

INTERNAL REVENUE SERVICE

Index No.: 0104-0200

Number: **199941019**

Release Date: 10/15/1999

CC:EBEO:6 PLR-106596-99

July 13, 1999

S.S.N:

Township =

Plan =

Dear

This letter is in response to your ruling request, dated March 5, 1999, concerning the federal income tax treatment of payments received under the provisions of a disability retirement pension.

According to your submission, you were injured in the line of duty as a police officer of the Township and subsequently diagnosed with injury to your spinal cord, right arm and hand. You were tested and examined by physicians who recommended that you not return to active duty. The Board of Supervisors of the Township reviewed the medical documentation and retired you from active duty under the Plan.

Section 706.1 of the Plan provides that in the event that any member of the Township Police Department is permanently disabled from performing police work for the Township as a result of a service-connected disability, then the member shall be entitled to a disability pension at any age at seventy-five percent (75%) of average monthly salary offset by any payment for such disability under Workers' Compensation. The pension continues to be paid until a determination is made that the member is no longer disabled, or until the member's death, whichever occurs first.

Section 706.2 of the Plan also provides that any member of the Township Police Department who suffers a service connected disability so as to render the member permanently disabled from performing police work for the Township may, upon application or on the application of one acting in the member's behalf, or upon application of the Chief of Police, be retired on disability pension if the physician(s) designated by the Board of Supervisors, after a medical and/or psychiatric examination,

certify to the Board of Supervisors that the member is physically or mentally disabled from performing police work for the Township, and that the member should be retired.

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, with certain exceptions not relevant in the instant case, 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 provides that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act, or a statute in the nature of a workmen's compensation act, that provides compensation to employees for personal injuries or sickness incurred during employment. 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.

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 pension from being in the nature of workmen's compensation. See, Rev. Rul. 85-104, 1985-2 C.B. 53; Rev. Rul. 75-500, 1975-2 C.B. 44; and Rev. Rul. 68-10, 1968-1 C.B. 50. Rather, the critical determination is whether payments are made because of injuries sustained in the line of duty.

Sections 706.1 and 706.2 of the Plan are statutes in the nature of workmen's compensation acts. Members retired under those Sections are retired for disability notwithstanding age or length of service and only if their incapacities are the result of work-related injuries or diseases. Benefits received under Sections 706.1 and 706.2 of the Plan are excludable from gross income under section 104(a)(1) of the Code.

Accordingly, based on the information submitted, representations made and authorities cited above, we conclude that amounts you receive under Sections 706.1 and 706.2 of the Plan are excludable from your gross income under section 104(a)(1) of the Code.

Except as specifically ruled above, no opinion is expressed as to the federal income tax consequences of the transaction described under any other section of the Code.

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

Sincerely yours,

Harry Beker
Chief, Branch 6
Office of the Associate Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure
Copy for section 6110 purpose