

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TE/GE:EB:HW PLR-169435-02

Date:

05/08/2003

Taxpayer =

City =

Statute =

Dear :

This responds to a ruling request dated December 8, 2002, submitted on behalf of the Taxpayer concerning whether amounts received as retirement disability benefits are excludable from the gross income of the Taxpayer under section 104(a)(1) of the Internal Revenue Code (the "Code").

Taxpayer was hired by the City as a police officer in 1966. In 2001, it was determined that Taxpayer, as a result of a work-related injury which occurred in 1979 was occupationally disabled from doing police work.

Taxpayer applied for disability retirement in 2000. He was retired under a regular retirement pension on August 17, 2000, while his application for disability retirement was being reviewed. On February 22, 2001, after review of his application, Taxpayer was approved for disability retirement, effective the date of his retirement, August 17, 2000.

Section 31-30-608 (1) of the Statute provides that:

If any officer, member, or employee of the police department, while in the performance of his duty, becomes mentally or physically permanently disabled by reason of service in such department, so as to render necessary his retirement from service in such department, the board shall retire such disabled member from service in such department. No such retirement on account of disability shall occur unless said member has contracted said disability while in the service of such police department.

Section 31-30-608 (2) of the Statute provides, in part, that:

Upon such retirement the board shall order the payment to such disabled member of such police department from such pension fund of a sum equal to one-half the monthly compensation allowed to such officer, member or employee as salary at the date of his retirement.

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.

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

Section 31-30-608 of the Statute restricts benefits to a class of employees with service-related injuries or diseases resulting in disabilities and the benefits paid are not determined with reference to the employee's age, length of service or prior contributions. Accordingly, section 31-30-608 of the Statute constitutes a statute in the nature of a workmen's compensation act and disability benefits paid under the statute are excludable from the gross income of the Taxpayer beginning with his date of retirement, August 17, 2000, 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, Health & Welfare Branch
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosures

Copy of this letter
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