

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Legend

Taxpayer =

State =

Statute =

Act =

Dear :

This is in reply to a letter dated October 14, 2009, and subsequent correspondence from your authorized representatives, requesting rulings on behalf of Taxpayer, concerning the federal income tax treatment of certain disability benefits paid pursuant to Statute and Act.

Taxpayer administers the payment of retirement and disability benefits for member police officers and firefighters employed by cities, towns and counties in State. Benefits are also available to qualified survivors of deceased members.

Section 12(g)(2) of Statute, as amended by Act, provides that a fund member who is receiving disability benefits based on a determination under this chapter that the fund member has a Class 1 or Class 2 impairment; is entitled to receive a disability benefit

for the remainder of the fund member's life in the amount determined under the applicable sections of this chapter.

Class 1 and Class 2 impairments are the direct result of an injury or illness incurred in the line of duty and benefits are not based on age, length of service or prior contributions. Section 13.5(b) and (c) of Statute.

Section 13.5(g) of Statute, as amended by Act, provides that benefits for a Class 1 impairment as determined under this section are payable for the remainder of the fund member's life.

Section 13.5(h) of Statute, as amended by Act, provides that benefits for a Class 2 impairment are payable: (1) for a period equal to the years of service of the member if the member's total disability benefit is less than thirty (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or (2) for the remainder of the fund member's life if the fund member's benefit is (A) equal to or greater than thirty percent (30%) of a first class patrolman or firefighter in the year of the local board's determination of impairment; or (B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

Section 23 of Statute was added by Act and provides:

(a) This section applies to a fund member who:

- (1) after June 30, 2009, receives a benefit based on a determination that the member has a Class 1 or Class 2 impairment, regardless of whether the determination was made before, on, or after June 30, 2009; and
- (2) before July 1, 2009, has not had the member's disability benefit recalculated under section 13.5 of this chapter.

(b) Upon becoming fifty-two (52) years of age, a fund member receiving a Class 1 impairment benefit or Class 2 impairment benefit under section 13.5(h)(2) of this chapter is entitled to receive a monthly supplemental benefit determined in STEP THREE of the following formula:

STEP ONE: Determine the greater of:

- (A) the monthly retirement benefit payable to a fund member with twenty (20) years of service; or
- (B) the monthly retirement benefit payable to a fund member with the total years of service (including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits) and salary, as of the year the fund member becomes fifty-two (52) years of age, that

the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age.

STEP TWO: Subtract from the amount determined under STEP ONE the amount of any monthly benefit determined under section 13.5 of this chapter that the fund member is entitled to receive for the remainder of the fund member's life.

STEP THREE: Determine the greater of the following:

(A) The remainder determined under STEP TWO.

(B) Zero (0).

(c) A monthly supplemental benefit determined under this section is payable for the remainder of the fund member's life.

Section 104(a)(1) of the Internal Revenue Code (the Code) states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include--(1) Amounts received under workmen's compensation acts as compensation for personal injuries or sickness... ."

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Accordingly, based on the representations made, and authorities cited above, we conclude as follows:

(1) Line-of-duty disability benefits paid under sections 12(g)(2) and 13.5 of Statute, as amended by Act, to a member who suffers a disability due to a job-related illness or injury and which are paid as lifetime disability benefits (or as a continuation to a survivor) will not be considered gross income to the recipient under section 104(a)(1) of the Code.

(2) The monthly-supplemental benefit paid to a member under section 23 of Statute, as added by Act, will be considered gross income to the recipient.

No opinion is expressed or implied concerning the tax consequences under any other provision of the Code or regulations other than those specifically stated above.

These rulings are directed only to the Taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely

Harry Beker  
Chief, Health and Welfare  
Branch  
Office of Division Counsel/Associate  
Chief Counsel (Tax Exempt & Government  
Entities)