

INTERNAL REVENUE SERVICE

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County =

Statute X =

Statute Y =

Statute Z =

Dear

This letter responds to your request of September 7, 1998, regarding the proper federal income tax treatment of your service-connected disability retirement benefits.

You state that after 14 years of employment, you retired from the County Sheriff's Department on service-connected disability in December, 1990. You began receiving disability retirement benefits that were excludable from your gross income. More than four years after retiring on disability, you returned to work with the County's Department of Human Services on March, 1995, pursuant to a special program adopted by the County to implement Statute X. While in the Sheriff's Department you held a safety position, but currently hold a non-safety position with the County.

Statute Y provides, "Upon retirement of any member for service-connected disability, he shall receive an annual retirement allowance payable in monthly installments, equal to one-half of his final compensation. ..."

Statute Z provides,

A person retired for disability who has not attained the mandatory age for retirement applicable to persons in the employment in which he or she will be employed, and whom the board finds not disabled for that employment, may be employed by any employer without reinstatement from retirement in a position other than that from which he or she retired or a position in the same member classification. His or her disability

retirement pension shall be reduced during that employment to an amount that, when added to the compensation received, shall equal the maximum compensation earnable by a person holding the position that he or she held at the time of his or her retirement. Any employment shall terminate upon his or her attainment of the mandatory retirement age for persons in that employment.

Section 61(a) of the Internal Revenue Code (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 a deceased employee. 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.

Rev. Rul. 80-137, 1980-1 C.B. 36, held, under a particular statute, that payments made by a municipality to a police officer injured in the line of duty who subsequently returns to "light duty" with the police department were not excludable from gross income under section 104(a)(1) of the Code. The statute provided that if a "disabled" policeman was unable to perform his regular duties as a result of the injury or sickness but was able to perform specified types of light police duty, payment of the full amount of regular salary or wages would be discontinued with respect to the policeman if he refused to perform whatever type of light police duty was available and offered to him. The revenue ruling stated that the police officer was being paid for the performance of services and thus the payments were not excludable from gross income under section 104(a)(1) of the Code.

You retired under Statute Y and began receiving disability retirement payments. Statute Y limits retirement disability benefits to members who become totally and permanently disabled as a result of on-the-job injury and is a statute in the nature of a workmen's compensation act. Therefore, disability retirement benefits paid to you under Statute Y are excludable from your gross income under section 104(a)(1) of the Code.

Statute Z allowed you to return to work in a position other than that from which you retired, without reinstatement from disability retirement. However, under this section, if your disability retirement payments when added to your current salary, exceed the maximum pay you could have received under your previous job title at the time of your retirement, your disability retirement payments are reduced during employment to equal that amount. Rev. Rul. 80-137 does not control your case. Unlike the payments under the statute in Rev. Rul. 80-137, your disability retirement payments under Statute Z are not contingent upon whether you accepted other duties offered to you.

Accordingly, based on the representations made and authorities cited above, we rule that to the extent you continue to receive disability retirement benefits under Statute Y, these benefits are excludable from your gross income under section 104(a)(1) of the Code notwithstanding your return to work pursuant to the provisions of Statute Z.

This ruling letter 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  
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Office of the Associate Chief Counsel  
(Employee Benefits and  
Exempt Organizations)