

**Internal Revenue Service**

Number: **200542019**

Release Date: 10/21/2005

Index Number: 104.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EB:HW

PLR-126896-05

Date:

July 19, 2005

**LEGEND:**

Taxpayer =

City =

Statute =

Dear :

This is in reply to a letter of March 28, 2005, submitted on your behalf, requesting a ruling on the Federal income tax treatment of certain disability benefits under section 104(a)(1) of the Internal Revenue Code (the Code).

In the course of your employment as a police officer, you were physically disabled as the result of an on-the-job injury. You were found by the City to have been injured while discharging duties within the scope of your employment and were awarded benefits under the City Statute.

The Statute provides that:

If any participant, regardless of the number of completed years of continuous service with the employer, shall incur a total and permanent disability in the line of duty, such participant shall be entitled to receive a disability retirement benefit in an amount equal to the normal retirement

benefit . . . , based on the final monthly average salary of the participant at the date the total ands [sic.] permanent disability was incurred.

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 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either 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, or to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

The fact that the amount received as a disability retirement pension is computed with regard to the employee's salary prior to retirement does not disqualify the payment from being in the nature of workmen's compensation. See, Rev. Rul. 85-104, 1985-2 C.B. 52; Rev. Rul. 75-500, 1975-2 C.B. 44; and Rev. Rul. 68-10, 1968-1 C.B. 50.

The Statute limits benefits to employees who suffer service-connected disability. The benefits are not determined on the basis of age, length of service, or prior contributions. Thus, the Statute is a statute in the nature of a workmen's compensation act.

Accordingly, based on the representations made and authorities cited above, we conclude that amounts you receive under the Statute are excludable from your gross income under section 104(a)(1) of the Code.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than those specifically stated above.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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