Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:HW
PLR-124976-17

Date:
February 07, 2018

LEGEND:

Taxpayer =

Plan =

Statute =
State =

Dear :

This is in reply to your letter dated August 10, 2017, requesting a ruling on behalf of Taxpayer, concerning the federal income tax treatment of certain disability and death benefits paid pursuant to Statute and sections 6.1, 6.2 and 9.3 of the Plan.

Taxpayer adopted the Plan pursuant to Statute to provide certain benefits for police officers employed by Taxpayer who are disabled due to an accident or to another cause in the line-of-duty. Sections 6.1 and 6.2 of the Plan provide that a police officer disabled in the line-of-duty will receive a monthly disability benefit equal to 50% of the employee's final average compensation for the period of disability once unused annual or sick leave has been paid to the disabled police officer, as reduced by any amounts paid as State workers compensation benefits. Section 6.5 of the Plan provides that the actuarial equivalent value of the disability benefit shall not be less than the participant's retirement value, or accumulated value of the employee and employer's contribution account, at the date of disability. Section 6.1 of the Plan provides that a participant receiving a disability benefit shall not be entitled to any other benefits, including death benefits, provided under the Plan unless the disability ends prior to death and the participant's retirement value has not been fully paid as a disability benefit.

Section 9.3(b) of the Plan provides that if a police officer dies in the line-of-duty, or if death is caused by injuries received in the line-of-duty, a monthly benefit equal to 50%

of the employee's final average compensation at the time of death shall be paid to any surviving spouse, or upon his or her remarriage or death, to the minor children. This amount is reduced for amounts paid as State workers compensation benefits. Section 9.3(c) of the Plan provides that to the extent that the police officer's retirement value at the date of death exceeds the amount required to provide a monthly benefit equal to 50% of the employee's final average compensation at the time of death, as reduced by any amounts paid as State workers compensation benefits, the excess shall be paid to the participant's surviving spouse or minor children as described above.

Under State law, the parties may specifically provide in a domestic relations order that the former spouse will receive a share of a disability benefit, and the Taxpayer will follow that direction.

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services.

Section 72(a) of the Code provides that, except as otherwise provided, 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 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 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either 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, or to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts. Section 1.104-1(b) of the regulations also states that section 104(a)(1) applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee.

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. Rev. Rul. 80-44 also holds that benefits of the surviving spouse which are a continuation of the employee's benefits are excludible under section 104(a)(1) of the Code in the same percentage as the employee's benefits were excludible.

Rev. Rul. 80-84, 1980-1 C.B. 35, concluded that benefits paid to employees' survivors may qualify as paid under a statute in the nature of a workmen's compensation act where those benefits are a mere continuation of employees' section 104(a)(1) benefits. The ruling also stated that a statute authorizing benefits for employees' survivors may qualify as a statute in the nature of a workmen's compensation act if it requires as a prerequisite to payment a determination that the cause of the employee's death was service-related. The ruling concluded that survivor benefits are excludable from gross income under section 104(a)(1) of the Code if the recipient can establish that the benefits are received under the service-connected death provisions.

Rev. Rul. 85-104, 1985-2 C.B. 52, considered a statute under which the participants who were disabled due to work-related injury or sickness, 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 would be excludible from the participant's gross income under section 104(a)(1) of the Code but that any excess, computed on the basis of length of service, would not be excludible under section 104(a)(1). The ruling also concluded that 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, then the benefits are payment for those injuries, and the statute under which the benefits are paid qualifies as a statute in the nature of a workmen's compensation act.

Benefits are paid under the Statute and the Plan where the disability is the result of an accident or other cause which occurred as a result of the employee's work in the line-of-duty, or where death is caused by injuries received in the line-of-duty, and are thus in the nature of workmen's compensation. To the extent the actuarial equivalent value of the disability benefit or death benefit is less than the retirement value, the excess would be includible as taxable gross income under section 72 of the Code.

Section 104(a)(1) is strictly construed in a manner consistent with section 61, which provides that all income is included in gross income unless explicitly excluded. The line-of-duty disability payments are specifically paid to employees under the Plan for their line-of-duty disabilities. Moreover, section 1.104-1 of the regulations explicitly limits the exclusion from income to employees and their survivors. Neither the Code nor the regulations provide an exclusion from income for amounts paid to former spouses pursuant to a domestic relations order. See, Fernandez v. Commissioner, 138 T.C. 378 (2012).

Based on the representations made by Taxpayer and the authorities cited above, we conclude as follows:

(1) Benefits paid to a police officer under the Plan for injuries incurred in the line-of-duty will not be gross income to the recipient under section 104(a)(1) to the extent that the benefits do not exceed 50% of the employee's final average compensation. Any portion of the benefit that exceeds that amount will be gross income to the recipient under section 72 of the Code.

(2) Benefits paid under the Plan to a survivor of a police officer that dies in the line-of-duty, or if death is caused by injuries received in the line-of-duty, will not be gross income to the recipient under section 104(a)(1) to the extent that the benefits do not exceed 50% of the employee's final average compensation. Any portion of the benefit that exceeds that amount will be gross income to the survivor under section 72 of the Code.

(3) Disability benefits and line-of-duty death benefits paid under the Plan to former spouses of police officers pursuant to eligible domestic relations orders are not excludable from the taxable income of former spouses under section 104(a)(1) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences under any other provision of the Code or regulations or Statute other than those specifically stated above.

These rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely,

/s/

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

cc: