

Internal Revenue Service

Number: **200542015**

Release Date: 10/21/2005

Index Number: 104.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-115258-05

Date:

July 06, 2005

Legend

Taxpayer =

Borough =

Ordinance =

:

This is in reply to a ruling request, dated February 10, 2005, submitted on your behalf, concerning the federal income tax treatment of payments you receive as disability retirement under the Borough's Ordinance.

You state that you were injured as a police officer. It was subsequently determined that you were injured in the line of duty and permanently disabled. Your disability retirement was approved from the Borough as a service-connected disability.

For a period of time, you received state workers compensation benefits. After termination of those payments, you began receiving service-connected disability benefits pursuant to the Borough's Ordinance.

Section 6.010 of the Ordinance provides, in part, that:

A Participant who is Totally and Permanently Disabled shall be entitled to a monthly disability benefit equal to the Participant's Accrued Benefit determined as of his Disability Date, plus any cost of living adjustment to which the Participant may be entitled

Section 1.260 of the Ordinance further provides:

“Total and Permanent Disability” shall mean a condition of physical or mental impairment due to which a Participant is unable to perform any substantial, gainful activity and due to which the Participant qualifies for Social Security disability benefits. Certification of such condition shall be made by the Plan Administrator in accordance with uniform principles consistently applied and upon such competent medical evidence as the Plan Administrator deems necessary or desirable. . . . [A] condition shall not be treated as a Total and Permanent Disability unless such condition results from the Participant’s performance in the line of the Employee’s duty as a member of the Employer’s police force. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty is not entitled to receive disability benefits. . . .

Section 61(a) of the Internal Revenue Code (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 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 workmen’s compensation act, that provides compensation to employees for personal injuries or sickness incurred during employment. 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.

The fact that the amount received as a disability retirement pension is computed with regard to the employee’s salary prior to retirement does not disqualify the payment from being in the nature of workmen’s compensation. See, Rev. Rul. 85-104, 1985-2 C.B. 52; Rev. Rul. 75-500, 1975-2 C.B. 44; and Rev. Rul. 68-10, 1968-1 C.B. 50.

Accordingly, based on the representations made and authorities cited above, we conclude that amounts you receive as disability payments under the Ordinance are excludable from your gross income under section 104(a)(1) of the Code.

Except as specifically ruled above, no opinion is expressed as to the federal income tax consequences of the transaction described under any other section of the Code.

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

Sincerely,

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