

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

January 23, 2003

Legend

Taxpayer =

Fund =

Statute A =

Statute B =

Statute C =

Statute D =

Statute E =

Dear _____ :

This responds to your request of September 9, 2002, on behalf of the Taxpayer, concerning the Federal income tax treatment under section 104 of the Internal Revenue Code (the Code) of certain benefits paid under the Fund.

The Fund was created by the State Legislature to establish, operate, and make contributions for the payment of benefits to disabled employees and to the qualified survivors of deceased employees. The Fund is further authorized by State statute to establish disability expense reimbursements and disability pensions for employees who incur a disability in the line of duty and for the payment of benefits to dependent parents, surviving spouses, and dependent unmarried children of employees who die in the line of duty

Statute A provides that in the event an Employee who is participating in [Statute A] incurs a disability through the performance of duty, the Employee or Employee's beneficiary or estate shall be entitled to receive from the Fund reimbursement for all travel, medical, surgical, and hospital expense directly resulting from such disability incurred before the Employee's death.

In addition, the Employee shall be entitled to receive monthly payments from the Fund. The amount of monthly disability payment shall be determined in accordance with the extent of disability. Disability payments shall be based on the possibility of twenty (20) Years of Service and on a maximum of one-half ($\frac{1}{2}$) of the average monthly salary received, or to be received, during the highest paid consecutive twelve (12) months, plus twenty dollars (\$20).

In the event an Employee shall become totally disabled in the performance of duty, he shall, in addition to the monthly disability pension payment, and for the same period as such payment, receive from the Fund forty dollars (\$40) per month for each dependent parent and each dependent minor child less than eighteen (18) years of age.

Statute B states, that in the event an Employee who is participating in [Statute B] incurs a disability through the performance of duty, the Employee or Employee's beneficiary or estate shall be entitled to receive from the Fund reimbursement for all travel, medical, surgical, and hospital expense directly resulting from such disability incurred before the Employee's death.

In addition, the Employee shall be entitled to receive monthly payments from the Fund. The amount of monthly disability payment shall be determined in accordance with the extent of disability. Disability payments shall be based on the possibility of twenty-five (25) Years of Service and on a maximum of one-half ($\frac{1}{2}$) of the Average Monthly Salary.

In the event an Employee shall become totally disabled in the performance of duty, he shall, in addition to the monthly disability pension payment, and for the same period as

such payment, receive from the Fund forty dollars (\$40) per month for each dependent parent and each dependent minor child less than eighteen (18) years of age.

Statute C provides that, effective July 1, 2002, the disability benefits for a regular, paid police employee who is participating in [Statute A] immediately prior to his or her disability and is permanently and totally disabled by a catastrophic personal injury that (1) is sustained in the line of duty after January 1, 2001, and (2) permanently prevents the Employee from performing any gainful work, shall be determined by this Section. An Employee that meets the requirements of this Section shall receive a disability pension equal to the Employee's regular salary at the commencement of the disability. The disability pension provided under the terms of this Section is provided instead of the monthly disability pension payment set forth in [Statute A].

Statute D provides that, effective July 1, 2002, the disability benefits for a regular, paid police employee who is participating in [Statute B] immediately prior to his or her disability and is permanently and totally disabled by a catastrophic personal injury that (1) is sustained in the line of duty after January 1, 2001, and (2) permanently prevents the Employee from performing any gainful work, shall be determined by this Section. An Employee that meets the requirements of this Section shall receive a disability pension equal to the Employee's regular salary at the commencement of the disability. The disability pension provided under the terms of this Section is provided instead of the monthly disability pension payment set forth in [Statute B].

Under Statute E, if an employee dies in the line of duty, a surviving spouse, dependent children, dependent parent or parents are entitled to receive payments from the Fund.

Section 104(a)(1) of the Code 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—(1) 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 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.

Accordingly, whether benefit payments are excludable by the recipient under section 104(a)(1) of the Code 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 (8th Cir. 1983).

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

Statute A and Statute B restrict benefits to a class of employees who incur disabilities while in the performance of their duties and constitute statutes in the nature of workmen's compensation acts. Disability reimbursements and benefits paid under Statute A and Statute B to an employee who suffers a disability through the performance of duty are excludable from the gross income of the recipient under section 104(a)(1) of the Code.

Statute C and Statute D restrict benefits to a class of employees who become permanently and totally disabled by a catastrophic personal injury incurred in the line of duty and constitute statutes in the nature of workmen's compensation acts. Accordingly, disability benefits paid under Statute C and Statute D to an employee who suffers a catastrophic personal injury are excludable from the gross income of the recipient under section 104(a)(1) of the Code.

Statute E provides benefits which are limited to survivors of employees who die as a direct result of injury or illness incurred in the line of duty. Accordingly, amounts received by a surviving spouse, dependent children, dependent parent or parents of a deceased employee under Statute E are excludable from the gross income of the recipient 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 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, Health & Welfare Branch
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosures

Copy of this letter

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