

Rev. Rul. 80-14

1980-1 C.B. 33, 1980-2 I.R.B. 12.

Internal Revenue Service  
Revenue Ruling

## DISABILITY BENEFITS; FIREFIGHTERS

Published: January 14, 1980

Section 104.--Compensation for Injuries or Sickness, 26 CFR 1.104-1:  
Compensation for injuries or sickness.

(Also Section 61; 1.61-2.)

Disability benefits; firefighters. Duty disability payments paid under a municipal statute to disabled firefighters prior to their reaching normal retirement age are excludable from gross income under section 104(a)(1) of the Code. If the disabled firefighter dies prior to normal retirement age the benefits paid under the statute to the surviving spouse are also excludable for the surviving spouse's life.

## ISSUES

1. Are benefits paid to disabled fire-fighters, under the circumstances described below, excludable from gross income under section 104(a)(1) of the Internal Revenue Code?
2. Are benefits paid to a firefighter's surviving spouse, under the circumstances described below, excludable from gross income under section 104(a)(1) of the Code?

## FACTS

Under statutes adopted by City M, any firefighter in active service who becomes permanently and totally incapacitated for duty as the natural and proximate result of an injury occurring in the actual performance of duty will, upon filing a request for retirement, be entitled to a duty disability retirement allowance provided the medical council after a medical examination of the firefighter certifies that the firefighter is mentally or physically incapacitated for further duty as a result of the injury, the incapacity is likely to be permanent, and the firefighter should be retired.

The statutes provide that any firefighter eligible for duty disability retirement will have the right to receive a benefit during the period of such disability of an amount equal to 75 percent of the current actual salary for the position the firefighter held at the time of the injury. If the firefighter dies while receiving the duty disability allowance, the firefighter's spouse will receive 70 percent of the amount of the allowance the firefighter received at the time of death.

Disabled firefighters continue to receive a duty disability allowance during their period of eligibility until they reach age 62, at which time they begin to receive a normal retirement pension based on years of service with service credit given for time spent on duty disability.

## LAW AND ANALYSIS

Section 61(a) of the Code provides that gross income means all income from whatever source derived, unless otherwise excluded by law, including compensation for services.

Section 104(a)(1) of the Code provides, with certain exceptions not relevant to this case, 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 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 which provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation that 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 of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

The disability benefits in this case are authorized by a statute that provides benefits to a class restricted to employees with service-incurred disabilities. These benefits are thus payments for those disabilities. Therefore, the statute qualifies as a statute in the nature of a workmen's compensation act. Compare Rev. Rul. 72-291, 1972-1 C.B. 36; Rev. Rul. 72-44, 1972-1 C.B. 31.

Disability benefits received by a disabled firefighter prior to conversion to normal retirement benefits therefore qualify for exclusion under section 104(a)(1). Benefits received after conversion, however, do not qualify for exclusion from gross income because they are determined with reference to years of service and age.

If a disabled firefighter dies while receiving duty disability benefits, the statutes of M authorize payment of a percentage of

those benefits to the surviving spouse. The spouse's payments are merely a continuation of the excludable disability benefits received by the decedent and are part of the benefit package granted to an employee as compensation for the employee's occupational disability.

#### HOLDINGS

##### Issue 1

Duty disability benefits paid by M to disabled firefighters prior to the time of their conversion to normal retirement are excludable from gross income under section 104(a)(1) of the Code. Benefits paid to disabled firefighters after their conversion to normal retirement are not excludable under section 104(a)(1).

##### Issue 2

If a disabled firefighter dies prior to the firefighter's conversion to normal retirement the benefits paid to the surviving spouse during that spouse's lifetime are excludable from gross income under section 104(a)(1) of the Code.

Rev. Rul. 80-44

1980-1 C.B. 34, 1980-8 I.R.B. 6.

Internal Revenue Service  
Revenue Ruling

## DISABILITY BENEFITS; INCLUSION IN GROSS INCOME

Published: February 25, 1980

26 CFR 1.104-1: Compensation for injuries or sickness.

(Also Section 105; 1.105-1.)

Disability benefits; inclusion in gross income. The tax treatment of disability payments is discussed in a situation in which the retired employee is entitled to benefits that comprise the larger of an amount based on years of service or an amount determined without regard to either years of service or age. The effect of the employee's election to decrease the retirement allowance in order to increase the survivor's benefit is also discussed.

## ISSUE

Are amounts received by an employee and the employee's survivors excludable from gross income under the provisions of either section 104(a) (1) or section 105(d) of the Internal Revenue Code under the circumstances described below?

## FACTS

Under statutes adopted by City M, any individual employed by M may retire on account of a disability that is incurred in such employment and is compensable under the workmen's compensation act of the state, provided that written notice is given to the city board of the intended retirement and its effective date, and provided further that a medical examiner, after examining the individual, certifies that the individual is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the individual should be retired. The statutes provide in general, that the service-connected disability retirement allowance shall be an amount equal to 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 ordinary, nonoccupational disability pension provisions of M's statutes (a pension based on years of service). Under these statutes the individual may elect to decrease the retirement allowance in order to increase the survivor's benefit to the employee's spouse.

Neither the occupational disability plan nor the nonoccupational disability plan is contributory.

As a result of a service-connected injury, A, an employee of M, retired in 1978 pursuant to the disability retirement provisions of the city plan. Because of years of service, A was entitled to an allowance of 80 percent of average final compensation. A elected to receive that allowance because it is greater than the disability retirement allowance of 60 percent of average final compensation. A's average final compensation was \$200 per week.

LAW

Section 61(a) of the Code and the Income Tax Regulations thereunder provide 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, with certain exceptions not pertinent to this case, 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 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 injuries or sickness incurred in the course of employment. However, the exclusion under 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 of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Section 105(d) of the Code provides, subject to certain limitations, that gross income does not include amounts received by an employee through accident or health insurance for personal injury or sickness if those amounts constitute wages or payments in lieu of wages for a period during which the employee is absent from work on account of permanent and total disability. Generally, for taxable years beginning after December 31, 1976, the exclusion is available only if the taxpayer is retired on disability, was permanently and totally disabled at the time of retirement, and has not reached age 65 before the end of the taxable year.

#### ANALYSIS AND HOLDINGS

The lifetime benefits in question here are authorized by a statute that provides benefits to a class restricted to employees with

service-incurred disabilities. These benefits are thus payments for those disabilities. Accordingly, this statute is a statute in the nature of a workmen's compensation act. Rev. Rul. 72-291, 1972-1 C.B. 36; Rev. Rul. 72-44, 1972-1 C.B. 31.

The allowance received by an employee under the service connected disability retirement provisions of M's statutes is therefore excludable from a recipient's gross income under section 104(a)(1) of the Code to the extent that the allowance (before any reduction to increase the survivor's benefit) does not exceed 60 percent of the recipient's average final compensation. The excess of that allowance (before any reduction to increase the survivor's benefit), if any, is attributable to the length of service and is not excludable under section 104(a)(1). See Rev. Rul. 72-44.

A's average final compensation was \$200 per week, so that A receives an allowance of \$160 (80 percent of average final compensation). Of this amount, \$120 (60 percent x \$200) is treated as workmen's compensation and is excludable under section 104(a)(1) of the Code. \$40 (20 percent x \$200) is attributable to years of service and is not excludable under section 104(a)(1). However, this amount is excludable from gross income to the extent permitted by section 105(d) for years in which the requirements of that section are met. See Rev. Rul. 58-43, 1958-1 C.B. 45, which applies section 105(d) to military disability retirement pay in excess of the amounts that are excludable under section 104(a)(4).

If an employee elects to reduce the employee's lifetime allowance in order to increase the survivor's benefit, the reduction is attributable pro rata among the components of the lifetime allowance. Thus, if as a result of such an election A's lifetime benefit were to be reduced to \$100 per week, \$75 ( $120/160 \times \$100$ ) of the amount is treated as workmen's compensation. The balance, \$25, is attributable to years of service and is not excludable under section 104(a)(1) of the Code. This \$25 is excludable to the extent permitted by section 105(d) for taxable years in which the requirements of that section are met.

The resulting increase in survivor's benefits is directly attributable to a reduction in the employee's lifetime benefits. The percentage of the increase equal to the percentage of lifetime benefits excludable under section 104(a)(1) of the Code is thus a continuation of lifetime section 104(a)(1) benefits. This percentage of the increase thus qualifies as payments under a workmen's compensation act to survivors of a deceased employee, and under section 1.104-1(b) of the regulations it is excludable from gross income under section 104(a)(1). As a result, 75 percent ( $120/160$ ) of any increase in benefits to A's survivors is excludable under section 104(a)(1).

Rev. Rul. 80-44, 1980-1 C.B. 34, 1980-8 I.R.B. 6.

Rev. Rul. 85-105

1985-2 C.B. 53, 1985-30 I.R.B. 13.

**Internal Revenue Service****Revenue Ruling****DISABILITY BENEFITS; FIRE FIGHTER; PRESUMPTION OF SERVICE CONNECTION**

Published: July 29, 1985

26 CFR 1.104-1: Compensation for injuries or sickness

(Also Section 61; 1.61-2.)

Disability benefits; fire fighter; presumption of service connection. A pension received by a disable fire fighter under a state statute that creates a rebuttable presumption the disability was service connected is excludable from gross income to the extent the pension is not attributable to length of service.

**ISSUE**

Are payments made to a retired firefighter excludable from gross income under section 104(a)(1) of the Internal Revenue Code under the circumstances described below?

**FACTS**

A, a municipal fire fighter, developed dizziness and chest pains while fighting a fire on August 1, 1984. Shortly after, A's doctor stated that A was suffering from heat stroke and exhaustion. On December 1, 1984, A suffered a heart attack while at home. A had no history of prior heart disease. After examination by the proper medical authorities, A retired with 26 years of service and received a service-connected disability pension pursuant to section 2 of the state, ST, statutes.

Section 1 of the ST statutes provides that any person who is a member of a regularly constituted fire department of any city or town within ST who serves as a member for not less than 20 years, the last 5 years continuously in the fire department in which that person was a member when retired, is entitled upon written request to retire from service. Upon retirement, the member will be paid a monthly pension of 50 percent of the fire fighter's average monthly salary paid for service in the fire department during the last 30 months of service. In addition, for each year of service beyond 20 years, but not to exceed 10 years, the firefighter is entitled to receive an additional 2 1/2 percent of the average monthly salary that was paid for services in the fire department during the last 30 months of service. In no event shall the member be entitled to receive more than 75 percent of salary.

Section 2 of the ST provides that any person serving in any capacity in a regularly constituted fire department of a city or town within ST may be retired whenever that person becomes physically or mentally disabled in the course of his or her duties and the disability prevents the effective performance of such duties. If retired, the Board of Trustees of the Firemen's Relief and Pension Fund will direct that the disabled firefighter be paid from the fund a monthly pension of 50 percent of the average salary that was paid during the last 30 months of service or, if

greater, the pension calculated on the regular retirement formula as set forth in section 1 of the ST statutes. Section 2 of the ST statutes further provides that the larger sum will be paid as a disability pension because ST's intention and public policy is that disabled firefighters should draw as disability pension the greater amount determined under the formula of section 1 or 2 of the ST statutes.

Section 3 of the ST statutes provides that any member of the fire department of any city or town within ST who is disabled as the result of heart disease or injury to the respiratory system, which disease or injury was not revealed by the physical examination passed by the member upon entry into the department, is presumed to have incurred the disease or injury while performing official duties as a member of the department unless the contrary is shown by competent evidence. Any such member who applies for disability benefits as a result of heart disease or injury to the respiratory system not revealed by the physical examination passed by the member upon entry into the department must be examined by three physicians, each of whom must submit a written report of findings to the board.

Under section 1 of the ST statutes, A was entitled to receive 65 percent of A's average monthly salary paid during the last 30 months of A's service; under section 2, A was entitled to receive 50 percent. Therefore, under the provisions of section 2, A was awarded a pension of 65 percent of A's monthly salary paid during the last 30 months of service.

#### LAW AND ANALYSIS

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, with certain exceptions not pertinent here, 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 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 under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injuries or sickness incurred in the course of employment. However, the exclusion under 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 of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

Rev. Rul. 80-14, 1980-1 C.B. 33, and Rev. Rul. 80-44, 1980-1 C.B. 34, hold that statutes providing benefits to a class restricted to employees with service-incurred disabilities are statutes in the nature of workmen's compensation. In both revenue rulings, a medical examination was necessary to certify the employee's work-related disability.

In *Take v. Commissioner*, 82 T.C. 630 (1984), a state occupational disability statute was held not to be a statute in the nature of a workmen's compensation act because it created an irrebuttable presumption that certain disabilities were occupationally-related.

Under the ST statutes, a rebuttable presumption is created in favor of a finding of service-incurred disability. The statutory presumption does not remove the necessity to demonstrate that the disability is work-related.

It merely shifts the burden of proof concerning the cause of disability to the board of the pension fund. The board still must make a finding, based on medical evidence, whether the employee's disability was service-connected. Therefore, the lifetime benefits received by A are authorized by a statute that provides benefits to a class restricted to employees with service-incurred disabilities. Because these benefits are payable for those disabilities, ST's statute is a statute in the nature of a workmen's compensation act.

The pension received by A under the service-connected disability retirement provisions of ST's statutes is excludable from A's gross income under section 104(a)(1) of the Code to the extent that the pension does not exceed 50 percent of A's final salary over the last 30 months of service. The excess (the extra 15 percent that, pursuant to section 2 of ST statutes, is received under section 1 of the St statutes) is attributable to length of service and is not excludable under section 104(a)(1). Rev. Rul. 80-44

#### HOLDING

A may exclude, under section 104(a)(1) of the Code, a monthly pension equal to 50 percent of the average monthly salary paid to A during the last 30 months of A's service. The excess is not excludable from gross income under section 104(a)(1).

Rev. Rul. 85-105, 1985-2 C.B. 53, 1985-30 I.R.B. 13.