

Rev. Rul. 85-104 (IRS RRU), 1985-30 I.R.B. 11, 1985-2 C.B. 52, 1985 WL 287189

Internal Revenue Service (I.R.S.)  
Revenue Ruling

DISABILITY BENEFITS; POLICE OFFICERS AND FIRE FIGHTERS; DISTRICT OF COLUMBIA

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SECTION 104.-COMPENSATION FOR INJURIES OR  
SICKNESS, 26 CFR 1.104- 1: Compensation for injuries or sickness

**\*1 Disability benefits; police officers and fire fighters; District of Columbia.** The extent to which payments received by disabled police officers and fire fighters under sections 4.615 and [4-616 of the District of Columbia Code](#) are excludable from gross income under [section 104\(a\)\(1\)](#) of the Code is set forth. [Rev. Rul. 79-147](#) superseded.

#### ISSUE

Are payments received by disabled police officers and fire fighters under [sections 4-615](#) and [4-616 of the District of Columbia Code](#) excludable from gross income under [section 104\(a\)\(1\) of the Internal Revenue Code](#)?

#### FACTS

The [District of Columbia Code \(D.C. Code\)](#), [sections 4-615](#) and [4-616 \(1981\)](#), provide disability retirement benefits to certain police officers and fire fighters. Persons eligible to receive disability retirement benefits under [sections 4-615](#) and [4-616](#) are officers and members of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the Executive Protective Service, and certain officers or members of the United States Secret Service Division. Pursuant to [section 4-612](#), these employees contribute a percentage of their salary to a retirement fund (which also contains employer contributions), from which the disability retirement benefits are paid.

[Section 4-615 of the D.C. Code](#) provides an annuity to police officers and fire fighters who are disabled due to an injury or disease incurred other than in the performance of duty.

[Section 4-616\(a\) of the D.C. Code](#) provides an annuity to police officers and fire fighters who are injured or contract a disease in the performance of duty or who receive an aggravation of such injury or disease in the performance of duty, and such injury, disease, or aggravation permanently disables the police officer or fire fighter for the performance of duty. The annuity is equal to the greater of (a)  $66 \frac{2}{3}$  percent of the individual's average pay, or (b)  $2 \frac{1}{2}$  percent of the individual's average pay multiplied by the number of full or partial years of service. However, the annuity shall not exceed 70 percent of the individual's average pay.

[Section 4-616\(e\) of the D.C. Code](#) provides an annuity to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia who first became officers and members after the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act and who are injured or contract a disease in the performance of duty or who receive an aggravation of such injury or disease in the performance of duty and such injury, disease, or aggravation permanently disables the police officer or fire fighter from the performance of duty. The annuity is the greater of (a) 40 percent of the individual's basic salary at the time of his or her retirement, or (b) 70 percent of the individual's basic salary at the time of his or her retirement multiplied by the percentage of disability

incurred. Under [section 4-616\(e\)\(2\)\(B\)](#), the percentage of disability is determined with reference to the following factors: (i) the nature of the injury or disease; (ii) the percentage of impairment as determined by the Board of Police and Fire Surgeons; (iii) the position held by the member immediately prior to retirement; (iv) the age and years of service of the member; (v) and any other factors or circumstances which may affect the capacity of the member to earn wages or engage in gainful activity in a disabled condition.

\*2 [Section 4-616\(b\) of the D.C. Code](#) provides an annuity to officers and members of the United State Park Police force, the Executive Protection Service, and the United States Secret Service Division who incur an on-the-job aggravation of an injury or disease, not incurred in the performance of duty or for which the proximate cause is doubtful, rendering the individual permanently disabled for the performance of duty. The annuity is equal to the greater of (a)  $66\frac{2}{3}$  percent of the individual's average pay or (b)  $2\frac{1}{2}$  percent of the individual's average pay multiplied by the number of full or partial years of service. However, the annuity shall not exceed 70 percent of the individual's average pay.

#### LAW AND ANALYSIS

[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](#) states that [section 104\(a\)\(1\)](#) of the Code excludes from gross income amounts that are 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 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 that it is determined by reference to the employee's age, length of service, or prior contribution, even though the employee's retirement is occasioned by an occupational injury or sickness. [Section 104\(a\)\(1\)](#) also does not apply to amounts that are received as compensation for a nonoccupational injury or sickness or 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.

If disability benefits are received under a workmen's compensation act, or under a statute in the nature of a workmen's compensation act, they qualify for the [section 104\(a\)\(1\)](#) exclusion. A statute is in the nature of a workmen's compensation act if it provides compensation to employees only for personal injuries or sickness incurred in the course of employment. Thus, if disability retirement benefits are paid pursuant to such a statute, those benefits will qualify for the [section 104\(a\)\(1\)](#) exclusion. See [Rev. Rul. 80-14, 1980-1 C.B. 33](#). 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 employee's with service-incurred injuries, then the benefits are payments 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. See [Rev. Rul. 80-84, 1980-1 C.B. 35](#).

The fact that the amount received is equal to the employee's salary at the date of the disability or is based on a percentage of that salary does not disqualify the payment from qualifying as one in the nature of workmen's compensation. See [Rev. Rul. 68-10, 1968-1 C.B. 50](#). Nor does the fact that employees contribute a percentage of their salary to a retirement fund, pursuant to [section 4-612](#), disqualify the payments since the amount of the disability pensions does not depend on the amount so contributed.

\*3 The benefits provided by [section 4-615 of the D.C. Code](#) are amounts received as compensation for a nonoccupational injury or sickness. Accordingly, that section in the D.C. Code is not a statute in the nature of a workmen's compensation act within the meaning of [section 1.104-1\(b\) of the regulations](#). See [Rev. Rul. 79-147, 1979-1 C.B. 80](#), which holds that [section 4-526](#) (the predecessor of [section 4-615](#)) of the D.C. Code is not a statute in the nature of a workmen's compensation act within the meaning of [section 1.104-1\(b\) of the regulations](#).

The benefits provided by [sections 4-616\(a\), 4-616\(b\), and 4-616\(e\) of the D.C. Code](#) are authorized by a statute that restricts benefits to a class of employees with service-incurred injuries or diseases resulting in permanent disabilities. The benefits provided by [section 4-616\(b\)](#), for a service-related aggravation of an existing injury or illness are received under a statute in the nature of a workmen's compensation act since the increment or increase in the injury or illness caused by the job-incurred aggravation is in itself in the nature of an injury or illness.

However, the benefits provided under [sections 4-616\(a\) and 4-616\(b\) of the D.C. Code](#) are partially computed by reference to the employee's length of service. To the extent that an annuity provided under [sections 4-616\(a\) and 4-616\(b\)](#) exceeds  $66\frac{2}{3}$  percent of the employee's salary, it is attributable to the employee's length of service. Therefore, although [sections 4-616\(a\) and 4-616\(b\)](#) are statutes in the nature of a workmen's compensation act, annuities provided to employees under [sections 4-616\(a\) and 4-616\(b\)](#) are excluded from gross income under [section 104\(a\)\(1\)](#) of the Code only to the extent that they do not exceed  $66\frac{2}{3}$  percent of the employee's average pay. The benefits provided under [section 4-616\(e\)](#) are computed under a formula that refers to the employee's basic salary and percentage of disability. While age and years of service are mentioned in this formula, they are only considered as factors in determining the percentage of disability, not in directly calculating the annuity. Accordingly, [section 4-616\(e\)](#) is a statute in the nature of workmen's compensation act within the meaning of [section 1.104-1\(b\) of the regulations](#).

#### HOLDING

Payments received by disabled police officers and fire fighters under [section 4-615 of the D.C. Code](#) are not excludable under [section 104\(a\)\(1\)](#) of the Code. The total annuity received by an employee pursuant to [section 4-616\(e\)](#) is excludable from gross income under [section 104\(a\)\(1\)](#). An annuity provided to an employee under [section 4-616\(a\) or 4-616\(b\)](#) is excludable under [section 104\(a\)\(1\)](#) only to the extent it does not exceed  $66\frac{2}{3}$  percent of the employee's average pay.

#### EFFECT ON OTHER REVENUE RULINGS

[Rev. Rul. 79-147](#) is superseded.

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