KLAUSNER KAUFMAN JENSEN & LEVINSON

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
ATTORNEYS AT LAW

MEMORANDUM

To: Board of Trustees

From: Klausner, Kaufman, Jensen & Levinson

Subject: Form 1099-R: Reporting of disability annuity payments to first responders and other disabled taxpayers

Date: April 2024

On March 15, 2024, the IRS provided notice that they made changes to the 2023 Instructions for Forms 1099-R and 5498 to help clarify how to report disability annuity payments to first responders or other taxpayers on the Form 1099-R.

Revenue Ruling 85-105, 1985-2 C.B. 53 states that disability retirement payments made to a taxpayer "under a workmen's compensation act or under a statute in the nature of a workmen's compensation act" as compensation for personal injuries or sickness incurred during the course of employment may not be subject to federal income tax.

> **A new paragraph was added to the 2023 Instructions:**
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> **Box 2a, Taxable Amount, now references Rev. Rul. 85-105 to help you determine the taxable and/or non-taxable amount of the disability payments. If the annuity payments are fully non-taxable, there should be a zero in box 2a.**

If a portion of the pension benefit is based on age or length of service under the retirement plan, enter that portion of the annuity in box 2a. See Rev. Rul. 85-105, 1985-2 C.B. 53. Enter distribution code 3 in box 7. This occurs when a member has an accrued benefit in excess of the fixed percentage of compensation awarded for service incurred disability. That "years-of-service" based amount in excess of the fixed percentage is taxable. This distinction was explained in *Sewards v. Commissioner of Internal Revenue*, 785 F.3d 1331 (9th Cir. 2015). Worker's compensation benefits are not dependent on years of service.

In light of this guidance, the firm recommends that your Fund should report any hybrid disability payments which are both taxable and potentially non-taxable on two separate 1099Rs. Any part of the disability pension that is based on the member's age or length

of service should be reported as taxable. You may still code the fixed percentage disability portion as "taxable amount not determined" since Revenue Ruling 85-105 uses the language that such payment "may" not be subject to federal income taxes. Alternatively, if you have been reporting the fixed percentage disability portion as non-taxable, you may continue to do so. It is also recommended that members on disability retirement be advised to consult a qualified tax professional.

You should also be aware of the tax treatment of disabilities based on a presumptive disease. If the presumption is rebuttable, the disability based on a presumption is non-taxable. The IRS made this distinction in the case of *Take v. Commissioner*, 804 F.2d 553 (9th Cir. 1986). Thomas Take was an Anchorage, Alaska firefighter who retired on a service-connected disability based on heart disease. In his plan, the presumption could not be rebutted. The court determined that since the presumption could be rebutted for worker's compensation, but not under the pension, the benefit "was not in the nature of worker's compensation." In Florida, all presumptive disease clauses can be rebutted by other evidence with the sole exception of the firefighter cancer presumption. For that reason, disability retirement based on the cancer presumption is taxable.

To assist members in their tax filings, future disability orders will contain a paragraph regarding the method for determining the benefit whether a fixed percentage, based on years of service/age, or hybrid and if based on a presumption, whether that presumption is rebuttable or not. Our office will need to work with the administrator and actuary to document the calculation of the benefit.

As always, if there are any questions, please contact our office.