

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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May 7, 1999

Attn:

Legend

State	=
Plan	=
Program	=
Statute	=
Policy	=

This is in response to your request of December 29, 1998, for a ruling on behalf of the Plan for the proper federal tax treatment under section 104 of the Internal Revenue Code (the Code) of certain work-related disability benefit payments to employees made pursuant to the Statute.

In 1998, the State enacted the Statute which created a consolidated program to provide sick leave, family and personal leave, short-term disability and long-term disability to participating State employees in the Program. The Plan was directed to develop, implement and administer the Program.

Qualifying part-time State employees and full-time State employees who begin employment or who are reemployed on or after January 1, 1999, are required to participate in the Program. State employees who are employed before January 1, 1999, may elect to irrevocably participate in the Program.

The Statute contains the provisions regarding both the short-term and long-term work-related disability benefits of the Program. Disability benefits payable under the Statute must be attributable to work-related injuries.

Supplemental short-term disability benefits commence after a seven calendar-day waiting period. In accordance with the Statute, the short-term disability coverage furnishes income replacement for a percentage of the employee's creditable compensation. The Statute provides a chart to determine the amount of disability benefits, which in no event last more than 125 days. Creditable compensation is defined in the Statute as "the full compensation payable annually to an employee working full time in his covered position." The short-term disability benefits are payable only during periods of (i) total disability, (ii) partial disability, or (iii) periodic absences due to a major chronic condition.

Under the Statute, supplemental long-term disability benefits commence upon the expiration of a 180 calendar-day waiting period. The long-term disability payments provide income replacement equal to 60 percent of the employee's creditable compensation.

Under the Statute, both short-term and long-term disability benefits are reduced by the amount of any benefit paid to an employee, or for which the employee is eligible, under the State Workers' Compensation Act, as well as other sources.

For current employees covered by the Plan who choose to continue to be covered by the disability benefits offered through the Plan rather than under the Program, the Policy provides that certain employees who are on workers' compensation leave are eligible to receive payments for lost wages as described as follows: (1) during the first 7 days, 100 percent of salary; (2) for the next 85 days, the difference between workers' compensation benefits and 100 percent of salary; and (3) after 92 calendar days, payments may be extended but not beyond 480 work hours.

You have requested the following rulings:

1. The Statute is a statute in the nature of a workmen's compensation act and payments of short-term disability and long-term disability benefits to participating State employees are not includible in the employees' gross income under section 104(a)(1) of the Code, and
2. The Policy is not a statute in the nature of a workmen's compensation act and payments of benefits under the Policy are includible in the employees' gross income under section 61 of the Code.

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, that gross income does not include amounts received under workmen's compensation acts as compensation for

personal injuries and 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, which provides compensation to employees for personal injuries or sickness incurred in the course of employment. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent determined by reference to the employee's age, length of service, or 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 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.

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

1. Supplemental short-term disability benefits received under the Statute are limited to employee's with occupational injuries or sickness and are computed as a percentage of the employee's creditable compensation. Accordingly, short-term disability benefits received under the Statute are excludable from the employee's gross income under section 104(a)(1) of the Code.
2. Supplemental long-term disability benefits received under the Statute are limited to employee's with occupational injuries or sickness and are computed as 60 percent of the employee's creditable compensation. Accordingly, long-term disability benefits received under the Statute are excludable from the employee's gross income under section 104(a)(1) of the Code.
3. The benefits under the Policy are provided pursuant to permissive authority which does not impose a duty to provide the supplemental disability. Thus, the Policy is not a statute in the nature of a workmen's compensation act and payments received under the Policy are includible in gross income under section 61 of the Code.

This 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 yours,

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Harry Beker  
Chief, Branch 6  
Office of the Associate Chief Counsel  
(Employee Benefits and Exempt  
Organizations)

Enclosures :  
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