

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

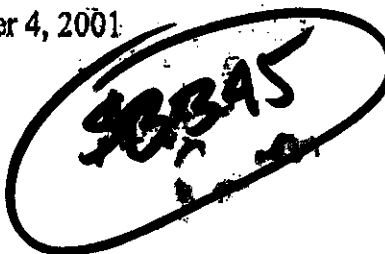
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (775) 684-1100
Fax (775) 684-1108
WEBSITE: <http://ag.state.nv.us/>
E-Mail: aginfo@ag.state.nv.us

FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 4, 2001

Dana Bilyeu
Operations Officer
Public Employees' Retirement System
693 West Nye Lane
Carson City, Nevada 89703



REC'D
OCT - 5 2001
PERS OF NEVADA

Re: *Taxation of Disability Retirement Benefits*

Dear Dana:

I have reviewed the material provided by Ron Cuzze on New Jersey's tax treatment of disability retirement benefits. Mr. Cuzze believes that Nevada PERS is unjustly deducting federal income tax on accidental disability without cause. After review of Mr. Cuzze's material, I have concluded that the current tax treatment of the disability retirement benefits is appropriate.

Mr. Cuzze's authority for excluding disability retirement benefits from taxable income is Section 104(a)(1) of the Internal Revenue Code. As noted in the legal opinion given to the State of New Jersey Division of Pensions and Benefits by tax counsel, Treasury Regulation Section 1.104-1(b) provides three elements that a benefit must meet in order to be excludable: (1) the amount must be received under a workers' compensation act or a statute in the nature of a workers' compensation act providing benefits for an occupational injury or illness; (2) the amount cannot be a retirement pension or annuity determined by reference to the recipient's age, length of service, or contributions; and (3) the amount cannot be in excess of the amount provided in the applicable workers' compensation law. I have attached Treasury Regulation Section 1.104-1 for your convenience.

The first requirement is that the amount received must be under a workers' compensation act or a statute in the nature of a workers' compensation act providing benefits for an occupational injury or illness. NRS 286.620 provides for a disability retirement benefit if, among other things, the member is unable to perform his current job or any comparable job for which he is qualified by his training or experience because of injury or mental or physical illness. Eligibility is not limited to occupational injuries or illnesses. Therefore, NRS 286.620 et seq. is not in the nature of a workers' compensation act and benefits paid under its authority are not excludable under Section 104(a)(1).

ORIGINALS ARE ON FILE IN THE
RESEARCH LIBRARY

ASSEMBLY GOVERNMENT AFFAIRS
DATE: 1-29-03 ROOM: 3143 EXHIBIT C
SUBMITTED BY: DANA BILYEU
PAGE 1 of 2

Dana Bilyeu
October 4, 2001
Page 2

The second requirement is that the amount is not determined by reference to the recipient's age, length of service or contributions. Pursuant to NRS 286.620(2), the disability retirement allowance is calculated in the same manner as provided in NRS 286.551, except that the allowance is not reduced on account of the member's age. NRS 286.551 provides for a calculation of allowance based partially on the member's length of service. Therefore, because the member's disability retirement allowance is calculated with reference to the member's length of service, the allowance is not excludable under Section 104(a)(1). Because the disability retirement provided by Nevada PERS does not meet the first two elements of the above-cited test, I have not analyzed the third element.

If you have any questions or comments, please feel free to contact me.

Yours truly,

FRANKIE SUE DEL PAPA
Attorney General

By:



TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:br
Enclosure