

INTERNAL REVENUE SERVICE

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November 23, 1998

Attn:

State =

County =

Plan =

Dear :

This responds to your request of September 23, 1998, on behalf of County, pertaining to the exclusion from gross income of line of duty disability benefits paid to disabled employees under the Plan.

The Plan, which was established by County ordinance, provides for annual disability retirement income to be paid to participants who are determined to be either totally and permanently disabled or partially and permanently disabled as a result of an accident or injury incurred in the line of duty.

Section 5.1(A) of the Plan provides that a participant (regardless of the number of his or her years of service) who reaches a termination date by reason of a total and permanent disability, incurred as a result of an accident or injury which has been determined to have been sustained in the line of duty, shall be entitled to receive an annual disability retirement income equal to 66 2/3%, multiplied by the participant's final average earnings for the three years prior to the participant's termination date, reduced by: (a) 50% of the amount the participant receives in the form of disability benefits under the federal Social Security Act, plus (b) 100% of the amounts the participant receives under the State workers' compensation act as compensation for the accident or injury underlying the participant's total and permanent disability, plus (c) 100% of the amounts the participant receives by virtue of participation in any long term disability plan sponsored by the employer, plus (d) 35% of the amount by which the participant's annual earned income exceeds the rate of earnings the participant would earn from the employer if the participant were still actively employed in the eligible class and the rank

and grade in which the participant was employed as of his or her termination date. If less than three rates of earnings are available, the average will be determined using the rates of earnings that are available.

Section 5.1(B) of the Plan provides that a participant (other than a participant employed as a communications dispatcher and regardless of the number of his or her years of service) who reaches a termination date by reason of a permanent partial disability, incurred as a result of an accident or injury which has been determined to have been sustained in the line of duty, shall be entitled to receive an annual disability retirement income equal to a percentage, as determined by the disability review board, which shall be dependent on the extent and degree of the participant's disability, but shall be no less than 15% and no greater than 50%, multiplied by the participant's final average earnings for the three years prior to the participant's termination date, reduced by: (a) 50% of the amount the participant receives in the form of disability benefits under the federal Social Security Act, plus (b) 100% of the amounts the participant receives under the State workers' compensation act as compensation for the accident or injury underlying the participant's total and permanent disability, plus (c) 100% of the amounts the participant receives by virtue of participation in any long term disability plan sponsored by the Employer, plus (d) 35% of the amount by which the participant's annual earned income exceeds the rate of earnings the participant would earn from the employer if the participant were still actively employed in the eligible class and the rank and grade in which the participant was employed as of his or her termination date. If less than three rates of earnings are available, the average will be determined using the rates of earnings that are available.

In order to qualify for line of duty disability benefits under sections 5.1(A) and (B) of the Plan, the accident or injury underlying the disability must be ruled compensable under the terms established by the disability review board.

You request a ruling that sections 5.1(A) and (B) of the Plan are statutes in the nature of workmen's compensation acts and line of duty disability benefits paid pursuant to sections 5.1(A) and (B) of the Plan are, therefore, excludable from the gross income of the recipients under section 104(a)(1) of the Internal Revenue Code.

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.

Sections 5.1(A) and (B) of the Plan limit payment of disability benefits to participants who become totally and permanently disabled or permanently and partially disabled as a result of an on-the-job injury. The benefits payable under sections 5.1(A) and (B) of the Plan are not determined by reference to the employee's age, length of service or prior contributions. Sections 5.1(A) and (B) of the Plan are therefore statutes in the nature of workmen's compensation acts.

Accordingly, we conclude that line of duty disability benefits paid under sections 5.1(A) and (B) of the Plan, other than amounts constituting the participants' "County Pick Up Contributions" benefits, 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 or to any other provision of the Plan.

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)

Enclosure: Copy for section 6110 purposes