

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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April 9, 2001

### Legend:

Taxpayer =

Plan =

State =

Act =

Dear

This letter responds to an inquiry on behalf of Taxpayer, dated November 14, 2000, requesting a ruling on the proper federal income tax treatment of certain death benefits received under the Plan.

Taxpayer's husband, a member of the Plan, died January 5, 1995 while fighting a fire. In 1997, the State determined that the Taxpayer's husband died "in the line of duty ...".

The Taxpayer began receiving survivor benefits in 1995 pursuant to a provision of the Plan which authorized the payment of a survivor allowance "in the event of the death of any member who is in active service... ." This provision was determined not to be a statute in the nature of a workmen's compensation act because it provided for a benefit for all deaths, not just those occurring in the course of employment. Thus, the benefits paid under that provision were includable in the Taxpayer's income.

Effective April 28, 1999, the Act amended the Plan provision under which the Taxpayer was receiving benefits. The Act divided the former provision of the Plan into two separate provisions. Section 2 of the Act grants benefits only to members who die or become disabled by injuries incurred in the line of duty. Section 3 of the Act, consistent with the former provision, continues to provide death benefits for deaths not incurred in the line of duty.

Section 2 of the Act provides in part:

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In the event of the duty connected death of any member who is in active service... , the surviving spouse shall become entitled to receive a monthly allowance equal to fifty percent of the final average salary at the date of death ... . The amount of this allowance will be increased five percent of final average salary for each child... , subject to a maximum combined allowance of sixty percent of final average salary... .

After the effective date of the Act, Taxpayer was entitled to, and began receiving benefits under Section 2 of the Act.

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

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

The benefits provided by Section 2 of the Act are restricted to survivors of employees who die in the line of duty and are not determined by reference to the employee's age, length of service or prior contributions. Therefore, we conclude that Section 2 of the Act is a statute in the nature of a workmen's compensation act within the meaning of section 1.104-1(b) of the regulations, and that the benefits paid thereunder are excludable from gross income under section 104(a)(1) of the Code. Accordingly, benefits received by the Taxpayer under Section 2 of the Act after April 28, 1999, are excludable from her gross income under section 104(a)(1) of the Code.

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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,  
Felix Zech  
Assistant Chief, Health & Welfare Branch  
Office of Division Counsel/Associate Chief Counsel  
(Tax Exempt & Government Entities)

Enclosure:

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