

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 104.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Suzanne H. Smith, Director of Human
Resources
City and County of Broomfield
1 DesCombes Drive
Broomfield, CO 80020

Person To Contact:
Stephanie L. Caden, ID No. 50-15119
Telephone Number:
(202) 622-6080

Refer Reply To:
CC:TEGE:EB:HW
PLR-128418-11

Date:

DEC 7 2011

Legend

Taxpayer = City and County of Broomfield
EIN 84-6014589
State = Colorado
Statute = Title 31, Article 31 of the Colorado Revised Statutes
Plan = Money Purchase Plan for Peace Officers, Plan Number 002

Dear Ms. Smith:

This is in reply to your letter dated March 23, 2011, for a ruling concerning whether certain disability benefits paid under section 806.5 of the Statute are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the Code).

The Statute requires employers in State to provide the pension benefits of the statewide defined benefit plan established by the Statute. However, the Statute permits employers to withdraw from the statewide pension plan if they establish and maintain a locally administered and financed alternative pension plan that is subject to section 601(1)(b) of the Statute.

Section 601(1)(b)(II) of the Statute provides that "The members of such plan hired before, on, or after April 7, 1978, shall be covered by the provisions of sections ... 803, ... 807, ... and 807.5 in lieu of any other defined disability and preretirement death benefits."

Sections 803(1) and (2) of the Statute provide that a member who is not eligible for the normal retirement pension described in section 403, or a local defined benefit retirement pension selected pursuant to section 704(3), or provided pursuant to Article 30.5 of the Statute, and who becomes totally or occupationally disabled, shall be retired from active service for disability and shall be eligible to receive disability benefits under section 803 or 806.5 of the Statute. The annual disability benefits provided are based on a certain percentage of a member's annual base salary paid to the member immediately preceding retirement and an additional amount if the member had a spouse and dependent children at the time of the disability. Sections 803(1)(a) and (b) and (2)(a) and (b) of the Statute.

Section 806.5(1) of the Statute provides that if "a member, who is otherwise eligible to apply for the disability retirement benefits under section ... 803, is required to terminate the member's regular employment due to a total or occupational injury ... that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section ... 803(1)." Section 806.5(3) of the Statute states that "The board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury received while performing official duties or an occupational disease arising out of an in the course of employment."

Section 804(2) of the Statute states that "the benefits payable under section ... 803 or ... 806.5 to any member ... who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article ... shall be reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum."

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 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.

The fact that the amount received as a disability retirement pension is computed with regard to the employee's salary prior to retirement does not disqualify the payment from being in the nature of workmen's compensation. See Rev. Rul. 85-104, 1985 C.B. 52; Rev. Rul. 68-10, 1968-1 C.B. 50.

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

Section 806.5 of the Statute limits benefits to a class of employees with service-incurred injuries or disease and the benefits are not determined with reference to the employee's age, length of service or prior contributions. Accordingly, section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.

Benefits paid under section 806.5 of the Statute, as offset by the benefits funded under the Plan pursuant to section 804(2) of the Statute, are excludable from the member's gross income under section 104(a)(1) of the Code.

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

This ruling is directed only to the Taxpayer requesting 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 Associate Chief Counsel/Division
Counsel (Tax Exempt & Government Entities)

cc: Kirsten B. Stewart
Sherman & Howard
633 Seventeenth Street, Suite 3000
Denver, CO 80202

PLR-128418-11

4

cc: Commissioner, Tax Exempt and Government Entities Division
SE:T
PENN Building, Room 684
1111 Constitution Avenue, NW
Washington, DC 20224

Notice of Intention to Disclose

Taxpayer name	
Mailing date of this notice	December 23, 2011
Last date to request IRS review	January 12, 2012
Last date to request delay	February 21, 2012
Last date to petition Tax Court	February 21, 2012
Date open to public inspection	March 16, 2012

Section 6110 of the Internal Revenue Code provides that copies of certain rulings, technical advice memoranda, and determination letters will be open to public inspection after deletions are made. Rulings and technical advice memoranda will be open to public inspection in the Freedom of Information (FOI) Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, where they may be read and copied by anyone interested.

In accordance with section 6110, we intend to make the enclosed deleted copy of your ruling open to public inspection. We made the deletions indicated in accordance with section 6110(c), which requires us to delete:

1. The names, addresses, and other identifying details of the person the ruling pertains to, and of any other person identified in the ruling [other than a person making a "third party communication" (see back of this notice)].
2. Information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and which is in fact properly classified under such Executive Order.
3. Information specifically exempted from disclosure by any statute (other than the Internal Revenue Code) which is applicable to the Internal Revenue Service.
4. Trade secrets and commercial or financial information obtained from a person that are privileged or confidential.
5. Information which would constitute a clearly unwarranted invasion of personal privacy.
6. Information contained in or related to examination, operating, or condition reports prepared by, or for use of, an agency that regulates or supervises financial institutions.
7. Geological and geophysical information and data (including maps) concerning wells.

These are the only grounds for deleting material. We made the indicated proposed deletions after considering any suggestions for deletions you may have made prior to issuance of the ruling.

If You Agree with the proposed deletions you do not need to take any further action. We will place the deleted copy in the National Office FOI Reading Room on the "Date Open to Public Inspection" shown on this notice.

If You Disagree with the proposed deletions, please return the deleted copy and show, in brackets, any additional information you believe should be deleted. Include a statement supporting your position. Only material falling within the seven categories listed above may be deleted. Your statement should specify which of these seven categories is applicable with respect to each additional deletion you propose. Send your deleted copy and statement to:

Internal Revenue Service
Attention: CC:PA:LPD:DLS
Ben Franklin Station
Post Office Box 7604
Washington, DC 20044

For Paperwork Reduction Act information, see back of notice.

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 104.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:TEGE:EB:HW
PLR-128418-11

Date:
DEC 7 2011

Legend

Taxpayer =

State =

Statute =

Plan =

Dear _____:

This is in reply to your letter dated March 23, 2011, for a ruling concerning whether certain disability benefits paid under section 806.5 of the Statute are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the Code).

The Statute requires employers in State to provide the pension benefits of the statewide defined benefit plan established by the Statute. However, the Statute permits employers to withdraw from the statewide pension plan if they establish and maintain a locally administered and financed alternative pension plan that is subject to section 601(1)(b) of the Statute.

Section 601(1)(b)(II) of the Statute provides that "The members of such plan hired before, on, or after April 7, 1978, shall be covered by the provisions of sections ... 803, ... 807, ... and 807.5 in lieu of any other defined disability and preretirement death benefits."

Sections 803(1) and (2) of the Statute provide that a member who is not eligible for the normal retirement pension described in section 403, or a local defined benefit retirement pension selected pursuant to section 704(3), or provided pursuant to Article 30.5 of the Statute, and who becomes totally or occupationally disabled, shall be retired from active service for disability and shall be eligible to receive disability benefits under section 803 or 806.5 of the Statute. The annual disability benefits provided are based on a certain percentage of a member's annual base salary paid to the member immediately preceding retirement and an additional amount if the member had a spouse and dependent children at the time of the disability. Sections 803(1)(a) and (b) and (2)(a) and (b) of the Statute.

Section 806.5(1) of the Statute provides that if "a member, who is otherwise eligible to apply for the disability retirement benefits under section ... 803, is required to terminate the member's regular employment due to a total or occupational injury ... that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section ... 803(1)." Section 806.5(3) of the Statute states that "The board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury received while performing official duties or an occupational disease arising out of an in the course of employment."

Section 804(2) of the Statute states that "the benefits payable under section ... 803 or ... 806.5 to any member ... who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article ... shall be reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum."

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 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.

The fact that the amount received as a disability retirement pension is computed with regard to the employee's salary prior to retirement does not disqualify the payment from being in the nature of workmen's compensation. See Rev. Rul. 85-104, 1985 C.B. 52; Rev. Rul. 68-10, 1968-1 C.B. 50.

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

Section 806.5 of the Statute limits benefits to a class of employees with service-incurred injuries or disease and the benefits are not determined with reference to the employee's age, length of service or prior contributions. Accordingly, section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.

Benefits paid under section 806.5 of the Statute, as offset by the benefits funded under the Plan pursuant to section 804(2) of the Statute, are excludable from the member's gross income under section 104(a)(1) of the Code.

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

This ruling is directed only to the Taxpayer requesting 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 Associate Chief Counsel/Division
Counsel (Tax Exempt & Government Entities)

cc:

PLR-128418-11

4

cc: