

INTERNAL REVENUE SERVICE

Index Number: 104.00-00

Number: **199906023**

Release Date: 2/12/1999

Attn:

CC:EBEO:6 - PLR 117178-98

State =

November 16, 1998

County =

Plan =

Dear :

This responds to your request of May 26, 1998, on behalf of County, concerning the federal income tax treatment of certain disability benefits paid pursuant to the Plan.

The Plan was established to provide retirement benefits, disability benefits and survivor's benefits to certain designated full-time employees of the County Police Department and Department of Fire and Rescue Services.

Section 6.4(b)(1)(ii) of the Plan (formerly section 6.4(b)(ii)) provides that a participant (regardless of his length of service) who terminates employment by reason of a total and permanent disability, incurred as a result of an accident or injury which has been sustained as an active covered employee and which has been ruled compensable under the workers' compensation law of State, shall be entitled to receive a monthly benefit equal to the greater of (i) the benefit determined under section 6.4(a) or (ii) the lesser of (A) a monthly amount which, when combined with any Social Security disability benefits the participant is entitled to receive, equals 100% of the participant's compensation at the time the disability is incurred, or (B) 66 2/3% of such compensation.

Section 6.4(b)(2) of the Plan provides that, regardless of his or her length of service, a firefighter, who terminates employment after December 31, 1997, or a police officer who terminates employment after March 31, 1998, by reason of a line of duty disability, shall be entitled to receive: (i) if the line of duty disability is a catastrophic disability, a monthly benefit equal to 66 2/3% of the participant's compensation; or (ii) if the line of duty disability is a non-catastrophic disability, a monthly benefit equal to 50% of the participant's compensation.

Section 6.4(b)(3)(i) defines "line of duty disability" as a total and permanent disability which is incurred as a result of an accident or injury which has been sustained as a result of service as an active covered employee and which has been ruled compensable under the workers' compensation law of State.

Section 6.4(b)(3)(ii) defines "catastrophic disability" as a line of duty disability (A) by reason of which the participant will be permanently prevented from engaging in any substantial gainful employment; or (B) which severely limits one or more major life activities.

Section 6.4(b)(3)(iii) defines "non-catastrophic disability" as a line of duty disability which is not a catastrophic 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.

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.

We conclude that benefits paid under section 6.4(b)(1)(ii) of the Plan and section 6.4(b)(2) of the Plan are restricted to employees with service-incurred injuries or sickness. Accordingly, section 6.4(b)(1)(ii) of the Plan and section 6.4(b)(2) of the Plan are statutes in the nature of workmen's compensation acts and benefits paid thereunder are excludable from the gross income of the recipients 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 letter 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, Branch 6
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosures

Copy of this letter

Copy for section 6110 purposes