

INTERNAL REVENUE SERVICE

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Attn:

January 9, 2001

Taxpayer =

State =

Statute A =

Statute B =

Statute C =

Statute D' =

Act =

Dear

This is in reply to your letter dated July 21, 2000, and subsequent correspondence, submitted by your designated representatives, requesting rulings on behalf of Taxpayer, concerning the federal income tax treatment of certain disability benefits paid pursuant to Statutes A through D as amended by the Act.

The Taxpayer administers the payment of retirement and disability benefits for member police officers and firefighters employed by cities, towns and counties in State. Benefits are also available to qualified survivors of deceased members.

The Act was signed into law in 2000, amending the provisions of Statutes A through D.

General Provisions Applicable to Disability Benefits

As amended by the Act, section 8(b) of Statute A provides that "Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the *** fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability: (1) that is: (A) the direct result of: (i) a personal injury that occurs while the fund member is on duty; (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or (iii) a duty related disease *** and (2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability."

As amended by the Act, section 11(e) of Statute B provides that "If *** the *** fund advisory committee determines that a person who becomes disabled after June 30, 2000: (1) has a disability that is: (A) the direct result of (i) a personal injury that occurs while the fund member is on duty; (ii) a personal injury that occurs while the fund member is responding to an emergency or reported emergency for which the fund member is trained; or (iii) an occupational disease (as defined in ***) including a duty related disease that is also included within clause (B); or a duty related disease ***; and (2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; the local board shall then authorize the monthly payment to the person from the *** fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. ***"

As amended by the Act, section 13(b) of Statute C provides that "For a member who becomes disabled after June 30, 2000, the *** fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolmen in the police department, ***, to an active member of the police department who: (1) has suffered or incurred a disability that renders the member permanently unfit for active duty in the police department and that is: (A) the direct result of : (i) a personal injury that occurs while the fund member is on duty; (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense; or (iii) an occupational disease (as defined in ***), including a duty related disease that is also included within clause (B); or (B) a duty related disease (***); and (2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. ***."

Section 13(e) of Statute C, as amended by the Act, is identical to the section 13(b) provision for permanently disabled members except that it provides a benefit of 30

percent of the salary of a first class patrolman in the police department for members who are temporarily unfit for active duty.

As amended by the Act, sections 8-(c), 11(f) and 13(c),(f) of Statutes A, B and C respectively, provide benefits to police and firefighters who suffer non-job related illness or injury.

Section 13.3(c) of Statute D, as amended by the Act, provides that " *** a fund member: (1) who becomes disabled after July 1, 2000; (2) who is determined to have a covered impairment that is: (A) the direct result of: (i) a personal injury that occurs while the fund member is on duty; (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the fund member is trained, in the case of a firefighter; or (iii) an occupational disease (as defined in ***), including a duty related disease that is also included within clause (B); or (B) a duty related disease ...; and (3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age."

As amended by the Act, section 13.3(d) of Statute D provides benefits for fund members who become disabled after July 1, 2000 and have covered impairments that are not described in sections 13.3(c)(2)(A) or (B) (i.e., are not job-related).

As amended by the Act, sections 8(h), 12.1(h), 13(m) and 12(f) of Statutes A, B, C and D respectively provide that an employee who is receiving disability benefits under Statutes A, B, C, or D shall be transferred from disability to regular retirement status when the employee becomes 55 years of age.

General Provisions Applicable to Survivor Benefits

Section 9.7 of Statute A, as amended by the Act, provides that "(a) This section applies to a member who died in the line of duty (as defined in section 10.1 of this chapter) before September 1, 1982. (b) A payment shall be made to the surviving spouse of a deceased member in an amount fixed by ordinance, but at least an amount equal to thirty percent (30%) of the monthly pay of a first class patrolman per month during the surviving spouse's life *** . (c) except as otherwise provided in this subsection, a payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month to each child: (1) until the child becomes eighteen (18) years of age: (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a

secondary school or is a full-time student at an accredited college or university; or (3) during the entire period of the child's physical or mental disability; whichever period is longer. However, the total of benefits under this subsection added to the benefits under subsection (b) may not exceed the maximum benefits computed under section 9 of this chapter for pension payments to a member who retires from active service after twenty (20) years or more of active service. This maximum benefit is equal to fifty percent (50%) of the salary of a first class patrolman in the police department plus, for a member who retired before January 1, 1986, two percent (2%) of the first class patrolman's salary for each year of service of the retired member over twenty (20) years or, for a member who retires after December 31, 1985, plus one percent (1%) of the first class patrolman's salary for each six (6) months of service of the retired member over twenty years. However, the maximum benefit can not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman. (d) If a deceased member leaves no surviving spouse and no child who qualifies for benefits under subsection (c) but does leave a dependent parent or parents, an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month from the time of the member's death shall be paid to the dependent parent or parents during their dependency. When both parents survive, the total amount is still twenty percent (20%), to be paid to them jointly. In all cases of payment to a dependent relative of a deceased member, the board is the final judge of the question of necessity and dependency and of the amount to be paid. *** (e) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person."

Section 10.1 of Statute A, as amended by the Act, provides benefits to survivors of members who die after August 31, 1982, that are similar in all material respects to those provided in section 9.7 except that the surviving spouse is entitled to the benefit to which the member would have been entitled on the date of the member's death, but no less than fifty percent (50%) of the monthly wage received by a first class patrolman and surviving children may receive an additional benefit fixed by ordinance but the total additional benefit to all the member's children may not exceed a total of thirty percent of the monthly wage of a first class patrolman. Subsection (g) of section 10.1 provides that, "For purposes of this section 'dies in the line of duty' means death that occurs as a direct result of personal injury or illness resulting from any action that the member in the member's capacity as a police officer: (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or (2) performs in the course of controlling or reducing crime or enforcing the criminal law."

Section 12.3 of Statute B, as amended by the Act, provides that "(a) This section applies to a member who died in the line of duty (as defined in section 12.4 of this chapter) before September 1, 1982. *** (b) If a member of the fire department or a retired member of the *** fund dies and leaves: (1) a surviving spouse: (2) a child or children less than eighteen (18) years of age: (3) a child or children at least eighteen (18) years of age who are mentally or physically incapacitated; or (4) a child or children

less than twenty-three (23) years of age who are (A) enrolled in and regularly attending a secondary school; or (B) full-time students at an accredited college or university; the local board shall authorize the payment to the surviving spouse and to the child or children of the amount from the fund as prescribed by this section. *** (c) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the *** fund that is prescribed by this section. *** (d) If a member dies while in active service: (1) the surviving spouse is entitled to receive an amount fixed by ordinance but not less than thirty-percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension; (2) the member's children who are: (A) less than eighteen (18) years of age; or (B) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university; are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension; and (3) each parent of a deceased member who was eligible for a pension is entitled to receive jointly an amount equal to thirty-percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state and is not receiving a benefit under subdivision (2)(B), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter as long as the mental or physical incapacity continues. ***."

Section 12.4 of Statute B as amended by the Act provides that "(a) This section applies to an active member who dies in the line of duty after August 31, 1982. *** (B) If a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty-percent (50%) of the monthly wage received by a fully paid first class firefighter. *** (c) If a member dies while in active service, the member's children who are: (1) less than eighteen (18) years of age; or (2) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university; are each entitled to receive an amount fixed by ordinance but not less than twenty-percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. *** (d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty-percent (30%) of the monthly wage received by a first class firefighter. However, this limitation does not apply to children of a member who are physically or mentally disabled. *** (e) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize monthly payment to the parent from the *** fund. Each

parent of a deceased member who was eligible for a pension under this subsection is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. *** (f) For purposes of this section, 'dies in the line of duty' means death that occurs as a direct result of personal injury or illness resulting from any action that the member, in the member's capacity as a firefighter: (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or (2) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene. *** (g) If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subsection (c)(2), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues."

Section 13.7 of Statute C, as amended by the Act, provides that *** "(a) This section applies to a member who died in the line of duty (as defined in section 14.1 of this chapter) before September 1, 1982. *** (b) The *** fund shall be used to pay an annuity, computed under subsection (g) and payable in monthly installments, to the surviving spouse of a member. *** (c) The *** fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman on the police department, computed as provided in section 12(b) of this chapter and payable in monthly installments [in equal monthly installments and increased or decreased as the salary of a first class patrolman increases or decreases], to each dependent child of a member of the fund who dies from any cause while in the actual discharge of duties as a police officer. The pension to each child continues: (1) until the child becomes eighteen (18) years of age; (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or (3) during the entire period of the child's physical or mental disability; whichever period is longer. However, the pension to the child ceases if the child marries or is legally adopted by any person. *** (d) If a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the *** fund shall be used to pay an annuity not greater than a sum equal to twenty-percent (20%) of the salary of a first class patrolman in the police department computed and payable as provided in section 12(b) of this chapter, payable monthly to the dependent parent or parents of a member of the police department . The annuity continues for the remainder of the life or lives of the parent or parents as long as either or both fail to have sufficient other income for their proper care, maintenance and support. *** (f) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person. *** (g) The annuity payable under subsection (b) equals thirty-percent (30%) of the salary of a first class patrolman. The amount provided in this subsection is subject to adjustment as provided in subsection (f)."

Section 14.1 of Statute C, as amended by the Act, provides that "(a) This section applies to an active member who dies in the line of duty after August 31, 1982. (b) if a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a first class patrolman. *** (c) The *** fund shall also be used to pay an annuity equal to twenty percent (20%) of the salary of a first class patrolman in the police department, *** to each dependent child of a member of the fund who dies from any cause while in the actual discharge of duties as a police officer. The pension to each child continues: (1) until the child becomes eighteen (18) years of age; (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or (3) during the entire period of the child's physical or mental disability; whichever period is longer. *** (d) the surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total benefit to all the member's children under this subsection may not exceed a total of thirty percent (30%) of the monthly wage received by a first class patrolman. However, this limitation does not apply to the children of a member who are physically or mentally disabled. (e) if a deceased member leaves no surviving spouse and no child who qualifies for a benefit under subsection (c) but does leave a dependent parent or parents, the *** fund shall be used to pay an annuity not greater than a sum equal to twenty-percent (20%) of the salary of a first class patrolman on the police department, *** to the dependent parent or parents of a member of the police department who dies from any cause while in the actual discharge of duties as a police officer. The annuity continues for the remainder of the life or lives of the parent or parents as long as either or both fail to have sufficient other income for their proper care, maintenance, and support. *** (g) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person. ***(h) For purposes of this section , 'dies in the line of duty' means death that occurs as a direct result of personal injury or illness resulting from any action that the member, in the member's capacity as a police officer: (1) is obligated or authorized by rule, regulation condition of employment or service, or law to perform; or (2) performs in the course of controlling or reducing crime or enforcing the criminal law."

Section 13.9 of Statute D, as amended by the Act, provides that " (a) This section applies to an active member who died in the line of duty (as defined in section 14.1 of this chapter) before September 1, 1982. ***(b) Except as otherwise provided in this subsection , if a fund member dies in the line of duty, the following apply: (1) Each of the member's surviving children is entitled to a monthly benefit equal to twenty-percent (20%) o the fund member's monthly benefit: (A) until the child becomes eighteen (18) years of age; or (B) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full time student at an accredited college or university; whichever period is longer. However, if the board finds

upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under clause (B), the child is entitled to receive an amount each month that is equal to the greater of thirty-percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. ***

(2) The member's surviving spouse is entitled to a monthly benefit equal to sixty-percent (60%) of the fund member's monthly benefit during the spouse's lifetime. *** If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty-percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime. ***

(c) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years of age, the benefit under subsection (b) is computed as if the member: (1) did have twenty (20) years of service; and (2) was fifty-two (52) years of age."

Section 14.1 of Statute D, as amended by the Act, provides "*** (b) This section applies to an active member who dies in the line of duty after August 31, 1982. *** (c) If a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to a monthly benefit during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to the member with twenty (20) years service at fifty-two years of age. *** (d) If a fund member dies in the line of duty, each of the member's surviving children is entitled to a monthly benefit equal to twenty-percent (20%) of the fund member's monthly benefit: (1) until the child reaches eighteen (18) years of age; or (2) until the child reaches twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university: whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2), the child is entitled to receive an amount each month that is equal; to the greater of thirty-percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. *** (e) If there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty-percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime. *** (f) If the fund member did not have at least twenty (20) years of service or was not at least fifty-two (52) years old, the benefit is computed as if the member: (1) did have twenty (20) years of service; and (2) was fifty-two (52) years of age. *** (g) For

purposes of this section, 'dies in the line of duty' means death that occurs as a direct result of personal injury or illness resulting from: (1) any action that the member, in the member's capacity as a police officer: (a) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or (B) performs in the course of controlling or reducing crime or enforcing the criminal law; or (2) any action that the member, in the member's capacity as a firefighter: (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or (B) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene."

Section 29 of the Act provides that, effective July 1, 2000, "(a) The *** fund advisory committee established by *** shall before November 1, 2000, determine which surviving spouses, children, or parents receiving benefits under Statutes A, B or C are survivors of police officers or firefighters who died in the line of duty before September 1, 1982." It is represented that the reason for the September 1, 1982 date is that there already was a finding of whether a death was or was not in the line of duty on and after September 1, 1982 because of a State lump sum line-of-duty death benefit.

Statement of Law

Section 104(a)(1) of the Internal Revenue Code states that, "Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include--(1) 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 that are 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 employees for personal injuries 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. 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.

Accordingly, whether benefit payments are excludable by the recipient under section 104(a)(1) of the Code depends upon the nature of the statute under which they are paid, not the particular circumstances of the recipient, and benefits will not be excludable where the statute allows for disability payments for any reason other than on-the-job injuries. See, Haar v. Commissioner, 78 T.C. 864, (1982), affd. 709 F.2d 1206 (8th Cir. 1983).

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 a work-related personal injury or sickness, and thus excludable from gross income under section 104(a)(1) of the Code. The Court determined that the sole purpose of amending the provision to allow for recertification and redesignation of disability benefits was to afford a favorable treatment for federal income tax purposes. The Court held that the provision, as amended in 1999, did not grant retroactive effect for federal tax purposes to the benefits petitioner received in 1992.

Section 101(h) of the Code provides that gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty -- (A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or former spouse) of the public safety officer or to a child of such officer; and (B) to the extent such annuity is attributable to such officer's service as a public safety officer.

Rulings and Conclusions

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

- (1) The exclusion from gross income provided in section 101(h) of the Code depends upon whether a "public safety officer" has been "killed in the line of duty". Absent facts concerning the death of a specific public safety officer, we are unable to issue general rulings concerning the applicability of section 101(h) to payments to survivors under Statutes A through D.
- (2) Section 8(b) of Statute A, as amended by the Act, provides benefits limited to employees who have suffered personal injury or sickness in the course of employment and the minimum benefit (fifty-five percent of the salary of a first class patrolman), is not based on age, length of service, or prior contribution of the employee. Accordingly, section 8(b) of Statute A, as amended by the Act, is a statute in the nature of a workmen's compensation act and amounts received under that provision up to fifty-five percent of the salary of a first class patrolman are excludable from the recipient's gross income under section 104(a)(1) of the Code. If the employee receives a disability pension in excess of fifty-five percent of the salary of a first class patrolman, then the excess will not be excludable from the recipient's gross income under section 104(a)(1) of the Code because the excess is determined by reference to the employee's age, length of service or prior contributions. See, Rev. Rul. 85-104, 1985-2 CB 52.
- (3) Section 11(e) of Statute B, and section 13(b) and (e) of Statute C, as amended by the Act, limit benefits to employees who have suffered personal injury or sickness in the course of employment and the benefits are not determined by reference to the

recipient's age, length of service, or prior contributions. Accordingly the provisions constitute statutes in the nature of workmen's compensation acts and the benefits received are excludable from the recipient's gross income under section 104(a)(1) of the Code.

(4) As amended by the Act, section 8(c) of Statute A, section 11(f) of Statute B, and sections 13(c) and (f) of Statute C provide benefits to employees who have suffered personal injuries or sickness other than in the course of employment. Accordingly, these provisions do not constitute statutes in the nature of workmen's compensation acts and the benefits received are not excludable from the recipient's gross income under section 104(a)(1) of the Code.

(5) Section 13.3(c) of Statute D, as amended by the Act, provides benefits that are limited to employee's who have suffered personal injuries or sickness in the course of employment. The minimum benefit payable is the amount the employee would have received if the employee had retired with 20 years of service and was 52 years of age. This amount is payable regardless of the employee's actual age and years of service. Thus, the minimum benefit is not determined by reference to the recipient's age, length of service or prior contributions. Accordingly, section 13.3(c) of Statute D, as amended by the Act, constitutes a statute in the nature of a workmen's compensation act and the minimum benefit is excludable from a recipient's gross income under section 104(a)(1) of the Code. Amounts received in excess of the minimum benefit are based upon the recipient's age and years of service and are not excludable from the recipient's gross income under section 104(a)(1) of the Code.

(6) Section 13.3(d) of Statute D, as amended by the Act, provides benefits to employees who have suffered personal injuries or sickness other than in the course of employment. Accordingly, this provision does not constitute a statute in the nature of a workmen's compensation act and the benefits received are not excludable from the recipient's gross income under section 104(a)(1) of the Code.

(7) Statutes A, B, C, and D, as amended by the Act, all provide that employees will only receive disability benefits until they reach the age of 55 years at which time they are transferred to regular retirement status. Accordingly, when employees receiving disability benefits under Statutes A, B, C, or D that are excludable under section 104(a)(1) of the Code reach age 55 and are transferred to regular retirement status, their benefits will cease to be excludable under section 104(a)(1) and will be taxed in accordance with the provisions applicable to regular retirement for age and length of service. See, Rev. Rul. 80-14, 1980-1 CB 33.

(8) As amended by the Act, sections 9.7 and 10.1 of Statute A, sections 12.3 and 12.4 of Statute B, sections 13.7 and 14.1 of Statute C and sections 13.9 and 14.1 of Statute D provide benefits to the survivors of employees who died in the line of duty either before September 1, 1982 or after August 31, 1982. The effective date of the amendment of these provisions by the Act was July 1, 2000. With respect to employees who died after August 31, 1982, a determination has previously been made

that the death did or did not occur in the course of employment. With respect to employees who died before September 1, 1982, section 29 of the Act requires that a determination now be made whether spouses, children, or parents receiving benefits under these provisions are survivors of police officers or firefighters who died in the line of duty. These provisions, as well as any other provision amended by the Act, do not grant retroactive effect for federal income tax purposes.

(9) Section 9.7 of Statute A, as amended by the Act, limits benefits to the survivors of employees who died in the line of duty before September 1, 1982. Section 9.7 of Statute A, as amended by the Act, is a statute in the nature of a workmen's compensation act. The benefits payable to the surviving parent or parents under subsection (d) of section 9.7, after the determination required by section 29 of the Act are not based on the age, length of service or prior contributions of the employee and are excludable from the gross income of the parent or parents under section 104(a)(1) of the Code. Subsection (c) of section 9.7 provides that benefits payable to the spouse and children shall not exceed fifty percent of the salary of a first class patrolman plus additional percentages based on years of service over 20 years. Accordingly, because benefits up to fifty percent of the salary of a first class patrolman are payable to the surviving spouse and children regardless of the employee's actual years of service, benefits received, after the date of the determination required in section 29 of the Act, of up to fifty percent of the salary of a first class patrolman are excludable from the surviving spouse and children's gross income under section 104(a)(1) of the Code. Benefits in excess of fifty percent are included in the income of the spouse and children in the same proportion that their benefits bear to the total benefits.

(10) Section 10.1 of Statute A, as amended by the Act, limits benefits to the survivors of employees who died in the line of duty after August 31, 1982. Section 10.1 of Statute A, as amended by the Act, is a statute in the nature of a workmen's compensation act. Subsection (e) of section 10.1 provides benefits for the surviving parent or parents that are not determined with reference to the age, length of service, or prior contributions of the employee and benefits received, after the effective date of the Act, by a parent or parents under subsection (e) are excludable from the gross income of the parent or parents under section 104(a)(1) of the Code. Subsection (b) of section 10.1 provides that the surviving spouse is entitled to the benefit to which the employee would have been entitled on the date of the employee's death, but no less than fifty percent of the salary received by a first class patrolman. Accordingly, benefits received, after the effective date of the Act, by a surviving spouse under subsection (b), of up to fifty percent of the salary received by a first class patrolman, are excludable from the gross income of the spouse under section 104(a)(1) of the Code. Benefits received under subsection (b) in excess of fifty percent are not excludable under section 104(a)(1) of the Code because they are determined with reference to the age, years of service or prior contributions of the employee. Subsection (c) of section 10.1 provides that each surviving child is entitled to an amount fixed by ordinance but not less than twenty percent of the pay of a first class patrolman, and subsection (d) provides an additional benefit in an amount fixed by ordinance. Benefits received under subsection (c), after the effective date of the Act, by a surviving child, of up to twenty percent of the

salary of a first class patrolman, are excludable from gross income under section 104(a)(1) of the Code. Amounts received by a surviving child in excess of twenty percent of the salary of a first class patrolman under subsection (c) or (d) will also be excludable except to the extent that these amounts are determined under the ordinance by reference to the age, length of service, or prior contributions of the employee.

(11) Section 12.3 of Statute B, as amended by the Act, limits benefits to the survivors of employees who die in the line of duty before September 1, 1982. Section 12.3 of Statute B, as amended by the Act, is a statute in the nature of a workmen's compensation act. Subsection (d)(1) of section 12.3 provides that the surviving spouse is entitled to receive an amount fixed by ordinance but not less than thirty percent of the salary of a first class firefighter. Accordingly, benefits received by a surviving spouse under subsection (d)(1), after the date of the determination required by section 29 of the Act, of up to thirty percent of the salary of a first class firefighter are excludable from the recipient's gross income under section 104(a)(1) of the Code. Benefits received pursuant to ordinance in excess of thirty percent will also be excludable from gross income except to the extent they are determined with reference to the employee's age, length of service or prior contributions. Subsection (d) (2) of section 12.3 provides benefits to each surviving child in an amount fixed by ordinance but not less than twenty percent of a first class firefighter's salary. Accordingly, benefits received under subsection (d)(2) of section 12.3, after the date of the determination required by section 29 of the Act, by a surviving child of up to twenty percent of the salary of a first class firefighter are excludable from the recipient's gross income under section 104(a)(1) of the Code. Benefits received by ordinance in excess of twenty percent by a surviving child are also excludable from gross income under section 104(a)(1) except to the extent amounts are determined under the ordinance with reference to the age, length of service or prior contributions of the deceased employee. Subsection (d)(3) provides benefits jointly to surviving parents equal to thirty percent of the salary of a first class firefighter. Accordingly, benefits received under subsection (d)(3) are excludable from the recipient's gross income under section 104(a)(1) of the Code. In addition, section 12.3 of Statute B provides a benefit equal to the amount paid to the surviving spouse of a deceased employee for children who are mentally or physically incapacitated. Amounts received under this provision, after the date of the determination required by section 29 of the Act, are excludable under section 104(a)(1) to the same extent as benefits payable to the a surviving spouse.

(12) Section 12.4 of Statute B, as amended by the Act, limits benefits to the survivors of employees who die in the line of duty after August 31, 1982. Section 12.4 of Statute B, is a statute in the nature of a workmen's compensation act. Subsection (e) of section 12.4 provides benefits for dependent surviving parent or parents that are not determined with reference to the age, length of service, or prior contributions of the employee. Accordingly, benefits received, after the effective date of the Act, by a parent or parents under section 12.4 (e) of Statute B are excludable from the gross income of the parent or parents under section 104(a)(1) of the Code. Subsection (b) of section 12.4 provides that the surviving spouse is entitled to the benefit to which the employee would have been entitled on the date of the employee's death, but no less

than fifty percent of the monthly wage received by a first class firefighter. Accordingly, benefits received, after the effective date of the Act, by a surviving spouse under subsection (b), of up to fifty percent of the monthly wage received by a first class firefighter, are excludable from the gross income of the spouse under section 104(a)(1) of the Code. Benefits received under subsection (b) in excess of fifty percent are not excludable under section 104(a)(1) of the Code because they are determined with reference to the age, years of service or prior contributions of the employee.

Subsection (c) of section 12.4 provides that each surviving child is entitled to an amount fixed by ordinance but not less than twenty percent of the pay of a first class firefighter, and subsection (d) provides an additional benefit in an amount fixed by ordinance. Benefits received under subsection (c), after the effective date of the Act, by each surviving child, of up to twenty percent of the wage of a first class firefighter, are excludable from gross income under section 104(a)(1) of the Code. Amounts received by a surviving child in excess of twenty percent pursuant to ordinance under subsection (c) or (d) of section 12.4 of Statute B will also be excludable except to the extent that the amounts are determined under the ordinance by reference to the age, length of service, or prior contribution of the employee.

(13) Section 13.7 of Statute C, as amended by the Act, limits benefits to the survivors of employees who die in the line of duty before September 1, 1982 and the benefits are not determined by reference to the age, length of service, or prior contributions of the employee. Section 13.7 of Statute C, as amended by the Act, is a statute in the nature of a workmen's compensation act and the benefits received after the date of the determination required by section 29 of the Act, are excludable from the recipient's gross income under section 104(a)(3) of the Code.

(14) Section 14.1 of Statute C, as amended by the Act, provides benefits that are limited to the survivors of employees who die in the line of duty after August 31, 1982. Section 14.1 of Statute C, as amended by the Act, is a statute in the nature of a workmen's compensation act. Subsection (e) of section 14.1 provides benefits for dependent surviving parent or parents that are not determined with reference to the age, length of service, or prior contributions of the employee. Accordingly, benefits received, after the effective date of the Act, by a parent or parents under subsection (e) are excludable from the gross income of the parent or parents under section 104(a)(1) of the Code. Subsection (b) of section 14.1 provides that the surviving spouse is entitled to the benefit to which the employee would have been entitled on the date of the employee's death, but no less than fifty percent of the monthly wage received by a first class patrolman. Accordingly, benefits received, after the effective date of the Act, by a surviving spouse under subsection (b), of up to fifty percent of the monthly wage received by a first class patrolman, are excludable from the gross income of the spouse under section 104(a)(1) of the Code. Benefits received under subsection (b) in excess of fifty percent are not excludable under section 104(a)(1) of the Code because they are determined with reference to the age, length of service or prior contributions of the employee. Subsection (c) of section 14.1 provides that each surviving child is entitled to twenty percent of the pay of a first class firefighter, and subsection (d) provides an additional benefit in an amount fixed by ordinance. Benefits received under subsection

(c), after the effective date of the Act, by each surviving child, of up to twenty percent are excludable from gross income under section 104(a)(1) of the Code. Additional benefits received by each surviving child pursuant to ordinance under subsection (d) of section 14.1 of Statute C will also be excludable except to the extent that the amounts are determined under the ordinance by reference to the age, length of service, or prior contribution of the employee.

(15) Section 13.9 of Statute D, as amended by the Act, limits benefits to the survivors of employees who died in the line of duty before September 1, 1982. Section 13.9 of Statute D, as amended by the Act, is a statute in the nature of a workmen's compensation act. Subsection (b)(1) of Section 13.9 provides a basic benefit for each surviving child less than 18 years old or, 23 years old if a student, equal to twenty percent of the employee's benefit. However, subsection (c) provides that if the employee did not have at least 20 years of service or was not at least 52 years of age the benefit is computed as if the employee had 20 years of service and was 52 years of age. Because a benefit based on this minimum benefit is payable regardless of the actual age and years of service of the employee, the benefit based upon the minimum benefit is not determined by reference to the employee's age, length of service or prior contributions. Accordingly, the minimum benefit provided to a surviving child under subsection (b)(1), after the date of the determination required under section 29 of the Act, is excludable from the recipient's gross income. Benefits in excess of the minimum benefit are not excludable under section 104(a)(1) because they are determined by reference to the employee's actual age, length of service or prior contributions. Subsection (b)(1) also provides to certain mentally or physically incapacitated surviving children a benefit equal to the greater of thirty percent of the pay of a first class patrolman or firefighter or fifty-five percent of the monthly benefit the deceased employee was receiving or entitled to receive. Benefits payable to each incapacitated child under section (b)(1), after the date of the determination required under section 29 of the Act, are excludable from the recipient's gross income under section 104(a)(1) of the Code up to the greater of thirty percent of the pay of a first class patrolman or firefighter or fifty-five percent of the minimum monthly benefit. Amounts received in excess of the greater of thirty percent of the pay of a first class patrolman or firefighter or fifty-five percent of the minimum monthly benefit are not excludable under section 104(a)(1) because determined by reference to the employee's actual age, length of service or prior contributions. Subsection (b)(2) of section 13.9 of Statute D provides that a surviving spouse is entitled to a benefit equal to sixty percent of the employee's monthly benefit. Amounts received under subsection (b)(2) of section 13.9 of Statute D, after the date of the determination required under section 29 of the Act, of up to sixty percent of the minimum monthly benefit, are excludable from the recipient's gross income under section 104(a)(1) of the Code. Amounts in excess of sixty percent are not excludable under section 104(a)(1) because they are determined by reference to the employee's actual age, length of service or prior contributions. Subsection (b) also provides a benefit for a surviving dependent parent or parents of fifty percent of the employee's monthly benefit. Accordingly, amounts received by a surviving dependent parent or parents under subsection (b), after the date of the determination required under section 29 of the Act, of up to fifty percent of the employee's minimum monthly

benefit are excludable from the recipient's gross income under section 104(a)(1) of the Code. Amounts in excess of fifty percent are not excludable under section 104(a)(1) because they are determined by reference to the actual age, length of service, or prior contributions of the employee.

(16) Section 14.1 of Statute D, as amended by the Act, provides benefits that are limited to survivors of employees who die in the line of duty after August 31, 1982. Section 14.1 of Statute D, as amended by the Act, is a statute in the nature of a workmen's compensation act. Subsection (f) of Section 14.1 provides that if the employee did not have at least 20 years of service or was not at least 52 years of age, benefits are computed as if the employee had 20 years of service and was 52 years of age. Subsection (c) provides that the employee's surviving spouse is entitled to the benefit the employee would have been entitled to on the date of death but not less than this minimum benefit. Accordingly, amounts received by a surviving spouse under subsection (b), after the effective date of the Act, up to the minimum benefit, are excludable from the surviving spouse's gross income under section 104(a)(1) of the Code. Amounts received in excess of the minimum benefit are not excludable under section 104(a)(1) because they are determined by reference to the employee's actual age, length of service, or prior contributions. Subsection (d) of section 14.1 provides a basic benefit for each surviving child less than 18 years old or, 23 years old if a student, equal to twenty percent of the employee's benefit. The benefit provided to a surviving child under subsection (b)(1), after the effective date of the act, is excludable from the recipient's gross income up to twenty percent of the minimum benefit. Benefits in excess of twenty percent are not excludable under section 104(a)(1) because they are determined by reference to the employee's actual age, length of service or prior contributions. Subsection (d) also provides to certain mentally or physically incapacitated surviving children a benefit equal to the greater of thirty percent of the pay of a first class patrolman or firefighter or fifty-five percent of the monthly benefit the deceased employee was receiving or entitled to receive. The benefits payable to each incapacitated child under subsection (d), after the effective date of the Act, are excludable from the recipient's gross income under section 104(a)(1) of the Code up to the greater of thirty percent of the pay of a first class patrolman or firefighter or fifty-five percent of the minimum monthly benefit. Amounts received in excess of the greater of thirty percent or fifty-five percent are not excludable under section 104(a)(1) because determined by reference to the employee's actual age, length of service or prior contributions. Subsection (e) of section 14.1 provides a benefit for a surviving dependent parent or parents of fifty percent of the employee's monthly benefit. Accordingly, amounts received by a surviving dependent parent or parents under subsection (e) after the effective date of the Act, of up to fifty percent of the minimum monthly benefit are excludable from the recipient's gross income under section 104(a)(1) of the Code. Amounts in excess of fifty percent are not excludable under section 104(a)(1) because they are determined by reference to the actual age, length of service, or prior contributions of the employee.

(17) Many of the benefits provided for under Statutes A, B, C, and D are determined with reference to the pay of a first class patrolman or firefighter and indicate that if the

salary of a first class patrolman or firefighter is increased, the benefit will be proportionately increased. Benefit increases based upon pay increases given to active employees do not refer to the age, length of service, or prior contributions of the employee with respect to whom the benefit is being paid. Accordingly, benefit increases based on increases in the current pay of a first class patrolman or firefighter will be excludable from gross income under section 104(a)(1) of the Code if the statute under which the benefits are being paid otherwise qualifies as a statute in the nature of a workmen's compensation act. If only a portion of the benefit under the a statute qualifies for exclusion under section 104(a)(1), because the remaining portion is computed by reference to the employee's age, length of service, or prior contributions, only that portion of the increase will be excludable under section 104(a)(1).

No opinion is expressed or implied concerning the tax consequences under any other provision of the Code or regulations other than those specifically stated above. In addition, the rulings provided are not applicable to the extent that an irrebuttable presumption of work-relatedness applies to the benefits received.

These rulings are directed only to the Taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely yours,
Harry Beker, Chief
Health and Welfare Branch
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures:

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