

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Refer Reply To:
CC:ITA:B04
PLR-P-116360-14
Date:
September 03, 2014

Dear _____ :

This responds to your request for a private letter ruling concerning whether § 104(a)(2) of the Internal Revenue Code excludes from your gross income payments a city made to you to insulate your home from noise from temporary construction and thereby avoid possible exacerbation of a physical illness to a member of your household.

In a telephone conversation, we informed your authorized representative that we could not issue a ruling on this matter due to the factual nature of the issues involved. See section 4.02(1) of Rev. Proc. 2014-3, 2014-1 I.R.B. 111. We hope, however, that the following general information is helpful.

Under § 61(a) gross income means all income from whatever source derived. Gross income extends to undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion, unless specifically excluded. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955) Not only is § 61 broad in scope, exclusions from gross income must be narrowly construed. *Commissioner v. Schleier*, 515 U.S. 323, 328 (1995).

One of these exclusions, § 104(a)(2), permits a taxpayer to exclude from gross income damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness.

Under current law, it appears that payments to avoid possible future exacerbation of a physical injury or physical sickness would not qualify for exclusion under § 104(a)(2) and would be includible in gross income under § 61(a). See *Starrels v. Commissioner*,

304 F.2d 574, 576 (9th Cir. 1962), *aff'g* 35 T.C. 646 (1961); *Roosevelt v. Commissioner*, 43 T.C. 77 (1964). In *Starrels*, both the Tax Court and the Court of Appeals for the Ninth Circuit concluded that payments made pursuant to a prior consent to a future invasion of privacy rights failed to qualify for exclusion under § 104(a)(2). The Ninth Circuit noted that “[t]he language of Section 104(a)(2) reads most naturally in terms of payment for injuries sustained prior to a suit or settlement agreement. The ‘exemption is allowed for damages which have already occurred, and there is no suggestion of an exemption for amounts paid for possible future damages.’” 304 F.2d at 576. In *Roosevelt*, the Tax Court approved this rationale in denying the § 104(a)(2) exclusion for compensation paid for the waiver of possible future personal injuries.

This letter is an “information letter” which calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1.

In accordance with the provisions of a Power of Attorney currently on file with this office, we are sending a copy of this letter to your authorized representative.

If you have any questions, please contact our office at () .

Sincerely,

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