

September 23, 2019

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SYLLABUS:

2019-032

Medical, dental, and vision benefits provided to a death benefit fund recipient under R.C. 124.824 are not subject to federal, state, or local income taxation, regardless of whether a recipient is a survivor of a state or local fallen public safety officer.



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OPINION NO. 2019-032

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Dear Director Damschroder:

You have requested an opinion whether elective medical, dental, and vision benefits provided to surviving spouses and children of law enforcement and public safety officers killed in the line of duty are subject to federal, state, or local taxation. The Department of Administrative Services administers the benefits provided to survivors of fallen public safety officers. *See* Am. Sub. H.B. 166, 133rd Gen. A. (2019), at § 361.10. In connection with this responsibility, you ask the following three questions:

1. Is the payment provided by the State of Ohio, beginning with the enactment of S.B. 296 (132d General Assembly), to provide medical, dental, and vision benefits to Death Benefit Fund Recipients (“survivors”) pursuant to R.C. 124.824 subject to federal, state, and local income taxes? Is the answer the same for the payment provided by the State beginning on July 18, 2019, assuming that is the effective date of the amendment(s) to R.C. 124.824 that were enacted in the 2019-2020 biennial budget bill (H.B. 166)?
2. If either of these payments is subject to federal, state, and local income taxes, is the Department of Administrative Services (“DAS”) obligated to report such amounts to federal, state, and local taxing authorities?
3. Do the answers to either of the questions above change in circumstances where the payments provided by the State pursuant to R.C. 124.824 are provided to survivors of former State of Ohio public safety officers as compared to survivors of public safety officers who were not employed by the state?

**Medical, Dental, and Vision Benefits Provided to Survivors of Public Safety Officers Killed in the Line of Duty under R.C. 124.824**

In 2018, the General Assembly enacted R.C. 124.824. The statute authorizes survivors of certain law enforcement and public safety officers killed in the line of duty to elect to receive medical, dental, and vision benefits from the State of Ohio. *See* Am. Sub. S.B. 296, 132d Gen. A. (2018) (eff. Dec. 27, 2018). Benefits under R.C. 124.824 are the same as the health benefits provided to employees of the State of Ohio. The General Assembly amended the statute as part of the biennial budget bill in 2019. *See* Am. Sub. H.B. 166, 133rd Gen. A. (2019). To be eligible to receive health benefits, a surviving spouse or child must be a “death benefit fund recipient,” meaning the person currently receives a death benefit paid under R.C. 742.63.<sup>1</sup> For example, a surviving spouse of a fallen member who was a firefighter or police officer, with no surviving children, shall receive the full death benefit amount “during the spouse’s natural life until the deceased member’s maximum pension eligibility date, on which date the benefit provided . . . shall terminate.” R.C. 742.63(B); *see also* R.C. 742.63(A)(1) (defining “member”); R.C. 742.63(A)(3) (defining “firefighter or police officer”); R.C. 742.63(A)(12) (defining “killed in the line of duty”).

Under S.B. 296, the State covered the entire costs of dental and vision benefits provided to survivors, while survivors contributed the same portion as state employees toward medical benefits, which was 15% of premium costs during the time S.B. 296 was effective. Under H.B. 166, survivors continue to pay no cost for dental and vision benefits. Now, premium costs for medical benefits previously paid by benefit recipients are automatically withheld from the death benefit received under R.C. 742.63 by the board of trustees of the Ohio public safety officers death benefit fund.<sup>2</sup> The board of trustees then forwards the remaining amount required to cover the cost of medical benefits to the Department of Administrative Services. *See* Am. Sub. H.B. 166, 133rd Gen. A. (2019), at 147-148, § 361.10. Qualifying survivors of deceased public safety officers, therefore, may elect to receive medical, dental, and vision benefits, provided by the State of Ohio, with premium costs for medical benefits automatically withheld.

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<sup>1</sup> A death benefit fund recipient is ineligible to receive medical, dental, or vision benefits under R.C. 124.824 if the recipient is “[a]n employee paid directly by warrant of the director of budget and management who is eligible to participate in those benefits pursuant to [R.C. 124.82]” or if the recipient is “[e]ligible to enroll in the medicare program established by Title XVIII of the ‘Social Security Act,’ 79 Stat. 291 (1965), 42 U.S.C. 1395c, as amended.” Am. Sub. H.B. 166, 133rd Gen. A. (2019), at 148.

<sup>2</sup> The board of trustees of the Ohio public safety officers death benefit fund is the board of trustees of the Ohio police and fire pension fund. Am. Sub. H.B. 166, 133rd Gen. A. (2019), at 147-148; *see also* R.C. 742.62.

You first ask whether these benefits, provided under either S.B. 296 (2018) or H.B. 166 (2019), are subject to federal, state, and local income taxation.<sup>3</sup>

***Question 1: Taxation of Medical, Dental, and Vision Benefits Received under R.C. 124.824***

*Federal Taxation of R.C. 124.824 Benefits*

No law of which we are aware expressly imposes taxes on the health benefits of death benefit fund recipients under R.C. 124.824. Therefore, we consider whether such benefits fall under the definition of “adjusted gross income,” subjecting the benefits to personal income taxes. See 1978 Op. Att’y Gen. No. 78-065, at 2-160.<sup>4</sup>

“Gross income” means “all income from whatever source derived” and includes such items as “[c]ompensation for services, including fees, commissions, fringe benefits, and similar items.” 26 U.S.C. § 61(a)(1). Gross income also includes interest, rents, royalties, dividends, annuities, income from life insurance contracts, and pensions, among others. 26 U.S.C. § 61(a)(4)-(10). The Supreme Court has long held that “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion” fall within the definition of gross income that subject the accession of wealth to personal income tax. See *Comm’r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955); see also *Adkins v. United States*, 882 F.2d 1078, 1080 (6th Cir. 1989); *Angell v. City of Toledo*, 153 Ohio St. 179, 183, 91 N.E.2d 250 (1950) (“[i]n its ordinary and popular meaning, ‘income’ is the amount of actual wealth which comes to a person during a given period of time”) (quotation marks and citation omitted).

Under federal law, employer-paid premiums under medical, dental, and vision plans are not generally considered gross income. In fact, employer-provided coverage under a health plan is specifically *excluded* from the definition of gross income. 26 U.S.C. § 106(a). Section 106 of the Tax Code deals with contributions “by an employer to an accident or health plan for the benefit of his employees, either in the form of contributions to a separate fund or trust *or by the payment of premiums on a policy of accident or health insurance.*” *Laverty v. Commissioner*, 61 T.C. 160, 165 (1973), *aff’d*, 523 F.2d 479 (9th Cir. 1975) (emphasis added); see also *Adkins v. United States*, 882 F.2d at 1080. The Internal Revenue service has further advised that “[a]fter

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<sup>3</sup> After careful review, we see no reason to differentiate the tax treatment of benefits provided under S.B. 296 versus H.B. 166. Accordingly, the conclusions reached in this opinion are equally applicable to benefits received under either enactment.

<sup>4</sup> This opinion does not analyze whether benefits received under R.C. 124.824 are subject to taxation under other taxation schemes, such as real property taxation, because such benefits can reasonably be argued to only constitute “income.” Accordingly, our analysis focuses on whether R.C. 124.824 benefits fall within the definition of adjusted gross income.

an employee's death, contributions by an employer to an accident and health plan that provides coverage for a surviving spouse and dependents of the deceased employee are excludable from the survivors' gross income under section 106 of the Code." Rev. Ruling 82-196, 1982-2 C.B. 53; *see also* 26 C.F.R. § 1.106-1 ("[t]he gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents"). In short, employer contributions to an employer-provided health plan are generally excluded from gross income under section 106. In particular, such contributions made on behalf of surviving spouses and dependents of deceased employees are also excluded from the survivors' gross income. Rev. Ruling 82-196.

Applying the above principles to insurance benefits that survivors of fallen public safety officers receive under R.C. 124.824, we conclude that such benefits are not part of the survivors' gross income and, therefore, are not subject to federal income taxation. This conclusion flows naturally from the plain language of section 106 and 26 C.F.R. § 1.106-1, which exclude from gross income those contributions made by an *employer* on behalf of an *employee* or the employee's spouse, dependent, or surviving spouse or dependent. Rev. Ruling 82-196. Accordingly, R.C. 124.824 benefits provided to survivors of fallen *state* public safety officers would clearly be excluded from federal income taxation under section 106 of the Tax Code because they are provided by the State of Ohio, the former "employer" of the fallen officer.

You ask, however, whether this conclusion also applies to R.C. 124.824 benefits provided to survivors of fallen public safety officers who were *not* employees of the state, such as municipal police officers. In that circumstance, the plain language of section 106 would not apply because the fallen officers were not employees of the state. Accordingly, one might argue that, although section 106 exempts from gross income health benefits provided to survivors of fallen state officers, the section does not exempt from gross income benefits provided to survivors of fallen *local* officers. The reason is because section 106 states that "gross income of an *employee* does not include *employer-provided* coverage under an accident or health plan." 26 U.S.C. § 106(a) (emphasis added). A municipal police officer, for example, is not an employee of the state of Ohio, and, one might argue, the benefits provided to survivors of a fallen municipal officer are not, consequently, excepted from the definition of gross income. Therefore, under this reasoning, survivors of local officers must pay federal income tax on R.C. 124.824 benefits, but survivors of state officers do not have to pay federal tax on the same benefits.

We need not answer the question of whether 26 U.S.C. § 106 applies to benefits provided to survivors of local officers because, in 2015, Congress enacted an exclusion to the definition of gross income that covers benefits provided to survivors of local public safety officers. The Don't Tax Our Fallen Public Safety Heroes Act specifically excludes from gross income "amounts received pursuant to . . . a program established under the laws of any State which provides *monetary compensation* for surviving dependents of a public safety officer who has died as the direct and proximate result of a personal injury sustained in the line of duty." Pub. L. No. 114-

14, 129 Stat. 198 (2015) (emphasis added). This provision is codified at 26 U.S.C. § 104(a)(6)(B).

Section 104 exempts from the definition of gross income any amount received (a) under a state program that provides monetary compensation to (b) surviving dependents of public safety officers killed in the line of duty. R.C. 124.824 is clearly a state program that provides assistance to survivors of public safety officers killed in the line of duty. Health benefits, the type of benefits provided under R.C. 124.824, are not normally considered “monetary compensation,” which is the term used in section 104. Logically, however, R.C. 124.824 benefits must either be included in the definition of gross income and taxable, or excluded from the definition of gross income and not taxable. If R.C. 124.824 benefits to survivors of local officers do not fall within the application of section 106, which exempts health benefits provided by employers to employees or survivors of deceased employees, then logically those benefits would be classified as some sort of compensation and, thus, gross income. Section 104, however, expressly exempts from the definition of gross income monetary compensation provided to survivors of public safety officers killed in the line of duty. As such, even if R.C. 124.824 benefits provided to survivors of local fallen officers do not fall within the application of section 106, those benefits would fall within the application of section 104. In short, section 104 exempts R.C. 124.824 benefits for survivors of local officers from the definition of gross income and, thus, from taxation.

Moreover, the clear public policy of Congress and the General Assembly is to avoid taxation of benefits provided to survivors of public safety officers killed in the line of duty. Indeed, section 104(a)(6)(B) resulted from an enactment entitled the Don’t Tax Our Fallen Public Safety Heroes Act. Accordingly, any doubt regarding the interpretation of sections 106 and 104 as exempting R.C. 124.824 benefits from the definition of gross income can be resolved in light of the strong and evident public policy that favors eliminating taxes on compensation and benefits provided to survivors of public safety officers killed in the line of duty.

Therefore, we conclude that medical, dental, and vision benefits provided to death benefit fund recipients under R.C. 124.824 are not subject to federal taxation, regardless of whether a recipient is a survivor of a state or local fallen public safety officer.

#### *State Taxation of R.C. 124.824 Benefits*

Like the federal government, Ohio also imposes a personal income tax on individuals based on their adjusted gross income. R.C. 5747.02(A)(3). The General Assembly has defined adjusted gross income to mirror the federal definition, with certain deviations not applicable here. R.C. 5747.01(A); *Buckley v. Wilkins*, 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811, at ¶¶ 8-9. We have previously concluded that when certain payments are “not income at the time they are made for the purpose of the federal income tax, they are not includible in an individual’s adjusted gross income for the purpose of the Ohio personal income tax.” 1978 Op. Att’y Gen. No. 78-065, at 2-160 to 2-161 (employer “pick-up” payments to the public teachers’ pension system are not included in the definition of adjusted gross income). As discussed above,

premium contributions made by the State of Ohio for medical, dental, and vision benefits for survivors of fallen public safety officers under R.C. 124.824 are not part of the survivors' gross income under federal law. As such, these benefits are not subject to federal income taxation. Because Ohio has adopted a definition of adjusted gross income that tracks the federal definition, and because no other law in Ohio subjects benefits received under R.C. 124.824 to state taxation, we conclude that the General Assembly intended that those benefits should not be taxed under state law.

#### *Local Taxation of R.C. 124.824 Benefits*

Local adjusted gross income in Ohio also mirrors the federal definition. *See* R.C. 718.01. Municipal taxable income for an "individual who is a resident of a qualified municipal corporation" is "Ohio adjusted gross income reduced by income exempted." R.C. 718.01(A)(1)(b)(ii). A "qualified municipal corporation" is a "municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income . . . as the income subject to tax for the purpose of imposing a municipal income tax." R.C. 718.01(RR). Moreover, municipal corporations cannot generally levy taxes on income forbidden under existing law. *See* 1976 Op. Att'y Gen. No. 76-016, at 2-47; *see also* Ohio Const. art. XIII, § 6 ("[t]he General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation . . . so as to prevent the abuse of such power"); Ohio Const. art. XVIII, § 13 ("[L]aws may be passed to limit the power of municipalities to levy taxes . . . for local purposes"); R.C. 715.03 (prohibiting municipal corporations from levying a tax that is "the same as or similar to a tax levied under Chapter . . . 5747 [income tax]" except as in accordance with R.C. Chapter 718). *But see Cincinnati Bell Tel. Co. v. City of Cincinnati*, 81 Ohio St. 3d 599, 607, 693 N.E.2d 212 (1998). As discussed above, R.C. 124.824 benefits are not included in the federal and state definitions of gross income and, on that basis, are not taxable. Therefore, R.C. 124.824 benefits provided to survivors residing in a municipal corporation are not subject to local taxation because the definition of local adjusted gross income is the same as the definitions for federal and state adjusted gross income, and those definitions do not include R.C. 124.824 benefits.

#### ***Question 2: Reporting R.C. 124.824 Benefits to Federal, State, or Local Taxing Authorities***

Your second question is whether, if R.C. 124.824 benefits are taxable, the Department of Administrative Services must report the benefit amounts provided to survivors of fallen public safety officers to federal, state, or local taxing authorities. Because we have concluded that R.C. 124.824 benefits are not subject to federal, state, or local taxation, DAS is not required to, and should not, report such benefits to federal, state, or local taxing authorities.

***Question 3: Payments to Survivors of Former State of Ohio Employees versus Payments to Survivors of Persons not Previously Employed by the State of Ohio***

Your third question is whether the tax treatment of R.C. 124.824 benefits changes based on the identity of the fallen public safety officer. Namely, you ask whether payments to survivors of former *state* public safety officers are treated differently than payments to survivors of *local* officers. As discussed at length above, we are of the opinion that 26 U.S.C. §§ 104 and 106, taken together, exempt from gross income the health benefits provided to survivors of public safety officers killed in the line of duty under R.C. 124.824, regardless of whether the fallen officer was a state officer or a local officer.

**Conclusion**

Based on the foregoing, it is our opinion, and you are hereby advised, that Medical, dental, and vision benefits provided to a death benefit fund recipient under R.C. 124.824 are not subject to federal, state, or local income taxation, regardless of whether a recipient is a survivor of state or local fallen public safety officer.

Respectfully,



DAVE YOST  
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