

Internal Revenue Service

Department of the Treasury

Number: **200152017**
Release Date: 12/28/2001
Index Number: 104.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TE/GE:EB:HW-PLR 126951-01

Date:

September 25, 2001

Attn:

Legend

Fund =

City =

Statute =

Dear

This responds to a ruling request dated May 4, 2001, submitted on behalf of the Fund by its authorized representative, concerning whether certain cost-of-living adjustments received under the Statute are excludable from gross income under section 104(a)(1) of the Internal Revenue Code (the Code).

The Fund is a statutory retirement fund for the payment of retirement, death and disability benefits to firefighters employed by the City. You represent that the Service has previously held certain benefits to which this Statute applies are excludable from the firefighters' gross income under section 104(a)(1) of the Code

You request a ruling concerning the tax treatment of the cost-of-living adjustments paid under the Statute to disabled firefighters receiving excludable service connected disability benefits.

The Statute provides:

The board of trustees shall be authorized to use interest earnings on investments of the system in excess of normal requirements as determined by the actuary to provide an annual cost-of-living increase in benefits for members who have retired and widows of members who have retired in an amount not to exceed three percent of the original benefit. Such benefits shall be paid only when funds are available from this source, from funds appropriated for this purpose by the [City], or from other sources designated for this purpose, and payments shall be made in

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such manner and in such amount as may be determined by the board of trustees, based on funds available.

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 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.

Rev. Rul 80-84, 1980-1 C.B. 35, considers a situation in which a statute in the nature of a workmen's compensation act provides benefits in the event of work-related injury and also provides that whenever any member dies after retirement, a pension based on the average salary of the member at the time of his death will be paid to survivors. Rev. Rul. 80-84 states:

If a Los Angeles fireman or policeman suffers a service-related injury or illness necessitating the employee's retirement, the compensation for that injury or illness is two-fold - - (1) because of that injury, the employee may retire...and receive lifetime benefits... and (2) because that injury qualifies the employee for retirement, the employee's survivors qualify for ... survivors' benefits whenever any member dies after retirement (the retirement provision). Benefits paid under this provision to survivors of employees ... are thus part of the compensation for the employee's service-related injury or illness. These benefits therefore are treated as a continuation of the employee's lifetime section 104(a)(1) benefits.

Similarly, when firefighters in the instant case suffer service-related injury or illness that qualifies them to receive excludable benefits, they also qualify for cost-of-living increases under the Statute. Accordingly, the cost-of-living increases are treated as a

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continuation of the employee's excludable benefits.

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

Cost-of-living adjustments under the Statute are a continuation of the benefits to which they relate and do not refer to age, length of service, or prior contributions. Accordingly, cost-of-living adjustments to a firefighter's benefits will be excluded from gross income under section 104(a)(1) of the Code to the same extent that the benefits to which they relate are excludable. If only a portion of the firefighter's benefit qualifies for exclusion under section 104(a)(1), only the pro-rata portion of the cost-of-living adjustment attributable to the excludable portion of the benefit is excludable.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Felix J. Zech
Assistant Chief, Health & Welfare Branch
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosure:

Copy for section 6100 purposes

cc: