

PRIVATE LETTER RULING

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The Service has ruled that disability benefits a former police officer or firefighter receives under a state fund for injury in the line of duty are excludable from income under section 104(a)(1).

Firefighter's And Police Officer's Disability Benefits Are Excludable.

Author:

Institutional Author: Internal Revenue Service

===== **SUMMARY** =====

The Service has ruled that disability benefits a former police officer or firefighter receives under a state fund for injury in the line of duty are excludable from income under section 104(a)(1).

The plan provides that a covered individual who is permanently and totally disabled as a result of the performance of official duties is entitled to an annual disability benefit equal to 72 percent of the last year of annual salary. Individuals who are partially disabled and who have completed less than 25 years of service are entitled to a benefit of up to 60 percent of annual compensation at the time of disability. Individuals who are partly disabled and have completed 25 or more years of service are entitled to a benefit equal to a percentage of average annual salary; that benefit has a minimum of 60 percent of average annual salary, and a maximum of 72 percent of average annual salary.

The Service concluded that the state statute is in the nature of a worker's compensation statute under reg. Section 1.104-1(b). It added that because individuals with at least 25 years of service receive a 60 percent minimum benefit regardless of actual years of service, only the excess attributable to length of service is includable in gross income to the extent provided in section 72.

===== **FULL TEXT** =====

Date: March 21, 1996

Refer Reply to CC: EBEO:BR6 – TR-31-2645-95

LEGEND:

Fund = * * *

State = * * *

Statute = * * *

Dear * * *

- (1) This is in reply to your letter dated November 14, 1995, on behalf of the Fund in which you request rulings concerning the federal income tax treatment of certain disability and death benefits paid to police officers and firefighters of State. Your ruling request with respect to the application of section 101(b) of the Internal Revenue Code is within the jurisdiction of the Office of Assistant Chief Counsel (Financial Institutions and Products) which will respond to that request.
- (2) The Fund was established by the State General Assembly in 1965 to provide pension, disability and health care benefits to qualified participants and death and health care benefits to qualified surviving dependents. Under State law, membership in the Fund is mandatory for all full-time police officers employed by State municipalities. Full-time firefighters employed by State political subdivision must become members of the Fund upon satisfactory completion of a firefighter training course approved under the Statute required for employment.
- (3) Section 742.37(C)(1) of the Statute provides for a lifetime monthly pension upon reaching a qualifying age with sufficient service credit. Section 742.37 (C) (2) of the Statute provides that a member of the Fund who is permanently and totally disabled as a result of the performance of official duties shall be paid annual disability benefits until death equal to 72 percent of the last year of annual salary.
- (4) Section 742.37 (C) (3) of the Statute provides that a member of the Fund who is partially disabled in the performance of duties is entitled to receive annual benefits payable in monthly installments. For a member who has completed less than 25 years of active service, the disability benefit is equal to an amount established by the Fund's Administrative Board not to exceed 60 percent of average annual salary. A partial disability member who has completed 25 or more years of service at the time of disability is entitled to a benefit equal to a percentage of average annual salary. Under section 742.37 (C) (3), the percentage is equal to the sum of: (a) 2 ½ percent for each of the first 20 years of active service; (b) 2 percent for each of the 21st through 25th years; and (c)

1 ½ percent for each year in excess of 25 years, but the benefit may not exceed 72 percent of the member's average annual salary.

- (5) Section 742.37 (C) (4) of the Statute provides that a member who is disabled as a result of heart, cardiovascular, or respiratory disease, which was not revealed by the physical examination passed by the participant on entry into the department, is presumed to have incurred the disease while performing his duties. The presumption may be rebutted by evidence that the disease did not arise from service-related causes. If the disability prevents the participant from performing his official duties, he will be paid annual disability benefits under sections 742.37 (C) (2) or (3) of the Statute.
- (6) Section 742.3711 of the Statute provides that a member of the Fund, upon application for retirement under section 742.37 of the Statute, may elect to receive a retirement allowance payable for life, or may elect to receive the actuarial equivalent of retirement allowance in a lesser amount payable for his life and continuing after his death to a surviving designated beneficiary. The amount payable to the beneficiary cannot exceed the amount payable to the member of the Fund who is retiring.
- (7) Section 742.37 (D), (E) and (F) of the Statute provide benefits for the surviving spouse, children and parents respectively of a deceased member. These amounts are paid whether or not the member's death is job-related.
- (8) Section 742.63 of the Statute provides benefits for the surviving spouse and children of a member who dies in the line of duty. These benefits equal the member's full monthly salary prior to his death minus an amount equal to any benefits received under section 742.37 of the Statute.
- (9) 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, including compensation for services.
- (10) 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.
- (11) 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).

- (12) Section 104 (a) (1) of the Code provides, with certain exceptions, that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.
- (13) 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 or 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.
- (14) In Rev. Rul. 85-104, 1985-2 C.B. 52. the Service 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 Service concluded that an amount up to the percentage of base salary specified by the statute would be excludable from the participants' gross incomes under section 104(a)(1) of the Code and any excess, because it would be computed on the basis of length of service, would not be excludable under section 104(a)(1).
- (15) 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.

- (16) Rev. Rul. 85-105, 1985-2 C.B. 53, considered whether a pension received by a disabled firefighter under a state statute that created a rebuttable presumption that the disability was service-connected was excludable from gross income under section 104(a)(1) of the Code. The revenue ruling stated that the statutory presumption did not remove the necessity of demonstration that the disability was work related but merely shifted the burden of proof concerning the cause of disability to the pension board, which was required to make a finding, based on medical evidence, as to whether the disability was service connected. The revenue ruling concluded that amounts received up to the fixed percentage were excludable under section 104(a)(1) of the Code but that any excess above the fixed amounts was not excludable.
- (17) Based on the information submitted, representations made, and authorities cited above, we conclude as follows:
1. Section 742.37 (C)(2) of the Statute provides benefits on account of total and permanent disability and is restricted to a class of members with service-connected injuries or diseases resulting in disability. Accordingly, benefits received by disabled police officers and firefighters under section 742.37 (C)(2) of the Statute are excludable from gross income under section 104(a)(1) of the Code.
 2. Benefits received under section 742.37 (C)(3) of the Statute by members who are partially disabled as a result of injury or illness incurred in the line of duty are excludable under section 104(a)(1) of the Code to the extent payments are based on line-of-duty partial disability and not on the member's length of service. A member who has completed less than 25 years of service may receive a disability benefit not to exceed 60 percent of average annual compensation. Benefits up to 60 percent of average annual compensation received by these members are excludable from gross income under section 104(a)(1) of the Code. Furthermore, because the minimum benefit under section 742.37 (C)(3) of the Statute is 60 percent for members with 25 or more years of service, this minimum amount is received regardless of actual years of service. Accordingly, pursuant to Rev. Rul. 85-104, 60 percent of average annual salary received under section 742.37 (C)(3) for members with 25 or more years of service are excludable from participant's gross income under section 104(a)(1) of the Code and only

the excess attributable to length of service is includible in gross income to the extent provided in section 72 of the Code.

3. Section 742.37(C)(4) of the Statute provides that a member who is disabled by heart, cardiovascular or respiratory disease, is presumed to have incurred the disease in the line of duty “unless the contrary is shown by competent evidence.” This creates a rebuttable presumption and is similar to the facts in Rev. Rul 85-105. Accordingly, benefits received under section 742.37 (C)(4) of the Statute are excludable from gross income under section 104(a)(1) of the Code to the same extent the benefits are excludable under section 742.37 (C)(2) if the disability is total and permanent or under section 742.37 (C)(3) if the disability is partial.
 4. Amounts received under section 742.3711 of the Statute by the beneficiaries of a member who became disabled in the line of duty and was receiving a disability pension pursuant to sections 742.37(C)(2), (3) or (4) of the Statute at the time of death, are directly attributable to the member’s benefits otherwise payable under these provisions and constitute a continuation of the section 104 (a)(1) benefits. Accordingly, the payments under section 742.3711 of the Statute qualify as payments under a statute in the nature of a workmen’s compensation act and are excludable from the gross income of the beneficiaries of the member under section 104(a)(1) of the Code.
 5. Amounts received under section 742.63 of the Statute by the surviving spouse and/or minor children of a Fund member who dies in the line of duty are paid under a statute in the nature of a workmen’s compensation act to the survivor or survivors of a deceased member. Such amounts are excludable from the gross income of the spouse and/or minor children under section 104(a)(1) of the Code.
- (18) 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.
- (19) This ruling is directed only to the taxpayers 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