

INTERNAL REVENUE SERVICE  
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CC:EBEO:Br 6 PLR-122541-98

Attn:

October 4, 1999

Taxpayer =

State =

Statute A =

Statute B =

Statute C =

Statute D' =

Dear

This is in reply to a letter dated December 3, 1998, and subsequent correspondence, from your designated representatives, requesting rulings on behalf of Taxpayer, concerning the federal income tax treatment of certain disability benefits paid pursuant to Statutes A through D.

The Taxpayer administers the payment of retirement and disability benefits for member police officers and firefighters employed by cities, towns and counties in State. Benefits are also available to qualified survivors of deceased members.

Sections 9.8(c), (d) and (e) of Statute A provide that a payment shall be made to the surviving spouse and other designated individuals of a deceased member, in an amount fixed by ordinance.

Section 10.1(a) of Statute A provides that "[I]f a member dies in the line of duty ..., the surviving spouse is entitled to an additional monthly benefit, during the spouse's lifetime, ... equal to the difference between: (1) the benefit to which the member would have been entitled on the date of the member's death, but no less than fifty percent (50%) of the monthly wage received by a first class patrolman; and (2) the amount received by the spouse under section 9.8(c) ... " Section 10.1(c) provides that "dies in the line of duty" means death that occurs as a direct result of personal injury or illness resulting from any action that the member, in the member's capacity as a police officer, is obligated or authorized to perform.

Section 20(a) of Statute A provides that "[A] special death benefit of seventy-five thousand dollars (\$75,000) shall be paid in a lump sum [to designated relatives] of a fund member who dies in the line of duty ... "

Section 12.1(b)(2) of Statute B provides that "(A) If a member dies while in active service or after retirement:" the surviving spouse, children and parents are entitled to receive an amount fixed by ordinance.

Section 12.1(b)(3) of Statute B provides that "[I]f a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to an additional monthly benefit, during the spouse's lifetime ... equal to the difference between the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a fully paid first class firefighter and the amount received by the spouse under subdivision (2)(A)." This section also provides a definition of "dies in the line of duty" substantially similar to the definition of that term for police officers under Statute A.

Statute B also provides that "If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2)(B)(ii), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues.

Section 26(a) of Statute B provides a lump sum benefit identical to that provided under section 20(a) of Statute A.

Section 13.8(c) of Statute C provides that "the ... fund shall be used to pay an annuity, computed under subsection (h) and payable in monthly installments, to the surviving spouse of a member of the police department who: (1) Dies from any cause after having served for one (1) year or more; or (2) Dies from any cause while in the actual discharge of his duties as a police officer after having served less than one (1) year as an active member of the police department. ..." The annuity continues during the life of the surviving spouse unless the spouse remarried before September 1, 1983. If the spouse remarried before September 1, 1983, benefits cease on the date of remarriage.

However, if a member of the police department died in the line of duty and the member's surviving spouse remarried before September 1, 1983, the benefits for the surviving spouse shall be reinstated on July 1, 1995, and continue during the life of the surviving spouse.

Sections 13.8(d) and (e) provide that the fund "shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman ... payable in monthly installments [to each dependent child or dependent parent] of a member of the police department who dies from any cause after having served for one (1) year or more as an active member of the police department or dies from any cause while in the actual discharge of his duties as a police officer after having served less than one (1) year ..."

Section 13.8(h) of Statute C provides that "[T]he annuity payable under subsection (c) equals one (1) of the following: (1) For the surviving spouse of a member who dies before January 1, 1989, thirty percent (30%) of the salary of a first class patrolman. (2) For the surviving spouse of a member who dies after December 31, 1988, an amount per month during the spouse's life equal to the greater of (A) Thirty percent (30%) of the monthly pay of a first class patrolman; or (B) Fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death.

Section 14.1(a) of Statute C provides that "[I]f a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to an additional monthly benefit, during the spouse's lifetime equal to the difference between: (1) The benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a first class patrolman; and (2) the amount received by the spouse under section 13.8(b). Section 14.1(c) provides a definition of "dies in the line of duty" substantially similar to the definition of that term under Statute A.

Section 22(a) of Statute C provides a lump-sum benefit identical to that provided under section 20(a) of Statute A.

Section 10 of Statute D provides that "(a) A fund member is eligible for retirement after he has completed twenty (20) years of active service. (b) Benefit payments to a retired fund member begin on the first day of the month on or after the date he reaches fifty-five (55) years of age or on which he retires, whichever is later. ..."

Section 12(e) of Statute D provides that "[T]ime spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the fund member has a total of twenty (20) years of service. ..."

Section 12.3(b) of Statute D provides that "[A] covered impairment is an impairment that permanently or temporarily makes a fund member unable to perform the essential

function of the member's duties, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, with the police or fire department. ..."

Section 12.5 of Statute D provides that, with respect to members hired on or after January 1, 1990 or electing to be treated as such under section 12.4, at the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine whether the fund member has a Class 1 impairment (impairment that is the direct result of an injury or illness incurred in the line of duty); a Class 2 impairment (impairment that is a duty-related disease) or a Class 3 impairment (impairment that is not a Class 1 or Class 2 impairment).

Section 13.3 of Statute D provides that with respect to members hired before January 1, 1990 and not electing under section 12.4, "(b) A fund member who is determined to have a covered impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. ..."

Section 13.5 of Statute D provides that with respect to members hired on or after January 1, 1990 or electing to be treated as such under section 12.4, "(b) A fund member who is determined to have a Class 1 impairment ... is entitled to a monthly base benefit equal to forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. (c) A fund member who is determined to have a Class 2 impairment ..., is entitled to a monthly base benefit equal to twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter ... . (d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment ..., is entitled to a monthly base benefit equal to the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter ... . (e) For applicants hired after March 1, 1992, or describe in section 12.3(c)(2) ..., a fund member who is determined to have a Class 3 impairment ... " is entitled to certain specified benefits instead of benefits provided under subsection (d).

Section 14.1(b) of Statute D provides that if a fund member dies while receiving retirement or disability benefits each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit until certain cut-off events; the member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit, during the spouse's lifetime if the surviving spouse did not remarry before September 1, 1983 (if the spouse remarried before September 1, 1983, benefits cease on the date of remarriage). If a fund member dies while receiving retirement or disability benefits, and there is no surviving eligible child or spouse, but a dependent parent, the parent is to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or

parents' lifetime. If the fund member did not have at least twenty (20) years of service or was not at least fifty-five (55) years old, the benefit is computed as if the member did have twenty (20) years of service and was fifty-five (55) years of age.

Section 14.1(c) of Statute D provides that if a fund member dies while on active duty or while retired and not receiving benefits, the member's children, spouse or parents are entitled to receive a monthly benefit determined under section 14.1(b).

Section 14.1(d) of Statute D provides that "[I]f a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to an additional monthly benefit, during the spouse's lifetime if the surviving spouse did not remarry before September 1, 1983, equal to the difference between the benefit payable under subsection (b)(2) and the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to a member with twenty (20) years of service at fifty-five (55) years of age. ..." This section also provides a definition of "dies in the line of duty" substantially similar to the definition of that term for police officers under Statute A.

Section 20(b) of Statute D provides a lump-sum benefit identical to that provided under section 20(a) of Statute A.

Section 104(a)(1) of the Internal Revenue 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.

Accordingly, whether benefit payments are excludable by the recipient under section 104(a)(1) depends upon the nature of the statute under which they are paid, not the particular circumstances of the recipient, and benefits will not be excludable where the statute allows for disability payments for any reason other than on-the-job injuries.

Section 101(h) of the Code provides that gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such

term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty -- (A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or former spouse) of the public safety officer or to a child of such officer; and (B) to the extent such annuity is attributable to such officer's service as a public safety officer.

Accordingly, based on the representations made and authorities cited above, we conclude as follows:

(1) The exclusion from gross income provided in section 101(h) depends upon whether a "public safety officer" was "killed in the line of duty". Absent the facts concerning the death of a specific public safety officer, we are unable to issue rulings concerning the applicability of section 101(h) to payments made to survivors under Statutes A through D.

(2) Section 9.8 of Statute A does not limit benefits to employees who suffer employment related personal injury or sickness. Accordingly, section 9.8 of Statute A is not a statute in the nature of a workmen's compensation act and benefits received under subsections (c), (d) and (e) of Section 9.8 of Statute A by the spouse, children or parents of deceased members are not excludable from gross income under section 104(a)(1) of the Code.

(3) Section 10.1(a) of Statute A provides a benefit (in addition to the benefit provided to the surviving spouse under section 9.8(c)) to the spouse of an employee who dies in the line of duty. The minimum benefit provided (50% of the monthly wage received by a first class patrolman) is not based on the age, length of service or prior contributions of the employee. Accordingly, section 10.1(a) of Statute A constitutes a statute in the nature of a workmen's compensation act and benefits received by a surviving spouse under that provision equal to the excess of 50% of the monthly wage received by a first class patrolman over the amount received by the surviving spouse under section 9.8(c) are excludable from the surviving spouse's gross income under section 104(a)(1) of the Code.

(4) Section 20(a) of Statute A, section 26(a) of Statute B, section 22(a) of Statute C and section 20(b) of Statute D provide lump-sum benefits to survivors of employees who suffer line of duty death. Benefits are not determined by age, length of service or prior contributions. Accordingly, these statutory provisions are statutes in the nature of workmen's compensation acts and benefits paid are excludable from the recipient's gross income under section 104(a)(1) of the Code.

(5) Section 12.1(b)(2) of Statute B provides a benefit for the survivors of members who die while in active service or after retirement. The benefits provided under section 12.1(b)(2) are not limited to a class of employees who suffer work-related injuries or sickness. Accordingly, section 12.1(b)(2) of Statute B is not a statute in the nature of a workmen's compensation act and benefits are not excludable under section 104(a)(1) of

the Code. However, the benefits under section 12.1(b)(2) paid to survivors of members who were receiving excludable benefits under a statute in the nature of a workmen's compensation act at the time of death, are treated as a continuation of the employee's lifetime section 104(a)(1) benefits and are, thus, excludable from the recipient's gross income under section 104(a)(1) of the Code. See, Rev. Rul. 80-84, 1980-1 CB 35.

(6) Section 12.1(b)(3) of Statute B provides a benefit (in addition to the benefit provided to the surviving spouse under section 12.1(b)(2)) to the spouse of an employee who dies in the line of duty. The minimum benefit provided (50% of the monthly wage received by a first class firefighter) is not based on age, length of service or prior contributions of the employee. Accordingly, section 12.1(b)(3) of Statute B constitutes a statute in the nature of a workmen's compensation act and benefits received by a surviving spouse under that provision equal to the excess of 50% of the monthly wage received by a first class firefighter over the amount received by the surviving spouse under section 12.1(b)(2) are excludable from the surviving spouse's gross income under section 104(a)(1) of the Code. In addition, benefits received by incapacitated children of deceased firefighters who are not receiving benefits under section 12.1(b)(2)(B)(ii) of Statute B are excludable under section 104(a)(1) in the same proportion as the surviving spouse's excludable benefit.

(7) Section 13.8(c)(1) of Statute C does not limit benefits to members who incur work-related injuries or sickness. Accordingly benefits received under section 13.8(c)(1) are not excludable from the recipient's gross income under section 104(a)(1) of the Code. The benefits provided to the surviving spouse of a member who had served less than one year under section 13.8(c)(2) of Statute C are limited to a spouse of a member who dies in the actual discharge of duties and is not based on age, length of service or prior contributions. Accordingly, section 13.8(c)(2) of Statute C is a statute in the nature of a workmen's compensation act and the benefits received up to 30% of the monthly wage of a first class patrolman are excludable from the recipient's gross income under section 104(a)(1) of the Code. A spouse whose benefits had been terminated because of remarriage but were reinstated under section 13.8(c) are benefits received under a statute in the nature of a workmen's compensation act and are excludable from gross income up to 30% of the monthly pay of a first class patrolman.

(8) Sections 13.8(d) and (e) of Statute C provide benefits that are not based on age, length of service or prior contributions to the surviving dependent children and parents, respectively, of a police officer who dies after having served less than one year if the police officer dies in the actual discharge of duties. Accordingly, sections 13.8(d) and (e) are statutes in the nature of workmen's compensation acts and the benefits (where service has been less than one year) are excludable from the recipient's gross income under section 104(a)(1) of the Code. Benefits provided under section 13.8(d) and (e) of Statute C to survivors of police officers who had served more than one year are not limited to members who suffer work-related personal injuries or sickness. Accordingly, benefits provided to members who had worked more than one year under these

sections are not excludable from the recipient's gross income under section 104(a)(1) of the Code.

(9) Section 13.8(h)(2) of Statute C provides that the surviving spouse of a deceased member who dies after December 31, 1988 will receive a benefit under section 13.8(c) of the greater of 30% of the monthly pay of a first class patrolman or 55% of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death. If a member was receiving benefits excludable from his gross income under section 104(a)(1) of the Code at the time of his death, then the surviving spouse's benefit under section 13.8(h)(2) (up to 55% of the benefit received by the member at the time of his death) is excludable under section 104(a)(1) as a continuation of the member's excludable benefit regardless of how many years of service the member had at the time of death. See, Rev. Rul. 80-84.

(10) Section 14.1(a) of Statute C provides a benefit (in addition to the benefit provided to the surviving spouse under section 13.8(b)) to the spouse of an employee who dies in the line of duty. The minimum benefit provided (50% of the monthly wage received by a first class firefighter) is not based on age, length of service or prior contributions of the employee. Accordingly, section 14.1(a) of Statute C constitutes a statute in the nature of a workmen's compensation act and benefits received by a surviving spouse under that provision equal to the excess of 50% of the monthly wage received by a first class firefighter over the amount received by the surviving spouse under section 13.8(b) are excludable from the surviving spouses gross income under section 104(a)(1) of the Code.

(11) Section 10 of Statute D provides benefits that are not limited to members who incur work-related personal injury or sickness and are based on the age and length of service of the member. Accordingly, section 10 of Statute D is not a statute in the nature of a workmen's compensation act and the benefits paid thereunder are not excludable from the recipient's gross income under section 104(a)(1).

(12) Section 13.3 of Statute D provides benefits for disabled members that are not limited to members who suffer personal injury or sickness in the course of employment. Accordingly, section 13.3 of Statute D is not a statute in the nature of a workmen's compensation act and benefits received thereunder are not excludable from a recipient's gross income under section 104(a)(1) of the Code.

(13) Section 13.5(b) and (c) of Statute D provide benefits that are limited to employees who have incurred personal injuries or sickness in the course of employment, are not based on age, length of service or prior contributions and continue until the recipient reaches 55 years of age (or in certain circumstances for a period equal to the years of service of the member), at which time the employee is converted to the age and years of service retirement. Accordingly, sections 13.5(b) and (c) of Statute D are statutes in the nature of a workmen's compensation acts and benefits received under sections 13.5(b) and (c) of Statute D (including increased benefits under section 13.5(f)

attributable to base benefits under subsections (b) and (c)) are excludable from the recipient's gross income under section 104(a)(1) of the Code until such time as the recipient is converted to age and years of service retirement.

(14) Sections 13.5(d) and (e) of Statute D provide benefits that are not restricted to a class of employees who have incurred injury or sickness in the course of employment. Accordingly, Sections 13.5(d) and (e) of Statute D are not statutes in the nature of workmen's compensation acts and benefits received (including increased benefits under section 13.5(f) attributable to base benefits under subsections (d) and (e)) are not excludable from gross income under section 104(a)(1) of the Code.

(15) Sections 14.1(b) and (c) of Statute D provide benefits for surviving spouses, children and parents of fund members. Because sections 14.1(b) and (c) of Statute D do not limit benefits to survivors of members who incur personal injury or sickness in the course of employment, sections 14.1(b) and (c) are not statutes in the nature of workmen's compensation acts. Accordingly, benefits received by a survivor under section 14.1(b) or (c) of Statute D are generally not excludable from the recipient's gross income under section 104(a)(1) of the Code. However, if at the time of death, the member was receiving a benefit excludable under section 104(a)(1) of the Code, benefits received by that member's survivor under section 14.1(b) of Statute D will be excludable from the recipient's gross income under section 104(a)(1) as a continuation of the member's excludable benefit. See, Rev. Rul. 80-84.

(16) Section 14.1(d) of Statute D provides a benefit (in addition to the benefit provided to the surviving spouse under section 14.1(b)(2)) to the spouse of an employee who dies in the line of duty. The minimum benefit provided (the benefit payable to a hypothetical member with 20 years of service at 55 years of age) equals 50% of the monthly wage received by a first class patrolman or firefighter. The benefit is not based on age, length of service or prior contributions of the employee. Accordingly, section 14.1(d) of Statute D constitutes a statute in the nature of a workmen's compensation act and benefits received by a surviving spouse under that provision equal to the excess of 50% of the monthly wage received by a first class patrolman or firefighter over the amount received by the surviving spouse under section 14.1(b)(2) are excludable from the surviving spouse's gross income under section 104(a)(1) of the Code.

Ruling request number five of Taxpayer's revised ruling requests concerns annuity starting dates under section 72 of the Code. This issue is within the jurisdiction of the Employee Plans Division and will be the subject of a separate reply.

No opinion is expressed or implied concerning the tax consequences under any other provision of the Code or regulations 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.

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Sincerely yours,

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Harry Beker  
Chief, Branch No.6  
Office of the Associate  
Chief Counsel  
(Employee Benefits and  
Exempt Organizations)

Enclosures:

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