

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

08/21/2003

City =

Fund =

Charter =

Agreement =

Dear: :

This responds to the request of February 25, 2003, on behalf of the Fund concerning whether work-related disability benefits paid by the Fund are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the "Code").

The Fund is an employee benefit plan providing retirement, disability, death and survivor benefits to retired police officers formerly employed by the City Police Department and their beneficiaries. It pays benefits as defined in the Charter and the Agreement to those participants and surviving beneficiaries who meet certain eligibility requirements set forth in the mentioned documents.

Section C7-10-2 of the Charter states that,

There shall be such trust funds named herein or created hereafter by the Board of Representatives, which shall be governed by a trust indenture or similar

document, as amended from time to time by the respective collective bargaining agreement. The Director of Legal Affairs may prepare for the Trustees of each pension plan an agreement and declaration of trust for the ... Police Pension Trust Fund.. As may be later established by collective bargaining agreements.

Section C7-20-1 of the Charter states that,

The Board of Trustees of the Police Fund ...may, by a majority of vote of its members, upon request of the respective Chief of the Fire and Police Departments, as a reward for conspicuously meritorious service, retire from duty any member of the regular Police... upon certificate of such medical examiner as the Board of Trustees may designate showing that such member is permanently disabled, physically or mentally, so as to be unfit for any police or fire duty; provided such medical examiner shall further certify that, in the medical examiner's opinion, such disability is due ... to injury received or exposures endured in the performance of duty in such Department. The Board of Trustees, by a majority vote, may retire any member of the regular ... Police force ... who in the actual performance of duty and without personal fault or misconduct, shall have become permanently disabled, so as to be incapacitated in the performance of duty. The member so retired shall be entitled to receive from the proper fund, during life time, unless removed from the retired list after notice and hearing by a majority vote of the Board of Trustees an annual sum, payable monthly, equal to one-half of the member's compensation during the last year of service...

It is represented by the Fund's General Counsel that the benefits provided under the above charter section is payable only on account of service-related disabilities, that it has been so interpreted by the Fund's Board of Trustees, and that the Board of Trustees, as the agency administering the Fund has the authority to make such interpretation.

Section C7-20-5 of the Charter provides for survivor benefits to surviving spouse and children of police officers who die or suffer injury in the performance of duty.

, ... when any member of the Police Department ... shall die or be permanently injured in the actual performance of duty, the Board of Trustees shall direct an allowance out of this fund, equal to one-half of the salary of such deceased police officer .. to be paid to the surviving spouse or the dependent children, parent or sibling of the deceased police officer...

Section 9.K. of the Agreement, which was ratified by the City and incorporated by reference into the Charter, establishes the criteria for benefits associated with work-related illness or injury.

Active police officers of the [City] Police Department who suffer a work related illness or injury at any time during their employment as a police officer shall be

eligible for the following Disability Pension benefits, in addition to those currently existing pursuant to the [Charter] and Declaration of Trust.

1. Such members shall be entitled to a Disability Pension equal to one hundred percent (100%) of his/her base pay at the time of the Application if at least two out of three independent medical physicians selected by the Pension Board concur that said member has a permanent/partial disability of fifty percent (50%) or a combined permanent/partial disability of fifty percent (50%) or more of any part of his/her body, including mental disability, and the majority of the Pension Board concurs that said member is unable to be gainfully employed as a result of said disability. ...

2. Such members shall be entitled to a Disability Pension equal to seventy-five percent (75%) of his/her base pay at the time of the Application if at least two out of the three independent medical physicians selected by the Pension Board in accordance with the provisions of Paragraph 9K(1) above, concur that same member has a permanent/partial disability of thirty percent (30%) or a combined permanent/partial disability of thirty percent (30%) or more of any part of his/her body, including mental disability, and also at least two out of three of said independent medical physicians concur that said member is unable to meet the physical or mental requirements of an entry patrolman for the [City] Police Department.

Thus, the Charter provides for a disability benefit of 50% of a member's compensation during the last year of service if determined to be incapacitated from the performance of duty as a result of an illness or injury incurred in the performance of duty. The Agreement provides a disability benefit of 75% of the member's salary if determined to be at least 30% disabled and unable to meet the police department's entry level medical requirements, and a 100% disability benefit if at least 50% disabled and unable to be gainfully employed, such disability being caused by a work-related injury or illness.

Section 104(a)(1) of the Code states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include—(1) 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) excludes from gross income amounts that are 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 employees for personal injuries 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. However, 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.

In Rev. Rul. 81-47, 1981-1 C.B. 55, county law provided that all collective bargaining agreements entered into by the county would be adopted and approved by legislative acts of the county council and that such agreements were incorporated by reference into the county code. The revenue ruling concludes that the collective bargaining agreements therefore had the force and effect of law and were considered "statutes" for purposes of section 104(a)(1).

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.

Whether benefit payments are excludable by the recipient under section 104(a)(1) of the Code depends upon the nature of the statute under which they are paid. Benefits will not be excludable where the statute allows for disability payments for any reason other than on-the-job injuries. See, Haar v. Commissioner, 78 T.C. 864, (1982), affd. 709 F.2d 1206 (8th Cir. 1983).

Based on the information submitted, representations made and authorities cited, Section C7-20-1 of the Charter provides for service-related disability to members determined to be "permanently disabled, physically or mentally, so as to be unfit for any police ... duty." The benefits payable are not determined by reference to the member's age, length of service or prior contributions. Accordingly, Section C7-20-1 of the Charter, providing for service-related disability benefits, is a statute in the nature of a workmen's compensation act and the benefits received thereunder are excludable from the recipient's gross income under section 104(a)(1) of the Code.

Because Sections 9.K.1. and 9.K.2. of the Agreement have been incorporated by reference into the Charter, they have the force and effect of law and are a "statute" for purposes of section 104(a)(1) of the Code. Sections 9.K.1 and 9.K.2 limit benefits to members who suffer personal injury or sickness incurred in the performance of duty, and are not determined by reference to the member's age, length of service or prior contributions. Accordingly, Sections 9.K.1. and 9.K.2. of the Agreement are statutes in the nature of workmen's compensation acts and the benefits received thereunder are excludable from the recipient's gross income under section 104(a)(1) of the Code.

Section C7-20-5 of the Charter provides benefits to survivors of members who die as a result of accident or injury sustained in the performance of duty. Thus, Section C7-20-5 is a statute in the nature of a workmen's compensation act and the benefits received under section C7-20-5 by survivors of members are excludable from the recipient's gross income under section 104(a)(1) of the Code.

Except as specifically ruled upon above, no opinion is expressed or implied with respect

to the application of any other provisions of the Code or the regulations to the benefits described.

This ruling is directed only to the Taxpayer who requested 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)

Enclosures:

Copy of this letter

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