

**Internal Revenue Service**

Department of the Treasury

Index Number: 0104.02-00  
Number: **199908015**  
Release Date: 2/26/1999

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:EBEO:Br6-PLR-115363-98**

Date:

Taxpayer =

Plan =

Statute =

Dear Mr.

This is in reply to your letter dated July 29, 1998, concerning the federal income tax treatment of certain survivor benefit payments of the Plan under section 104(a)(1) of the Internal Revenue Code.

The Plan was established to provide disability benefit payments to police officers and firefighters who become occupationally or totally disabled as those terms are defined in the Statute. It also provides survivor benefits to spouses and dependents of police officers and firefighters who die while in active duty.

Legislation was passed to amend the former statute so as to clearly differentiate between survivor benefits that are awarded on the basis of deaths that are incurred or arise out of and in the course of a police officer's or firefighter's employment as opposed to survivor benefits that are awarded on the basis of deaths that are not service-related.

You have asked whether benefits paid by the Plan to the survivors of a deceased police officer or firefighter for service-related death as determined under the Statute is excludable from gross income under section 104(a)(1) of the Code.

The Statute provides:

PLR-115363-98

(1) If a member who is not eligible for the normal retirement pension... dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment and leaves a surviving spouse or dependent children or both, ... survivor benefits shall be paid ... .

(2) The Board shall promulgate rules that specify standards and establish procedures for determining whether a member's death is the direct and proximate result of a personal injury sustained while performing official duties or an occupational disease arising out of and in the course of a member's employment ... . The procedures established by the Board may include the appointment of hearing officers to conduct hearings.

(3)(a) The Board shall promulgate rules that specify the method of reviewing existing survivor benefit awards to:

(I) Determine whether a member's death was the direct and proximate result of a personal injury sustained while performing official duties as a result of an occupational disease arising out of and in the course of the member's employment.

\* \* \*

(III) Establish procedures for making such determinations, including the appointment of hearing officers to conduct hearings.

(b) The determinations made by the Board pursuant to this subsection (3) shall be made on the basis of the medical evidence that was previously submitted in connection with the application for survivor benefits and other relevant nontestimonial evidence.

(c) Any decision made by the Board to change an existing survivor benefit award to an on-duty survivor benefit under this subsection (3) shall operate on a prospective basis from the date of the Board's decision.

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

PLR-115363-98

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 provides that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act, or a statute in the nature of a workmen's compensation act, that provides compensation to employees for personal injuries or sickness incurred during 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. However, section 104(a)(1) does not apply to a retirement pension or annuity 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. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational 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. 85-105, 1985-2 C.B. 53, considered whether amounts received by a disabled firefighter under a state statute that created a rebuttable presumption that the disability was service-connected was excludable from gross income under section 104(a)(1) of the Code. The revenue ruling stated that the statutory presumption did not remove the necessity of demonstrating that the disability was work-related but merely shifted the burden of proof concerning the cause of disability to the pension board, which was required to make a finding, based on medical evidence, as to whether the disability was service connected. The revenue ruling concluded that the statute, which authorized benefits to a class restricted to employees with service-incurred disabilities, was a statute in the nature of a workmen's compensation act.

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

The Statute is a statute in the nature of a workmen's compensation act because payments provide compensation the survivors of a deceased employee only for death incurred in the course of employment and are not determined by reference to the deceased employee's age, length of service or prior contributions

Accordingly, payments received under the Statute by the survivors of deceased police officers or firefighters, for service-related deaths, are excludable from the gross income of the recipient under section 104(a)(1) of the Code.

PLR-115363-98

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 requesting 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 (1)

cc: copy for section 6110 purposes