

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:TEGE:EB:HW – PLR-167262-03  
Date:  
May 20, 2004

Legend:

Fund =

City =  
Charter =

Dear \_\_\_\_\_:

This is in reply to your letter dated November 20, 2003, on behalf of the Fund, in which you request rulings concerning the Federal income tax treatment of certain disability benefits paid to City firefighters and police officers and their survivors.

The Fund provides benefits to firefighters and police officers, referred to as "Members," who are unable to perform their required duties for the City because of a disabling event. The Fund also provides for Members' retirement, termination, and death benefits.

The City Charter creates the Fund, and describes its funding, administration, and benefits to be paid to the firefighters and police officers or their survivors. In \_\_\_\_\_, the City Charter was amended, resulting in changes to the disability benefits provided under the Fund. The benefit provisions in effect through \_\_\_\_\_ ("Old Plan") apply to disabled firefighters and police officers who commenced receiving benefits before \_\_\_\_\_, or who opted to remain covered under the Old Plan. The amended benefit provisions ("New Plan") are effective on or after \_\_\_\_\_.

General Provisions Applicable To Disability Benefits Under The Old Plan

of the City Charter provides that a Member shall be paid service-connected disability benefits upon a finding that the Member is unable to perform his or her required duties through injury suffered in the line of duty, or sickness caused by the performance of duty. further provides that disabilities of heart disease, hernia of the abdominal cavity or diaphragm, tuberculosis and pneumonia (except terminal pneumonia) are occupational disabilities, and a Member so disabled shall be entitled to the same benefits from the Fund as a Member injured in the line of duty or in the performance of duty.

of the City Charter provides that a surviving spouse or dependent minor child of a Member shall be entitled to benefits or pension if the Member dies prior to retirement from an injury suffered in the line of duty, or sickness caused by the performance of duty, or as a result of an occupational disability of heart disease, hernia of the abdominal cavity or diaphragm, tuberculosis, or pneumonia (except terminal pneumonia), while remaining unmarried.

of the City Charter provides that active service Members who become incapacitated due to nonservice-connected injury or sickness shall be entitled to nonservice-connected disability benefits, subject to other eligibility requirements.

of the City Charter provides that a surviving spouse or dependent minor child of a Member shall be entitled to benefits if the Member has at least one year of active service and dies before retirement from any cause not in the line of duty.

#### General Provisions Applicable To Disability Benefits Under The New Plan

of the City Charter, as amended, provides that a Member shall be eligible for service-connected disability benefits upon a determination that an injury or illness arises out of and in the course of the Member's employment.

of the City Charter, as amended, provides that an active Member shall be eligible for occupational disability benefits when unable to perform the Member's required duties because of heart disease, hernia of abdominal cavity or diaphragm, AIDS, AIDS-related complex, tuberculosis, hepatitis B or pneumonia (except terminal pneumonia). further provides that the Board of Trustees shall deny an occupational disability benefit if it determines that the disability was not contracted as a result of service as a firefighter or police officer.

of the City Charter provides that a surviving spouse of a Member who dies before retirement as a result of an illness or injury that qualifies as service-connected or occupational under shall be eligible to receive a death benefit. A dependent minor child of the Member shall be eligible to receive the benefit if the Member has no Surviving Spouse.

of the City Charter, as amended, provides that active Members who are unable to perform their required duties because of an injury or illness that does not qualify as service connected under or occupational under shall be eligible for nonservice-connected disability benefits, subject to other eligibility requirements.

of the City Charter provides that a surviving spouse of a Member who has one or more years of service and dies before retirement not as a result of a cause described in , shall be eligible to receive a death benefit. A dependent minor child of such a Member shall be eligible to receive the benefit if the Member has no surviving spouse or if the spouse is under age 55.

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.

Section 104(a)(1) 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 amounts received under workmen's compensation acts or 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. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational 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.

If benefits are computed by a formula that does not refer to the employee's age, length of service, or prior contributions and are provided to a class that is restricted to employees with service-incurred injuries, sickness or death, then the benefits are payments for the injuries, sickness or death, and the statute under which the benefits are paid qualifies as a statute in the nature of a workmen's compensation act. See Rev. Rul. 80-84, 1980-1 C.B. 35; Rev. Rul. 83-77, 1983-1 C.B. 37 and Rev. Rul. 72-291, 1972-1 C.B. 36. Whether a payment is in the nature of workmen's compensation depends upon whether it is made because of injury sustained in the line of duty, not upon the amount paid. The fact that the amount received is based on a percentage of

the employee's salary on the date of the disability does not disqualify the payment from qualifying as one in the nature of workmen's compensation.

Rev. Rul. 85-105, 1985-2 C.B. 53, considered whether amounts received by a disabled firefighter under a state statute that created a rebuttable presumption that the disability was service-connected were excludable from gross income under section 104(a)(1). The revenue ruling stated that a rebuttable presumption did not eliminate the necessity of demonstrating that the disability was work-related but merely shifted the burden of proof concerning the cause of disability to the pension board, which was required to make a finding, based on medical evidence, as to whether the disability was service-connected. The revenue ruling concluded that the statute, which authorized benefits to a class restricted to employees with service-incurred disabilities, was a statute in the nature of a workmen's compensation act. See Take v. U.S., 82 T.C. 630 (1984), affd. 804 F.2d 553 (9<sup>th</sup> Cir. 1986).

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. See, Haar v. Commissioner, 78 T.C. 864 (1982), affd. 709 F.2d 1206 (8<sup>th</sup> Cir. 1983).

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

1. The benefits paid under \_\_\_\_\_ of the Old Plan, relating to an injury suffered in the line of duty, or sickness caused by the performance of duty, are restricted to employees with service-incurred disabilities. Accordingly, \_\_\_\_\_ relating to service-incurred disabilities is a statute in the nature of workmen's compensation act and the benefits received are excludable from the gross income of the recipient under section 104(a)(1). Under \_\_\_\_\_, the benefits received by the surviving spouse or dependent minor child of a recipient who was receiving service-incurred benefits under \_\_\_\_\_ are also excludable from gross income.
2. The benefits paid under \_\_\_\_\_ of the Old Plan, relating to disabilities of heart disease, hernia of the abdominal cavity or diaphragm, tuberculosis and pneumonia (except terminal pneumonia), are not considered to be paid for injuries suffered in the line of duty or sickness caused by the performance of duty. Accordingly, \_\_\_\_\_ relating to disabilities of heart disease, hernia of the abdominal cavity or diaphragm, tuberculosis and pneumonia (except terminal pneumonia) is not a statute in the nature of workmen's compensation act and benefits received are includable in the recipient's gross income. Under \_\_\_\_\_, the benefits received by the surviving spouse or dependent minor child of a recipient who was receiving benefits under \_\_\_\_\_ for disabilities of heart disease, hernia of the abdominal cavity

or diaphragm, tuberculosis and pneumonia (except terminal pneumonia), are also includable in gross income.

3. The benefits paid under \_\_\_\_\_ of the Old Plan, relating to nonservice-connected disabilities, are includable in gross income under section 61(a).
4. The benefits paid under \_\_\_\_\_ of the New Plan are restricted to employees with service-incurred injuries. Accordingly, \_\_\_\_\_ is a statute in the nature of workmen's compensation acts, and benefits received are excludable from the gross income of the recipient under section 104(a)(1). Under \_\_\_\_\_, benefits received by the surviving spouse or dependent minor child of a recipient who was receiving service-incurred benefits under \_\_\_\_\_ are also excludable from gross income.
5. The benefits paid under \_\_\_\_\_ of the New Plan provide a rebuttable presumption that the illness or injuries incurred are service-related. Accordingly, \_\_\_\_\_ is a statute in the nature of workmen's compensation act, and benefits received are excludable from the gross income of the recipient under section 104(a)(1). Under \_\_\_\_\_, benefits received by the surviving spouse or dependent minor child of a recipient who was receiving service-incurred benefits under \_\_\_\_\_ are also excludable from gross income.
6. The benefits paid under \_\_\_\_\_ of the New Plan, relating to nonservice-connected disabilities, are includable in gross income under section 61(a).

The determination letters issued in 1951 and 1954 to the Fund holding that the disability payments described therein are excludable under section 22(b)(5) of the Internal Revenue Code of 1939 and section 104(a)(3) of the Internal Revenue Code of 1954, are revoked.

In accordance with section 11.06 of Rev. Proc. 2004-1, 2004-1 C.B. 1, this ruling is effective on a prospective basis only.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

Harry Beker  
Chief, Health and Welfare Branch  
Office of Division Counsel/Associate Chief  
Counsel  
(Tax Exempt & Government Entities)

cc: