Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

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January 30, 2003

Taxpayer =

County =

Plan A =

Plan B =

Plan C =

Plan D =

Dear :

This responds to a ruling request dated August 19, 2002, submitted on behalf of the Taxpayer by its authorized representative, concerning whether service-connected

disability benefits paid to disabled participants in Plan A, Plan B, Plan C, and Plan D are excludable from the gross income of the recipients under section 104(a)(1) of the Internal Revenue Code (the “Code“).

Four Plans were established by County ordinance to provide disability benefits to certain full-time employees of the County. Plan A covers County Employees, Plan B covers the County's Fire Service, Plan C covers the County's Police Service, and Plan D covers the County's Detention Officers and Deputy Sheriffs.

Plan A provides that if a participant is determined to be totally and permanently disabled as a result of a service-connected disability, the participant is entitled to receive an annual retirement pension equal to 66 b % of the participant's final average basic pay.

Plan B, Plan C, and Plan D provide as follows:

> If a participant has a total and permanent disability that is the result of bodily injury or disease arising out of and occurring in the course of the participant's employment, the participant is entitled to receive an annual disability retirement pension equal to the greater of the participant's accrued benefit or 66 b % of:
>
> (I) The participant's final average basic pay; or
>
> (II) If the participant is assigned to a higher classification and is disabled while acting in the higher classification, the final average basic pay that the participant would have received had the participant been promoted to the higher classification ...

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.

In Rev. Rul. 80-44, 1980-1 C.B. 34, a statute in the nature of a workmen's compensation act provided for an allowance of the greater of (A) 60 percent of the individual's average final compensation, or (B) the amount to which the individual would be entitled under the normal, years of service, retirement plan. The ruling concluded that the benefits under the statute were excludable under section 104(a)(1) of the Code to the extent that they did not exceed 60 percent of the final average compensation. Any excess over 60 percent of final average compensation was attributable to length of service and, therefore, not excludable from gross income.

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

Plan A restricts benefits to a class of participants who become totally and permanently disabled as a result of a service-connected disability and constitutes a statute in the nature of a workmen's compensation act. Accordingly, disability benefits paid under Plan A to a participant who suffers a service-connected disability are excludable from the gross income of the recipient under section 104(a)(1) of the Code.

Plan B, Plan C and Plan D restrict benefits to a class of participants who become totally and permanently disabled because of service-connected disabilities and constitute statutes in the nature of workmen's compensation acts. Accordingly, disability benefits paid under Plan B, Plan C and Plan D to a participant who suffers a service-connected disability are excludable under section 104(a)(1) of the Code to the extent the benefits do not exceed 66 b% of the participant's final average basic pay or the final average basic pay of the higher classification to which the participant has been assigned. Amounts in excess of 66 b% of the participant's final average basic pay are not excludable from gross income because they are determined by reference to age, length of service or prior contributions.

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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