

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
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Date:  
July 22, 2013

Legend

Statute =

Taxpayer =

Employer =

Dear

This is in reply to the letter dated February 25, 2013, submitted on your behalf, requesting a ruling with respect to whether certain disability payments you receive are excludable from gross income under section 104(a)(1) of the Internal Revenue Code (the "Code").

Taxpayer was injured while employed as a police sergeant. Taxpayer's application for duty disability income was approved and he was medically separated from employment. Employer informed Taxpayer that he must elect to receive either retirement income or disability income. Taxpayer elected the retirement income amount because it exceeds the disability income amount.

Section 31727.4 of the Statute provides:

Upon retirement of any member for service-connected disability, he shall receive an annual allowance payable in monthly installments, equal to one-half of his final compensation. Notwithstanding any other provision of this chapter, any member upon retirement for service-connected disability shall receive a current service pension or a current service pension combined with a prior service

pension purchased by the contributions of the county or district sufficient which when added to the service retirement annuity will equal one-half of his final compensation or, if qualified for a service retirement, he shall receive his service retirement allowance if such allowance is greater but in no event shall it exceed the limitation as set forth in section 31676.1 as it now reads or may hereafter be amended to read. The provisions of this section shall also apply to any employee who becomes disabled for service connected causes prior to the first day of the calendar month when he would normally become a member.

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.

If benefits are computed by a formula that does not refer to the employee's age, length of service or prior contributions and are provided to a class that is restricted to employees with service-incurred injuries, sickness or death, then the statute under which the benefits are paid qualifies as a statute in the nature of a workmen's compensation act. See, Rev. Rul. 80-84, 1980-1 C.B. 35; Rev. Rul. 83-77, 1983-1 C.B. 37; Rev. Rul. 80-44, 1980- 1 C.B. 34. The fact that the amount received is based on a percentage of the employee's salary on the date of the disability does not disqualify the payment from qualifying as one in the nature of workmen's compensation. See, Rev. Rul. 68-10, 1968-1 C.B. 50.

Under section 31727.4 of the Statute, if an employee receiving an allowance because of a service-connected disability is also qualified for a service retirement, the

employee may receive the service retirement allowance if the allowance is greater. The amount equal to the member's service-connected disability allowance (one-half of the member's final compensation) is excludable under section 104(a)(1) of the Code. Benefits received by a member pursuant to section 31727.4 of the Statute in excess of 50 percent of the member's final compensation are not excludable under section 104(a)(1) because they are based upon age and years of service. See Rev. Rul. 85-104, 1985-2 C.B. 52.

Based on the information submitted and authorities cited above, we conclude that the portion of Taxpayer's retirement income equal to his service connected disability allowance (one-half of Taxpayer's final compensation) is excludable from gross income under section 104(a)(1) of the Code. Any amount in excess of 50 percent of Taxpayer's final compensation is not excludable under section 104(a)(1) of the Code because such amount is based upon age and years of service.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than as specifically stated above.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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