

**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-149621-02

Date:

January 9, 2003

Legend

Taxpayer =

City =

Statute =

Dear :

This responds to a letter of August 12, 2002, submitted on your behalf, requesting a ruling on the proper Federal income tax treatment under section 104 of the Internal Revenue Code (the Code) of certain disability benefits you receive.

In the course of your employment as a police officer, you were physically disabled as the result of an on-the-job injury. Because of the injury, you retired at age 39. Upon early retirement, you were awarded duty disability retirement benefits under the City Statute.

Section 123.1 of the Statute provides that:

A member who becomes physically or mentally totally incapacitated for duty, as a police officer or firefighter in the employ of the City, by reason of a personal injury or disease, which the board of trustees finds to have occurred as the natural and proximate result of causes arising out of and in the course of the member's employment with the City... shall be retired by the board upon written application filed with the board by the said member or the member's department head. ... Upon the member's retirement he/she shall be entitled to a pension provided in Section 124.

Section 124 .2 of the Statute provides that:

A member who retires prior to his/her attainment of age 55 years on account of disability ... as provided in Section 123, shall receive a

disability pension computed according to Subsections 118.1 and 118.3.

Section 124.3 of the Statute provides that if the Police member has less than 25 years of credited service at time of disability:

- (d) Upon the member's attainment of what would have been 25 years of credited service, ... the member's duty disability pension will become a regular pension.

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 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.

Where an employee's disability retirement pension is converted when he reaches a certain age to a regular service retirement pension, the section 104(a)(1) exclusion ceases to apply at the time of the conversion. See, Rev. Rul. 80-14, 1980-1 CB 33.

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

Sections 123.1 of the Statute restricts benefits to a class of employees with service-incurred injuries or diseases and constitutes a statute in the nature of a workmen's compensation act.

Thus, disability benefits received by you under Section 123.1 of the Statute prior to the time of your conversion from duty disability retirement to regular service retirement are excludable from your gross income under section 104(a)(1) of the Code. Upon your conversion to regular service retirement under Section 124.3 of the Statute, the benefits received by you will become taxable.

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 who requested 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)

Enclosures

Copy of this letter

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