

Internal Revenue Service

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Washington, DC 20224

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Date:

December 03, 2003

Legend

System =

Statute =

Dear :

This responds to the request of September 25, 2003, on behalf of the System concerning whether disability benefits paid under the Statute are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the Code).

The Statute states that,

A member of the system who has 5 years or more of service credit and who becomes totally unable to perform his current job or any comparable job for which he is qualified by his training and experience, because of injury or mental or physical illness of a permanent nature is eligible to apply for disability retirement ...

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.

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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.

In Haar v. Commissioner, 78 T.C. 864 (1982), affd. 709 F.2d 1206 (8th Cir. 1983), the Court stated, "A statute will not be considered akin to a workers' compensation act if it allows for disability payments for any reason other than on the job injuries." Citing Riley v. U.S., 156 F. Supp. 751 (1957).

For a statute to qualify as a statute in the nature of a workmen's compensation act, the benefits provided must be restricted to a class of employees who incur an occupational injury, sickness, or death. Rev. Rul. 83-77, 1983-1 C.B. 37; Rev. Rul. 80-84, 1980-1 C.B. 35; Rev. Rul. 80-44, 1980-1 C.B. 34; Rev. Rul. 80-14, 1980-1 C.B. 33. Thus, 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.

In the instant case, the Statute does not limit benefits to line-of-duty injury or sickness. Accordingly, the Statute is not a statute in the nature of a workmen's compensation act. Benefits received under the Statute are not excludable from the gross income of the recipients under section 104(a)(1) of the Code.

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, Health & Welfare Branch
Office of Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosure (1)

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cc: