

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:HW PLR-152911-01

Date:

12/13/2001

Taxpayer=

Statute=

State =

Plan=

Dear :

This is in reply to your letter dated August 14, 2001 on behalf of Taxpayer. You requested a ruling concerning the federal tax treatment under section 104(a)(1) of the Internal Revenue Code (the Code) of benefits received by firefighters from the Plan.

The Statute requires that all employees be covered by the disability and preretirement death benefits under the Statute. See, Section 601(1)(b)(II) of the Statute. Section 806.5 of the Statute provides that if an employee "who is otherwise eligible to receive the disability benefits...is required to terminate the member's regular employment due to a total or occupational injury . . . that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for the disability amount provided in section . . . 803." Section 806.5(3) of the Statute states that "[t]he board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of employment." The annual disability benefits provided are based on a percentage of a member's annual base salary immediately preceding retirement and an additional percentage if the member has a spouse and dependent children at the time of the disability. Sections 803(1)(a) and (b) and (2)(a) and (b) of the Statute.

The Statute provides for joint State and local funding of benefits for firefighters and police officers. Section 804 of the Statute describes the funding mechanisms to provide disability compensation to employees who qualify for benefits under section 806.5 of the Statute. For employees who participate in the statewide or a locally administered defined benefit plan, the entire disability benefit is provided from State funds. Both the State and the local jurisdiction pay a portion of the disability benefits for employees who participate in a locally administered money purchase plan. To the

extent amounts received by an employee through a money purchase plan are less than the disability benefit determined under Sections 803 and 806.5, State funds will pay the difference.

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 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either (1) 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, or (2) to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

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

Section 806.5 of the Statute limits benefits to a class of employees with service-incurred injuries or disease and the benefits are not determined with reference to the employee's age, length of service or prior contributions. Accordingly, section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.

Benefits paid under section 806.5 of the Statute as funded partially with State funds and partially through the Plan pursuant to section 804(c)(2) of the Statute, are excludable from gross income under section 104(a)(1) of the Code. Amounts received in excess of the benefit amount determined under sections 803 and 806.5 of the Statute are not excludable under section 104(a)(1) of the Code because they are determined by reference to the employee's age, length of service or prior contributions. See, Rev. Rul. 72-44, 1972-1 C.B. 31; Rev. Rul. 80-44, 1980-1 C.B. 34; Rev. Rul. 85-105, 1985-2 C.B. 53.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than those specifically stated above. In particular, no opinion is expressed as to the federal tax consequences of the receipt of benefits under the supplemental disability benefits program pursuant to section 803(1)(c) and (2)(c) and section 803.5 of the Statute.

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 and Welfare Branch  
Office of Division Counsel/  
Associate Chief Counsel  
(Tax Exempt and Government Entities)