

Internal Revenue Service

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Person To Contact:

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Legend

Taxpayer =

Statute =

State =

Agency =

City =

Plan =

Z =

Dear :

This letter responds to your January 12, 2016 ruling request, submitted by your authorized representative, as supplemented by correspondence dated June 10, 2016, for a ruling concerning whether certain benefits paid by the Plan are excludible from your gross income under section 104(a)(1) of the Internal Revenue Code (the Code).

The Statute provides for pension and disability benefits paid to the State's police and firefighters from a statewide defined benefit plan established by the Statute and administered by the Agency. However, the Statute permits localities to withdraw from the statewide pension plan if they establish and maintain a locally administered and financed alternative pension plan.

Section 806.5(1) of the Statute provides that if a participant of the statewide defined benefit plan becomes totally disabled (as defined in section 801(4) of the Statute) as the result of an injury received while performing official duties, the participant is eligible for a disability benefit in an amount provided for under section 803(1) of the Statute. According to section 806.5(3) of the Statute, the Agency promulgates rules that specify standards for determining whether a participant's disability is the result of an injury received while performing official duties.

Under section 803(1) of the Statute, the amount of the participant's annual disability benefit is based on a certain percentage of the participant's annual base salary immediately preceding retirement or termination of employment due to disability.

Section 804(c)(2) of the Statute provides that the benefits payable under section 803 or 806.5 of the Statute to any participant who at the time of the award of such benefits is a participant of a locally administered and financed money purchase plan shall be reduced by an amount that is the actuarial equivalent of the benefits the participant receives from the money purchase plan, whether the benefits are paid on a periodic basis or in a lump sum.

We understand the following on the basis of the information provided by your authorized representative.

As authorized by the Statute, the City withdrew from the statewide defined benefit plan established by the Statute and established the Plan as a locally administered and financed plan for its police and firefighters. The Plan is a money purchase plan, and the Taxpayer's disability benefits are accordingly subject to section 804(c)(2) of the Statute.

The Taxpayer separated from service as a police officer of the City due to disability. The Agency later determined that the Taxpayer was totally disabled as the result of an injury received while performing official duties. In determining the Taxpayer's disability benefits, the Agency reduced the Taxpayer's monthly disability benefit by an actuarial value based on the Taxpayer's accrued benefit in the Plan as of the determination date (\$Z).

The Taxpayer represents that the Taxpayer does not have any tax basis in the Taxpayer's accrued benefit in the Plan.

RULINGS REQUESTED

(1) Section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.

(2) Benefits paid to the Taxpayer under section 806.5 of the Statute are excludible from the Taxpayer's gross income under section 104(a)(1) of the Code.

LAW

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. However, section 104(a)(1) does not apply to a benefit 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 benefit is computed with regard to the employee's salary prior to retirement does not disqualify the benefit from being excluded from income as compensation for personal injury under a workmen's compensation act. See Rev. Rul. 68-10, 1968-1 C.B. 50.

In Revenue Ruling 80-44, 1980-C.B. 34, a statute in the nature of a workmen's compensation act provided for an allowance of the greater of (A) 60 percent of the individual's average final compensation, or (B) the amount to which the individual would be entitled under the normal, years of service, retirement plan. The ruling concluded that the benefits under the statute were excludable under section 104(a)(1) of the Code to the extent that they did not exceed 60 percent of the final average compensation. Any excess over 60 percent of final average compensation was attributable to length of service, and therefore, not excludible from gross income.

In Rev. Rul. 85-104, 1985-2 C.B. 52, a statute provided that participants who were disabled due to work-related injury or sickness would receive the greater of a fixed percentage of base salary or an amount computed on the basis of years of service. The ruling concluded that an amount up to the percentage of base salary specified by the statute was excludible from a participant's gross income under section 104(a)(1) of the Code but that any excess, computed on the basis of length of service, was not excludible under section 104(a)(1).

CONCLUSIONS

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

- (1) Section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.
- (2) Benefits paid to the Taxpayer under section 806.5 of the Statute are excludible from the Taxpayer's gross income under section 104(a)(1) of the Code. Any amount distributed by the Plan in excess of \$Z does not apply for purposes of section 806.5 of the Statute and is not excludible under section 104(a)(1) of the Code.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2016-1, 2016-1 I.R.B. 1, § 7.01(15)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2016-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

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

Sincerely,

R. Lisa Mojiri-Azad
Assistant Branch Chief, Health & Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)