

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B04  
PLR-105098-17  
Date:  
July 31, 2017

In Re:

Legend

- Department =
- Employer =
- Employee =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Pension Plan =
- x =

Dear \_\_\_\_\_ :

This letter responds to your request for a private letter ruling that you do not include in your income under § 61 of the Internal Revenue Code \$x from discharge of

indebtedness due to the Department's waiver of collection of a \$x overpayment of your pension.

### Facts

You worked for Employer from Date 1 until your retirement on Date 2. While you were employed by Employer, you made after-tax contributions to the Pension Plan.<sup>1</sup> Due to your years of service as an Employee, you became eligible to receive payments from the Pension Plan, which the Department administers.

You began receiving payments from the Pension Plan on Date 3. You included in your gross income each year on your federal income tax return the taxable portion of the pension payments you received during that year. In accordance with Notice 88-118, 1988-47 I.R.B. 9, and § 72(b), you used the simplified safe harbor method to determine the tax-free and taxable portions of your pension payments from the Pension Plan.

On Date 4, you received a letter from the Department informing you that your pension was going to be reduced in the future due to systematic errors made years ago. The Department's calculations showed that you received a total overpayment of \$x due to errors in the calculation of your benefit. The Department has the discretion to waive past overpayments if certain criteria are satisfied. The Department determined you satisfied the criteria for automatic waiver of the collection of the overpayment. You represent that the Department would furnish you a Form 1099-C, *Cancellation of Debt*, for \_\_\_\_\_ to reflect its waiver of collection of the \$x overpayment.

### Law and Analysis

Section 61 provides that gross income means all income from whatever source derived except as otherwise provided in subtitle A of the Code, including pensions and income from discharge of indebtedness. Section 61(a)(11) and (12).

Ordinarily, you would be obligated to repay the amount of the \$x pension overpayment. The Department, however, waived the collection of the overpayment, which it is authorized to do. The \$x discharge of indebtedness is not gross income under § 61 because you accounted for all your pension payments under the Pension Plan (including the \$x overpayment) under Notice 88-118 as you received them.

Accordingly, based on the information submitted and representations and assumptions made, we conclude that you do not include in income under § 61 the Department's forgiveness of your obligation to repay the \$x pension overpayment. Thus, you should not report this \$x on your \_\_\_\_\_ Form 1040, *U.S. Individual Income Tax Return*, even if

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<sup>1</sup> For purposes of this ruling we have assumed that you included in your gross income your salary payments (including your after-tax contributions to the Pension Plan) during the years you actually or constructively received them.

you receive a Form 1099-C for \_\_\_\_\_ from the Department reflecting its waiver of the collection of the \$x overpayment.

Pursuant to section 7.06 of Rev. Proc. 2017-1, 2017-1 I.R.B 1, you must attach a copy of this letter ruling to any federal income tax to which it is relevant. If you file your returns electronically, you may satisfy this requirement by attaching a statement to your return that provides the date and control number of this letter ruling.

Except as expressly provided herein, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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

Sincerely,

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

cc: