

INTERNAL REVENUE SERVICE

Index Number: 104.02-00

Number: **199935032**

Release Date: 9/3/1999

CC:EBEO:6 PLR-102386-99

June 2, 1999

State =

City =

Statute A =

Dear

This letter responds to your ruling request of December 28, 1998, concerning whether the permanent disability benefits you receive pursuant to Statute A are excludable from your gross income under section 104(a)(1) of the Internal Revenue Code (the "Code").

Statute A concerns "Service-Connected Disability" and provides as follows:

Upon the filing of his written application for a disability pension or upon the filing of a written request thereof by or on behalf of the head of the department in which he is a Department Member, any System Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his duties, shall be retired by order of the Board from further active duty as a Department Member. Such Retired Member shall be paid thereafter and for life a monthly service-connected disability pension in an amount which shall be equal to the same percentage of his Normal Pension Base as the Board shall determine from time to time, to be his percentage of disability. Such pension shall be in an amount not less than 50% and not more than 90% of such Retired Member's Normal Pension Base and not less than that percentage thereof which he, if he shall have had 25 years of service or more ... would have received... .

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 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.

Statute A limits payment of disability benefits to individuals who become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of duties. The benefits payable under Statute A are not determined by reference to the employee's age, length of service or prior contributions. Statute A is therefore a statute in the nature of a workmen's compensation act.

Accordingly, we conclude that service-connected disability benefits paid to you pursuant to Statute A are excludable from your gross income 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)

Enclosure:

Copy of this letter
Copy for section 6110 purposes