



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

December 07, 2010

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CC:ITA:B04
CONEX-146281-10

UIL: 104.00-00

The Honorable Jim Webb
United States Senate
Washington, DC 20510

Attention:

Dear Senator Webb:

I am responding to your letter dated October 27, 2010, on behalf of your constituent, [redacted] inquired about the intent of Congress in amending section 104(a)(2) of the Internal Revenue Code to restrict the exclusion from gross income to damages received on account of personal physical injuries or physical sickness. [redacted] interprets this amendment as excluding all damages recovered under the Americans with Disabilities Act where a claim thereunder is based on a physical injury.

As requested, I responded directly to [redacted] and told her you had written on her behalf. I am enclosing a copy of my response.

I hope this information is helpful. If you have any additional questions, please contact me or [redacted], Identification Number [redacted] at [redacted].

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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UIL: 104.03-00

Dear :

Senator Webb wrote to us on your behalf and asked us to respond to your e-mail to him concerning whether all recoveries under the Americans with Disabilities Act (ADA) are excludable from gross income under section 104(a)(2) of the Internal Revenue Code, as amended in 1996. In your e-mail, you wrote that because section 104(a)(2) of the Code excludes from gross income damages received on account of personal physical injuries and physical sickness, if a claim under the ADA has its origin in a physical injury, then all proceeds recovered under the ADA should qualify for the exclusion. Congress' intent in enacting this provision does not support your view.

Prior to 1996, section 104(a)(2) of the Code excluded from gross income damages received on account of personal injuries or sickness. The IRS and the courts concluded that the exclusion encompassed damages compensating all personal injuries, including nonphysical injuries, such as those affecting emotions, reputation, or character. As amended in 1996, section 104(a)(2) of the Code expressly limits the exclusion to damages received "on account of personal physical injuries or physical sickness." Further, this section expressly states that emotional distress does not constitute a physical injury or sickness (except for an amount of damages not exceeding the amount paid for medical care attributable to emotional distress).

Documentation of Congress' intent in making this change is in the legislative history of the amendment. The legislative history states that "the exclusion from gross income does not apply to any damages received ... based on a claim of employment discrimination or injury to reputation accompanied by a claim of emotional distress." H. R. Conf. Rep. 104-737 at 301 (1996). In addition, for damages to qualify for the exclusion, the individual must be received because the employer's or other wrongdoer's actions caused the personal physical injury or sickness.

Thus, if an employer discriminates against an employee with a physical disability within the meaning of the ADA, for example, by not promoting the employee, the damages recovered for lost wages under the ADA are for the discrimination and not for any

physical injury or physical sickness that was inflicted by the employer. The employee must include those damages in income.

By contrast, if an employer physically injured an employee who had a physical disability within the meaning of the ADA, the employee could exclude from income under section 104(a)(2) of the Code a recovery of lost wages due to the period that employee missed work due to the physical injury.

I hope this information is helpful. If you have any additional questions, please contact me or _____, Identification Number _____ at _____.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)