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Date:

June 03, 2020

Legend:

Taxpayer =

Plan =

Statute =

Ordinances =

Worker's Compensation Act =

State =

City =

Union A =

Union B =

Union C =

Union D =

Union E =

Union F =

Union G =

Executive Employee Members =

Dear _____ :

This is in reply to a letter dated August 8, 2019, supplemented by a letter dated March 2, 2020, including certain clarifying amendments to the Plan, from your authorized representative, requesting a ruling on behalf of Taxpayer, concerning the federal income tax treatment of certain disability and death benefits paid pursuant to Statute and Ordinances and paid pursuant to Sections - and - of the Plan.

Taxpayer adopted the Plan pursuant to Statute and Ordinances. Taxpayer represents that certain benefits are paid under the Plan for eligible employees of City who have disabilities that arise out of and in the course of employment, in accordance with Statute and Ordinances. Taxpayer represents that the Plan is a tax-qualified governmental defined benefit pension plan.

Sections - and - of the Plan generally correspond to Sections and - of Ordinances and Sections and of Statute.

Section of Ordinances and Section of Statute provide, in relevant part, that any participant receiving payments under the Worker's Compensation Act will not, at the same time, receive an annuity provided by the Retirement Fund, except to the extent that such annuity for each month exceeds the worker's compensation benefit payable for the same month.

Section of Ordinances and Section of Statute provide, in relevant part, that any participant who is permanently disabled from performing duties of the nature required by his or her job, and such disability is shown to the satisfaction of the Retirement Board to have arisen out of and in the course of his or her employment by the City as defined by the Worker's Compensation Act, is eligible for retirement irrespective of the duration of his or her employment.

Section _____ of Ordinances and Section _____ of Statute provide, in relevant part, that any pension payable by reason of disability arising out of and in the course of employment as defined in the Worker's Compensation Act, provided such disability was not incurred as the result of any other gainful employment, is not less than one-half of the participant's annual rate of pay at the time of disability.

Section _____ of Ordinances and Section _____ of Statute provide, in relevant part, that upon the death of a participant who had been retired by reason of disability, there will be paid to or on account of his or her surviving child or children under eighteen (18) years of age, and, in the case of a male participant, to his qualified widow, monthly benefits consistent with the table set forth in Section _____ of Ordinances and Section _____ of Statute. Benefits payable under the table are determined based on pay, not based on the participant's age, length of service, or prior contributions.

Section _____ of Ordinances and Section _____ of Statute provide, in relevant part, that upon the death of a participant who has qualified for a disability annuity, a minimum monthly benefit will be paid to his or her qualified survivors if greater than the amount determined from the table in Section _____ of Ordinances and Section _____ of Statute. The minimum monthly benefit is equal to fifty percent (50%) of the amount of the monthly annuity to which the participant would have been entitled if he or she had been permanently disabled on the date of his or her death, or fifty percent (50%) of the amount of his or her actual monthly annuity in the case of a participant who has been receiving disability benefits from the Fund. The minimum monthly benefit when payable to a qualified widow without a qualified child or children in her care is further reduced in amount by two percent (2%) for each year that the age of the widow is less than the age of the deceased participant.

Section _____ of the Plan provides, in relevant part, that any participant, irrespective of the duration of his or her employment, who is permanently disabled from performing duties of the nature required by his or her job which disability arises out of and in the course of employment by the City is eligible for retirement on account of disability according to the provisions of Article _____.

With respect to participants who are members of Unions A, B, C, D, and E and Executive Employee Members, Section _____ of the Plan provides, in relevant part, that any participant who, irrespective of the duration of his or her employment, suffers a disability which is shown to the satisfaction of the Retirement Board to have arisen out of and in the course of his or her employment by the City, as defined in the Worker's Compensation Act, is entitled to an annuity in an amount determined pursuant to Section _____; provided satisfactory proof of such disability is submitted to the Retirement Board. Pursuant to Section _____ of the Plan, if a participant who is a member of Union C or Union E is separated from service pursuant to the City's Worker's Compensation Return to Work II program, the participant is considered to be disabled as a result of his or her employment with the City. As such, the participant is automatically eligible for a

disability annuity, provided the participant meets all other requirements. Taxpayer represents that the City's Worker's Compensation Return to Work program is only available to participants who are injured on the job, and part II of the program is for participants who, after a reasonable period of time, are determined to be unable to perform the essential functions of their jobs.

With respect to participants who are members of Unions A, B, C, D, and E and Executive Employee Members, Section _____ of the Plan provides, in relevant part, that for participants retiring by reason of disability arising out of and in the course of employment, as defined in the Worker's Compensation Act, any annuity payable by reason of such disability is not less than one-half of the participant's annual rate of Pay at the time of disability.

With respect to participants who are members of Unions F and G, Section _____ of the Plan provides, in relevant part, that any participant who, irrespective of the duration of his or her employment, suffers a disability which is shown to the satisfaction of the Retirement Board to have arisen out of and in the course of his or her employment by the City, as defined in the Worker's Compensation Act, is entitled to an annuity in an amount determined pursuant to Section _____, provided proof of such disability is submitted to the Retirement Board.

With respect to participants who are members of Unions F and G, Section _____ of the Plan provides, in relevant part, that for participants who are determined to be disabled under Section _____, any annuity payable by reason of disability, provided the disability was not incurred as the result of any other gainful employment, is not less than one-half of the participant's annual rate of Pay at the time of disability.

Section _____ of the Plan provides, in relevant part, that any participant receiving payments under the Worker's Compensation Act will not, at the same time, receive an annuity provided by the Retirement Fund, except to the extent that such annuity for each month exceeds the Worker's Compensation benefit payable for the same month.

With respect to participants who are members of Unions A, B, C, D, and E and Executive Employee Members, Section _____ of the Plan provides, in relevant part, that upon the death of a participant who had been retired by reason of disability, there will be paid to or on account of his or her surviving child or children under eighteen (18) years of age, and to his or her surviving spouse, monthly benefits consistent with the table set forth in Section _____. Benefits payable under the table are determined based on pay, not based on the participant's age, length of service, or prior contributions.

With respect to participants who are members of Unions A, B, C, D, and E and Executive Employee Members, Section _____ of the Plan provides, in relevant part, that upon the death of a participant who has qualified for a disability annuity, a minimum monthly benefit will be paid to his or her qualified survivors if greater than the amount determined from the table set forth in Section _____. The minimum monthly benefit is

equal to fifty percent (50%) of the amount of the monthly annuity to which the participant would have been entitled if he or she had been permanently disabled on the date of his or her death, or fifty percent (50%) of the amount of his or her actual monthly annuity in the case of a participant who has been receiving disability benefits from the Fund.

With respect to participants who are members of Unions F and G, Section _____ of the Plan provides, in relevant part, that upon the death of a participant who had been retired by reason of disability, there will be paid to or on account of his or her surviving child or children under eighteen (18) years of age, and, to his or her surviving spouse, monthly benefits consistent with the table set forth in Section _____. Benefits payable under the table are determined based on pay, not based on the participant's age, length of service, or prior contributions.

With respect to participants who are members of Unions F and G, Section _____ of the Plan provides, in relevant part, that upon the death of a participant who has qualified for a disability annuity, a minimum monthly benefit will be paid to his or her qualified survivors if greater than the amount determined from the table set forth in Section _____. The minimum monthly benefit is equal to fifty percent (50%) of the amount of the monthly annuity to which the participant would have been entitled if he or she had been permanently disabled on the date of his or her death, or fifty percent (50%) of the amount of his or her actual monthly annuity in the case of a participant who has been receiving disability benefits from the Fund. The minimum monthly benefit when payable to a surviving spouse of a participant of Union F without a qualified child or children in his or her care is further reduced in amount by two percent (2%) for each year that the age of the surviving spouse is less than the age of the deceased participant.

RULINGS REQUESTED

(1) A service-related disability benefit paid by the Plan to a participant who suffered a disability arising out of and in the course of the participant's employment by the City will be excludable from the participant's gross income under section 104(a)(1) of the Code to the extent not exceeding one-half of the participant's annual rate of pay at the time of disability.

(2) To the extent, if any, exceeding the amount specified in paragraph (1), the service-related disability benefit will be gross income to the participant under section 72 of the Code.

(3) Death benefits paid by the Plan to a survivor of a deceased disabled participant will be excludable from the recipient's gross income under section 104(a)(1) of the Code to the extent not exceeding the greater of: (a) a fixed amount stated in the Plan; or (b) one-half of the monthly disability benefit for which the participant had been qualified or was receiving at the time of the participant's death; provided, in either case, that the Retirement Board determined that the participant's disability arose out of and in the course of the participant's employment by the City.

(4) Disability benefits and death benefits paid under the Plan to former spouses of participants pursuant to domestic relations orders are not excludable from the gross income of former spouses under section 104(a) of the Code.

(5) The foregoing rulings are prospective and, based on the Plan's representation of no changes to the service-related disability benefit in recent years, also retroactive to 2019 service-related disability benefit payments.

Under State law, the parties may specifically provide in a domestic relations order that the former spouse will receive a share of a disability benefit, and the Taxpayer will follow that direction.

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services.

Section 72(a) of the Code provides that, except as otherwise provided, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment or life insurance contract.

Section 104(a)(1) of the Code provides that gross income does not include 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) of the Code excludes from gross income amounts 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 the employee for personal injury 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. 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. Section 104(a)(1) also does not apply to amounts which are received as compensation for a non-occupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

When a disability benefit is determined to be in the nature of workmen's compensation, benefits paid thereunder will be excluded in full pursuant to section 104(a)(1), even though such benefits exceed those payable under the state's general workmen's compensation act. See, Rev. Rul. 59-269, 1959-2 C.B. 39; Rev. Rul. 83-91, 1983-1 C.B. 38.

In Revenue Ruling 80-44, 1980-1 C.B. 34, a statute in the nature of a workmen's compensation act provided for an allowance of the greater of (A) 60 percent of the individual's average final compensation, or (B) the amount to which the individual would be entitled under the normal, years of service, retirement plan. The ruling concluded that the benefits under the statute were excludable under section 104(a)(1) of the Code to the extent that they did not exceed 60 percent of the final average compensation.

Any excess over 60 percent of final average compensation was attributable to length of service, and therefore, not excludible from gross income. Rev. Rul. 80-44 also holds that benefits of the surviving spouse which are a continuation of the employee's benefits are excludible under section 104(a)(1) of the Code in the same percentage as the employee's benefits were excludible.

Rev. Rul. 80-84, 1980-1 C.B. 35, concluded that benefits paid to employees' survivors may qualify as paid under a statute in the nature of a workmen's compensation act where those benefits are a mere continuation of employees' section 104(a)(1) benefits. The ruling also stated that a statute authorizing benefits for employees' survivors may qualify as a statute in the nature of a workmen's compensation act if it requires as a prerequisite to payment a determination that the cause of the employee's death was service-related. The ruling concluded that survivor benefits are excludable from gross income under section 104(a)(1) of the Code if the recipient can establish that the benefits are received under the service-connected death provisions.

Rev. Rul. 85-104, 1985-2 C.B. 52, considered a statute under which the participants who were disabled due to work-related injury or sickness, receive the greater of a fixed percentage of base salary or an amount computed on the basis of years of service. The ruling concluded that an amount up to the percentage of base salary specified by the statute would be excludible from the participant's gross income under section 104(a)(1) of the Code but that any excess, computed on the basis of length of service, would not be excludible under section 104(a)(1). The ruling also concluded that if benefits are computed by a formula that does not refer to the employee's age, length of service, or prior contributions and are provided to a class that is restricted to employees with service-incurred injuries, then the benefits are payment for those injuries, and the statute under which the benefits are paid qualifies as a statute in the nature of a workmen's compensation act.

Sections and of Statute and Sections and of Ordinances limit benefits to employees who suffer disabilities that arise out of and in the course of employment, and the benefits are not determined based on the employee's age, length of service, or prior contributions. Thus, Sections and of Statute and Sections and of Ordinances are in the nature of a workmen's compensation act.

Disability benefits are paid under the Plan pursuant to Sections and of Statute and Sections and of Ordinances to a participant where the disability arises out of and in the course of employment, or upon the death of a participant who had

been determined to be disabled by reason of disability that arose out of and in the course of employment, and are thus in the nature of workmen's compensation. The minimum disability benefits are determined by reference to rate of pay, not by reference to the participant's age, length of service, or prior contributions.

To the extent the disability retirement benefit paid under the Plan to a participant who suffers a disability that arises out of and in the course of employment exceeds the minimum disability benefit that is not determined by reference to the participant's age, length of service, or prior contributions, the excess is includable as taxable gross income under section 72. To the extent the death benefit paid under the Plan to a survivor of a deceased participant who had suffered a disability that arose out of and in the course of employment exceeds the minimum disability benefit that is not determined by reference to the participant's age, length of service, or prior contributions, the excess is includable as taxable gross income under section 72.

Section 104(a)(1) is strictly construed in a manner consistent with section 61, which provides that all income is included in gross income unless explicitly excluded. Moreover, section 1.104-1 of the regulations explicitly limits the exclusion from income to employees and their survivors. Neither the Code nor the regulations provide an exclusion from income for amounts paid to former spouses pursuant to a domestic relations order. See, *Fernandez v. Comm'r*, 138 T.C. 378 (2012).

Based on the representations made by Taxpayer and the authorities cited above, we conclude as follows:

(1) Benefits paid under the Plan to participants who are members of Unions A, B, C, D, E, F, and G and Executive Employee Members for disabilities that arise out of and in the course of employment will not be gross income to the recipient under section 104(a)(1) of the Code to the extent that the benefits do not exceed 50% of the participant's annual rate of pay at the time of disability.

(2) Any portion of the benefit paid under the Plan to participants who are members of Unions A, B, C, D, E, F, and G and Executive Employee Members for disabilities that arise out of and in the course of employment that exceeds 50% of the participant's annual rate of pay at the time of disability will be gross income to the recipient under section 72 of the Code.

(3) Benefits paid under the Plan to survivors of deceased participants who were members of Unions A, B, C, D, E, F, and G and Executive Employee Members and who were receiving disability benefits due to disabilities that arise out of and in the course of employment, will not be gross income to the recipient under section 104(a)(1) of the Code to the extent that the death benefits do not exceed the greater of: (a) a fixed amount stated in the Plan that is determined by reference to pay, not by reference to age or length of service, or (b) 50% of the monthly disability benefit for which the participant had been qualified or was receiving at the time of the participant's death, but

only to the extent that (a) and (b) do not exceed 50% of the participant's annual rate of pay at the time of disability. Any portion of the death benefit that exceeds that amount will be gross income to the survivor under section 72 of the Code.

(4) Disability benefits and death benefits paid under the Plan to former spouses of participants pursuant to eligible domestic relations orders are not excludable from the taxable income of former spouses under section 104(a)(1) of the Code.

(5) Pursuant to section 5.01 of Rev. Proc. 2020-1, 2020-01 I.R.B. 1, this ruling is effective for taxable years 2019 and later.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences under any other provision of the Code or regulations or Statute and Ordinances, 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,

Denise Trujillo, Branch Chief
Health & Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: