



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This responds to the letter dated April 20, 2006, requesting our views on the tax treatment of insurance payments received by military servicemembers under the traumatic injury protection provision at 38 U.S.C.A. § 1980A, which was enacted as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005, P.L. 109-13.

The traumatic injury legislation created a program that provides an insurance benefit to certain servicemembers who incur traumatic injuries. Under the traumatic injury program, military servicemembers covered under the Servicemembers' Group Life Insurance (SGLI) program receive automatic insurance if they suffer a traumatic injury. SGLI is a program of low cost group life insurance for military servicemembers. On May 11, 2005, Congress expanded the scope of SGLI by adding a "traumatic injury protection rider" (TSGLI) to SGLI that affords servicemembers insured through SGLI who suffer certain specified traumatic injuries, or their beneficiaries, a payment of up to \$100,000.

The starting point for determining the tax treatment of military benefits is the Internal Revenue Code, which is set forth in Title 26 of the United States Code. Prior to 1986, statutory provisions addressing the federal income tax treatment of military benefits were scattered throughout the United States Code under several different Titles, including, for example, Title 38. In order to better enable taxpayers and the Internal Revenue Service to understand and administer the tax rules, Congress enacted section 134 of the Internal Revenue Code to consolidate and set forth in one statutory provision the tax treatment of military benefits. (See 1986 House Conference Report No. 99-841, P.L. 99-514, p. II-548.)

Under section 134 of the Internal Revenue Code (the Code), "qualified military benefits" are excludable from gross income. Generally, a qualified military benefit is any allowance or in-kind benefit (other than personal use of a vehicle) which: (1) is received by any member or

former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services; and (2) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date.

Benefits are excludable under section 134 only to the extent of the amount authorized and excludable on September 9, 1986, except that adjustments may be made pursuant to a provision of law or regulation in effect on September 9, 1986, if the adjustments are determined by reference to fluctuations in cost, price, currency or other similar index. Thus, any new benefit provided to military personnel or their beneficiaries that was not excludable from income prior to September 9, 1986, cannot be excluded from income under section 134. However, Congress specifically noted that section 134 was not intended to limit benefits, which are excludable under another section of the Internal Revenue Code. (See 1986 House Conference Report No. 99-841, P.L. 99-514, p. II-548.)

Because the TSGLI benefit is not a benefit that was excludable from gross income prior to September 9, 1986, it cannot be excluded from income under Code section 134. However, even if a benefit is not excludable as a "qualified military benefit" under section 134, the benefit may be excludable under another section of the Internal Revenue Code.

Code § 104(a)(3) states that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 for any prior taxable year, gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts are attributable to contributions by the employer which were not includible in the gross income of the employee, or are paid by the employer).

Section 1.104-1(d) of the Income Tax Regulations states that if an individual purchases a policy of accident or health insurance out of his own funds, amounts received thereunder for personal injuries or sickness are excludable from his gross income under section 104(a)(3). Conversely, if an employer is either the sole contributor to such a fund, or is the sole purchaser of a policy of accident or health insurance for his employees (on either a group or individual basis), the exclusion provided under section 104(a)(3) does not apply to any amounts received by his employees through such fund or insurance.

Section 105(a) provides that, except as otherwise provided in section 105, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

Therefore, we conclude that, to the extent that servicemembers purchase TSGLI out of their own funds, amounts received thereunder for personal injuries or sickness are excludable

from gross income under section 104(a)(3). However, benefits received by an employee under TSGLI are includible in servicemembers' gross income under section 105(a) of the Code to the extent that they are attributable to contributions of his or her employer that were not includable in his or her gross income or are paid by the employer.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2006-1, §2.04, 2006-1 IRB 1 (Jan. 3, 2006). If you have further questions, please contact me or (ID ) at ( ) .

Sincerely,

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Division Counsel/Associate Chief Counsel  
(Tax Exempt and Government Entities)