

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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April 26, 2004

Legend:

Fund =

Statute =

Dear :

This is in reply to your letter dated December 22, 2003, requesting a ruling on behalf of the Fund concerning whether certain disability benefits received under the Statute are excludable from gross income under section 104(a)(1) of the Internal Revenue Code.

Section 6(g) of the Statute provides:

The board shall review, on a case-by-case basis, existing benefit payments to members, and to survivors of deceased members, who retired as a result of disability with 20 or more years of service under a provision of any predecessor statute previously governing the fund. The review will determine whether the member's disability was an on-duty disability that satisfies the requirements of Subsection (b) or (c) of this section. A determination that a member's disability was on on-duty disability, as described above, will apply only on a prospective basis beginning with January 1 of the calendar year in which the determination is made and will not affect the amount of the member's or survivor's benefits. The board shall make its review and determination under this subsection on the basis of the medical evidence and any other relevant non-testimonial evidence that was previously submitted in connection with

the prior application for benefits, except that if the board finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be added and accepted to help make the determination.

Section 61(a) 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) 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) 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 deceased employees. 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.

In Gabriel v. Commissioner, T.C. Memo 2000-328 (October 20, 2000), the taxpayer received benefits under a statute that did not limit benefits to work-related injuries. Subsequently, the statute was retroactively amended to provide a separate benefit for work-related personal injury or sickness. The taxpayer argued that the statute, as amended allowed taxable benefits previously received by the taxpayer to be retroactively redesignated as payments for work-related personal injury or sickness, and thus excludable from gross income under section 104(a)(1).

The Court determined that the sole purpose of amending the provision to allow for recertification and redesignation of disability benefits was to afford favorable treatment for federal income tax purposes. The Court held that the provision, as amended, did not grant retroactive effect for federal tax purposes to the benefits petitioner had previously received.

Unlike the statute in Gabriel, the statute here does not recharacterize as nontaxable payments taxable benefits previously received for injuries or sickness, but only applies prospectively after the disability is determined to be work-related.

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

Benefit payments to members who retired as a result of disability with 20 years or more of service under a provision of any predecessor statute that are determined, pursuant to section 6(g) of the Statute, to be on account of an on-duty disability that meets the requirements of sections 6(b) or 6(c) of the Statute, or to the survivors of deceased members, are received pursuant to a statute in the nature of a workmen's compensation act. Accordingly, after the date of the determination that the members' disability was an on-duty disability under section 6(g) of the Statute, benefits paid to such members or their beneficiaries will be excludable from gross income under section 104(a)(1) but only on a prospective basis and only to the extent provided in LTR 200116040 (January 23, 2001).

Except as specifically ruled above, no opinion is expressed or implied concerning the federal tax consequences of the transaction under any provision of the Code.

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.

Sincerely,

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