

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-92 (12) I
Income Tax
December 15, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I920910A

On September 10, 1992, a Petition for Advisory Opinion was received from Gerard J. Dowling, Box 623 RD #1 McVeigh Road, New Hampton, New York 10958.

The issue raised by Petitioner, Gerard J. Dowling, is whether pay received by him for an injury incurred in the line of duty may be treated as workman's compensation pursuant to section 104(a)(1) of the Internal Revenue Code (hereinafter "IRC").

During taxable year 1990, Petitioner was a sergeant with the New York City Transit Police Department (hereinafter "Department". For the periods January 22, 1990 to April 8, 1990 and October 12, 1990 to December 31, 1990 Petitioner was on the Department sick list for service connected injuries.

The Department Operations Order Number 50, dated December 19, 1990 states that:

Section 1204-c of the Public Authorities Law, combined with the current collective bargaining agreements, provides a statutory basis for members of the force in all ranks to treat pay received while on sick leave as the result of a line of duty illness or injury as compensation in lieu of salary also referred to as "sick exclusion" pay by IRS Revenue Ruling 83-77 which interprets Internal Revenue Code Section 104(a)(1).

The provisions of this order become effective as follows:

. . .

- Sergeants' Benevolent Association - March 1990

... (Emphasis added.)

Section 1204-c of the Public Authorities Law states that

1. A member of the New York city transit authority police force in the rank of police officer or a member of such force who is detailed or designated as a detective or who holds the position of sergeant or any position of higher rank, shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a member of the force, as determined by the authority, only in the event that a collective bargaining agreement granting such entitlement pursuant to this section has been entered into by the authority and the certified employee organization representing such member. The first entitlement of any such member of the New York city transit authority police force to the full amount of regular salary under

this section shall commence on the date of execution of the collective bargaining agreement providing for such entitlement with respect to such member (Emphasis added.)

Section 61(a) of the IRC provides that, except as otherwise provided by law, gross income includes all income from whatever source derived.

Section 104(a) (1) of the IRC provides, with 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 Treasury Income Tax Regulations provides that section 104(a) (1) of the IRC excludes from gross income amounts received 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 in the course of employment.

Thus, a prerequisite to the excludability of payments under section 104(a) (1) of the IRC is that the payments be paid pursuant to a "statute". (IRS Ltr Rul 9031017, August 3, 1990.)

Interpretation of the term "statute" for purposes of section 104(a) (1) of the IRC has not limited that term to state or federal statutes or city ordinances. For example, in Dyer v Commissioner, 71 TC 560, 562 (1979), a teacher received sick leave payments pursuant to regulations of the Board of Education of the City of New York. Reasoning that the regulations had the force and effect of law, the Tax Court found that the payments were made pursuant to a "statute" for purposes of section 104(a) (1) of the IRC.

However, in Rutter v Commissioner, 760 F2d 466, 468 (2d Cir 1985), cert den 474 US 848 (1985), payments received pursuant to a labor contract by a New York City police officer while on sick leave as a result of injury received in the line of duty were not excludible from the officer's gross income under section 104(a) (1) of the IRC. The Court distinguished payments made pursuant to a labor contract from those made pursuant to a "statute":

A regulation, like a statute, is a rule of general applicability promulgated by a public agency to govern conduct within the agency's jurisdiction. A labor contract, unlike a statute, is an agreement between union and employer, modifiable at any time. That this particular labor contract involved a public employer is irrelevant to the legislative purposes behind the workmen's compensation exclusion, and does not convert the contract into a "statute"

Similarly, Revenue Ruling 83-77, 1983-1 CB 37, concluded that a union contract does not qualify as a "statute". The ruling holds that a disabled police officer employed by the City of New York may not exclude from gross income, under section 104(a) (1) of the IRC, any payments received under the terms of a union contract between the City and the Patrolmen's Benevolent Association.

Where county law provides that all collective bargaining agreements entered into by the county shall be adopted and approved by legislative acts of the county council and that such agreements are incorporated by reference into the county code, payments made to disabled police officers under the agreements may

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be excludible from gross income under section 104(a)(1) of the IRC. Under these circumstances, the collective bargaining agreement has the force and effect of law and, therefore, is considered a "statute" for purposes of section 104(a)(1) of the IRC. (Rev Rul 81-47, 1981-1 CB 55.)

Herein, the collective bargaining agreement with the Sergeants' Benevolent Association has been incorporated into section 1204-c of the Public Authorities Law. Such statute is 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.

Therefore, commencing on the date of the execution of the Sergeants' Benevolent Association collective bargaining agreement, Petitioner's pay for the period of incapacity due to a line of duty injury, is excluded from Federal gross income pursuant to section 104(a)(1) of the IRC.

Section 611 of the Tax Law provides that New York taxable income of a resident individual is his New York adjusted gross income less his New York deduction and New York exemptions. Section 612 of the Tax Law provides that the New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the Laws of the United States for the taxable year, modified as required by such section. There is no modification in section 612 of the Tax Law with respect to income that is exempt from Federal gross income and Federal adjusted gross income pursuant to section 104(a)(1) of the IRC.

Accordingly, with respect to the periods from January 22, 1990 to April 8, 1990 and October 12, 1990 to December 31, 1990 during which Petitioner was on sick leave as the result of line of duty injuries, Petitioner may exclude from his New York adjusted gross income, in accordance with Section 612 of the Tax Law and section 104(a)(1) of the IRC, that portion of his pay received for such periods starting on the date the Sergeant's Benevolent Association collective bargaining agreement was executed in 1990. The pay Petitioner received for a line of duty injury for the period prior to the date in 1990 that the collective bargaining agreement was executed, may not be excluded from New York adjusted gross income.

DATED: December 15, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.