Internal Revenue Service

Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

199903039

Index No.: 0104-0200

Person to Contact:

Telephone Number:

Refer Reply to:

CC:EBEO:BR6 - PLR-115865-98

Date:

OCT 7 1998

State =
City =
Statute =
System =

Dear

This is in reply to your request for a ruling concerning whether certain disability benefits received from State are excludable from gross income under section 104(a)(1) of the Internal Revenue Code.

It is represented that while working as a police officer with the City Police Department, you were injured in the line of duty. After applying to the Board of Trustees of the System, you were approved for accidental disability retirement.

The Statute defines retirement for accidental disability as follows:

> (1) Upon the written application by a member in service, by one acting in his behalf or by his employer any member may be retired on an accidental disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him.

* * *

(2) Upon retirement for accidental disability, a member shall receive an accidental disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his aggregate contributions and

(b) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 2/3 of the member's actual annual compensation for which contributions were being made at the time of the occurrence of the accident.

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.

Section 72(a) of the Code provides that, except as otherwise provided by law, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment or life insurance contract.

Section 72(b) of the Code provides that gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amounts as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

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.

In Rev. Rul. 80-44, 1980-1 C.B. 34, the taxpayer was receiving disability payments. A portion of each payment was excludable under section 104(a)(1) and a portion was not excludable under section 104(a)(1) because it was attributable to length of service. The employee could reduce his disability allowance in order to increase the survivor's benefit. The revenue ruling held that if an employee elected to reduce the employee's lifetime allowance in order to increase the survivor's benefit, the reduction was attributable pro rata among the components of the lifetime allowance. Thus, the increase in the survivor's benefits was partially attributable to the employee's excludable section 104(a)(1) benefit and partially attributable to the employee's nonexcludable benefit

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

The Statute provides for mandatory payment of benefits restricted to a class of employees with service-incurred injuries. The Statute provides for payment of 2/3 of the injured employee's actual annual compensation for which contributions were being made at the time of the occurrence of the disability regardless of the employee's age, length of service or prior contributions. Thus, the Statute is a statue in the nature of a workmen's compensation act as defined in section 1.104-1(b) of the regulations.

Annual amounts received by you under the Statute which equal 2/3 of your actual annual compensation for which contributions were being made at the time of the occurrence of your disability are payable regardless of age, years of service or prior contributions and are, therefore, excludable from your gross income under section 104(a)(1) of the Code.

Annual amounts in excess of 2/3 of your actual annual compensation for which contributions were being made at the time of the occurrence of your disability are attributable to your prior contributions and are, therefore, includible in your gross income to the extent provided in section 72 of the Code.

Amounts received by your spouse, after your death, under the Statute that are directly attributable to your benefits otherwise payable under these provisions, constitute a continuation of the section 104(a)(1) benefits. Accordingly, the payments would qualify as payments under a statute in the nature of a workmen's compensation act and therefore excludable from the gross income of your spouse beneficiary 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 Internal Revenue Code.

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

Sincerely yours,

Harry Beker
Chief, Branch 6
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure
Copy for section 6110 purpose