



NATIONAL DIRECTOR  
FOR LEGISLATIVE  
AFFAIRS

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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The Honorable Thomas Davis  
Ranking Member  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Davis:

The Acting Commissioner asked me to respond to your letter of November 29, 2007, asking for assistance for retired federal employees who have questions about their eligibility for tax-favored treatment under section 402(l) of the Internal Revenue Code (the Code).

Section 845 of the Pension Protection Act of 2006 added section 402(l) to the Code, which excludes from gross income distributions of up to \$3,000 annually from an eligible government plan used to pay qualified health insurance premiums of an eligible retired public safety officer and his or her spouse and dependents. The exclusion applies to an eligible retired public safety officer who elects to have qualified health insurance premiums deducted from amounts distributed from an eligible government plan and paid directly to an insurer. Section 402(l)(4)(C) cross references the definition of public safety officer provided in section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Crime Control Act) (42 U.S.C. 3796b(9)(A)).

The IRS and Treasury Department issued guidance on eligibility for tax-favored distributions under section 402(l) of the Code. On January 10, 2007, we published the enclosed Notice 2007-7 (2007-5 I.R.B. 395) to provide guidance to taxpayers who may qualify for special treatment under section 402(l). Notice 2007-7 clarifies that the term "public safety officer," for purposes of section 402(l), means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew (see Q&A-21 of Notice 2007-7). That definition is the same as the one provided in section 1204(9)(A) of the Omnibus Crime Control Act.

You believe that certain federal retirees who served in a law enforcement capacity are unsure whether they are law enforcement officers for purposes of the income tax exclusion. Their eligibility depends on the interpretation of the term "law enforcement officer" as used in section 1204(9)(A) of the Omnibus Crime Control Act. Section

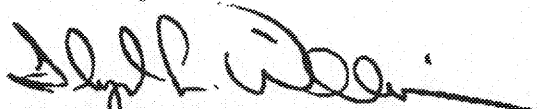
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1204(6) of the Omnibus Crime Control Act (42 U.S.C. 3796b(6)) defines the term "law enforcement officer" as an individual in crime and delinquency control or reduction, or enforcement of the criminal laws, including but not limited to police, corrections, probation, parole, and judicial officers. Section 1204 of the Omnibus Crime Control Act contains definitions that apply to that entire subchapter concerning public safety officers' death benefits. Therefore, the definition of law enforcement officer in section 1204(6) applies to the definition of public safety officer in section 1204(9)(A).

We share your commitment to ensuring that eligible taxpayers can take advantage of this provision. We face certain limitations in interpreting section 402(l)(4)(C) of the Code because it directly cross references the definition of public safety officer in section 1204(9)(A) of the Omnibus Crime Control Act and does not provide the IRS with the authority to expand or limit that definition. A more significant limitation, however, is that the Pension Protection Act and other recent legislation have created such a large need for written guidance that we cannot address many narrower issues at this time. Thus, it is unlikely that we will be able to provide additional written guidance in the near future regarding whether individuals who serve in particular law enforcement capacities qualify as "law enforcement officers." We will, however, consider the issue for inclusion in our next Priority Guidance Plan. In addition, we will continue to work with our information call centers and other parts of the IRS to give taxpayers accurate and timely guidance so that they can make an informed decision on their eligibility for tax-favored treatment under section 402(l) of the Code.

I hope this information is helpful. If you have any questions, please contact me at (202) 622-4725.

Sincerely,



Floyd L. Williams

Enclosure