

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
[CC:TEGE:EB:HW]  
PLR-162971-04

Date:  
May 23, 2005

In Re:

LEGEND:

Taxpayer =

Statute =

Dear :

This is in reply to your request dated November 1, 2004, on behalf of the Taxpayer, for a ruling concerning the federal tax treatment under section 104(a)(1) of the Internal Revenue Code (the Code) of benefits received under the Plan.

The Statute requires that all employees be covered by the disability and pre-retirement death benefits under the Statute.

Section 806.5 of the Statute provides that if "a member, who is otherwise eligible to apply for disability retirement benefits under section . . . 803, is required to terminate the member's regular employment due to a total [or occupational] disability . . . that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section . . . 803. . . .

Section 806.5(3) of the Statute states that "[t]he board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury

received while performing official duties or an occupational disease arising out of and in the course of employment and that establish procedures for making such determination.

The annual disability benefits provided are based on a percentage of a member's annual base salary immediately preceding retirement and an additional percentage if the member has a spouse and dependent children at the time of the disability.

As authorized by the Statute (Sections 401 and 601), the Taxpayer withdrew from the statewide defined benefit plan and created its own locally administered and financed plan. Pension and disability benefits for firefighters are available through the Plan.

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 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either (1) 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, or (2) to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

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

Section 806.5 of the Statute limits benefits to a class of employees with service-incurred injuries or disease and the benefits are not determined with reference to the employee's age, length of service or prior contributions. Accordingly, section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.

Benefits paid under the Plan to offset service-related benefits provided under section 806.5 of the Statute are excludable from the employee's gross income under section 104(a)(1) of the Code. Amounts received in excess of the benefit amount determined under section 806.5 of the Statute are not excludable under section 104(a)(1) of the Code because they are determined by reference to the employee's age, length of service or prior contributions.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than those specifically stated above.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

cc: