



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

OFFICE OF THE CHIEF COUNSEL

July 31, 2018

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The Honorable John Ratcliffe  
Member, U.S. House of Representatives  
6531 Horizon Road, Suite A  
Rockwell, Texas 75032

Attention:

Dear Representative Ratcliffe:

I am responding to your inquiry dated July 9, 2018, on behalf of your constituent, . provided information indicating that is a military veteran who receives disability retirement payments. asked about the application of section 104(b)(2)(B) of the Internal Revenue Code (Code) that would make these payments non-taxable.

Section 104(a)(4) of the Code provides, in general, that gross income does not include amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980. Section 104(b)(2)(B) of the Code provides that section 104(a) of the Code applies to an individual, if on September 24, 1975, was a member of any organization (or reserve component thereof) referred to in subsection (a)(4)....”

However, Treasury Regulation section 1.104-1(e) provides that retired pay based on years of service is not excluded under section 104(a)(4) of the Code. In accordance with this provision all or a portion of disability retirement payments based on years of service generally is included in income. For additional information about how section 104(a)(4) applies to military and government disability pensions, see IRS Publication 525 (Taxable and Nontaxable Income) at <https://www.irs.gov/pub/irs-pdf/p525.pdf>, pages 17 and 18.

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

Sincerely,

Denise Trujillo, Branch Chief  
Health and Welfare Branch  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)