

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TE/GE:EB:HW-PLR-107143-00

Date:

July 31, 2000

### Legend

State =

City =

Statute =

Dear

This letter responds to your letter of March 24, 2000, requesting a ruling regarding the proper federal income tax treatment of your service-connected disability retirement benefits.

You retired as a City Firefighter with a work-related injury. The City Retirement Board approved your application for disability retirement. It approved a disability of fifty per cent (50%) of your annual salary at the time of your disability retirement.

The Statute provides:

Any fire or police participant totally and permanently disabled during the performance of essential duties pertaining to his employment by the City..., irrespective of the duration of his employment, [shall] be retired for disability, provided proof of total disability is submitted to the retirement board substantiated by reports of examinations... .

The City ... guarantees that no pension payable to a fire or police participant employed by the fire or police department on account of total and permanent disability sustained during the performance of essential duties pertaining to employment by the City ... as provided herein, shall be less than one-half the annual rate of regular compensation received by the disabled employee at the time of disability.

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

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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. Section 104(a)(1) also does not apply to amounts which are received as compensation for a non-occupational injury or sickness nor to 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.

The Statute limits payment of disability benefits to participants who become physically incapacitated by reason of injuries received or sickness caused by the discharge of duties. The benefits payable under the Statute are not determined by reference to the employee's age, length of service or prior contributions. The Statute is therefore a statute in the nature of workmen's compensation acts.

Accordingly, we conclude that service-connected disability retirement benefits paid to you under the Statute is excludable from your 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 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)

cc: