

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

CC:TE/GE:EB:HW-PLR 106430-02

Date:

06/12/2002

Legend

System =

Charter =

Dear :

This is in reply to your ruling request dated January 28, 2002, concerning the proper federal income tax treatment of certain duty disability retirement benefits under section 104(a)(1) of the Internal Revenue Code (the Code).

The Service has previously issued private letter rulings that duty disability benefits provided under the Charter to police and firemen prior to conversion to normal retirement are excludable from the members' gross incomes under section 104(a)(1) of the Code and that members' duty disability benefits paid on and after conversion are excludable from gross income to the extent of 57% (in the case of a fireman) or 60% (in the case of a policeman) of the current annual salary for the position held at the time of injury.

Section 36-05-11-a of the Charter (Lump Sum Bonus) sets forth the payment of a lump-sum bonus to persons receiving a retirement allowance as of January 1, 2000. The amount of the bonus is 5% of the last full monthly installment payable prior to January 1, 2000 (or, if no full monthly installment was payable prior to January 1, 2000, the first full monthly installment payable immediately following January 1, 2000), multiplied by 12 times the appropriate lump sum factor (as set forth in the Charter).

Section 36-05-11-b of the Charter (Firemen and Policemen Survivorship Fund Dissolution Bonus) provides for the payment of a lump sum bonus to certain firemen and policemen retired on a disability retirement allowance as of January 1, 2000 who are active members in good standing of the firemen and policemen's survivorship fund as of January 1, 2000. Three separate categories of members are eligible to receive this bonus:

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- a. members on a duty disability retirement allowance who are eligible to convert to a service retirement allowance (the bonus is calculated as 8.6% of member's accrued service retirement allowance multiplied by the appropriate factor as set forth in the Charter);
- b. members on a duty disability retirement who are ineligible (member is subject to mandatory conversion, has passed the age for conversion, or has a lifetime duty disability retirement benefit) for conversion (the bonus is calculated as 8.6% of the member's annual service retirement allowance at age 63 multiplied by the appropriate factor as set forth in the Charter) ; and
- c. members retired on a disability retirement allowance who are ineligible for conversion to a service retirement allowance and who are older than age 63 as of January 1, 2000 (the bonus is calculated as 8.6% of their disability retirement allowance payable for the year immediately prior to January 1, 2000, multiplied by the appropriate factor as set forth in the Charter).

Section 36-05-11-d of the Statute (Retiree Special Bonus) provides a special bonus to every participant in the combined fund who is receiving a retirement allowance as of January 1, 2000. This bonus is equal to the full monthly installment payable for the month immediately prior to January 1, 2000 (or, if no monthly installment was payable prior to January 1, 2002, the first full monthly installment payable after January 1, 2000), multiplied by the appropriate multiplier factor as found in the Charter.

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

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 deceased employees. Section 104(a)(1) does not apply to a retirement pension or annuity to the extent 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

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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.

In Rev. Rul. 80-44, 1980-1 CB 34, a statute provided for an allowance for work-related disabilities of the greater of 60 percent of the individual's average final compensation or 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 final average compensation. Any excess over 60 percent of final average compensation was attributable to length of service and therefore, not excludable from gross income.

Rev. Rul. 80-84, 1980-1 CB 35, considered a situation in which a statute in the nature of a workmen's compensation act provided benefits in the event of work related injury and also provided that whenever any member died after retirement, a pension based on the average salary of the member at the time of his death would be paid to survivors. The ruling stated:

If a Los Angeles firemen or policeman suffers a service-related injury or illness necessitating the employee's retirement, the compensation for that injury or illness is two-fold -- 1) because of that injury, the employee may retire... and receive lifetime benefits ... and 2) because that injury qualifies the employee for retirement, the employee's survivors qualify for ...survivors' benefits whenever any member dies after retirement (the retirement provision). Benefits paid under this provision to survivors of employees... are thus part of the compensation for the employee's service-related injury or illness. These benefits therefore are treated as a continuation of the employee's lifetime section 104(a)(1) benefits.

Based on the information submitted, representations made and authorities cited, we conclude as follows:

Sections 36-05-11-a (Lump Sum Bonus) and 36-05-11-d (Special Retiree Bonus) of the Charter require that bonuses be paid to members who are receiving duty disability retirement calculated on the amount of the retirement allowance. The bonuses are considered extensions of the members' duty disability benefits. Accordingly, only those members receiving excludable duty disability benefits under section 104(a)(1) of the Code are permitted to exclude, in the same proportion as their duty disability allowances any bonuses received by them.

Section 36-05-11-b (Fireman and Policeman Survivorship Fund Dissolution Bonus) of the Charter requires that the following bonuses be paid to members receiving duty disability retirement allowances: (a) members who are eligible to convert to service retirement receive a bonus based on an accrued service retirement allowance; (b) members who are ineligible for conversion; receive a bonus based on an annual service retirement allowance at age 63, and (c) members who are ineligible for conversion to a service

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retirement allowance and who are older than age 63 as of January 1, 2000, receive a bonus based on the disability retirement allowance payable for the year immediately prior to January 1, 2000. The bonuses received under (a) and (b) are based on age, length of service or prior contributions and are not excludable from gross income under section 104(a)(1). The bonuses received under (c) are not based on age, length of service, or prior contributions and are excludable in the same proportion as the members' excludable section 104(a)(1) duty disability allowance.

Except as expressly provided herein, no opinion is expressed or implied 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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Enclosure:

Copy for section 6110 purposes

cc: