

U. S. Office of Personnel Management
Retirement and Insurance Service



1920



1954



1959



1986

Benefits Administration Letter

Number: 97-104

Date: March 5, 1997

SUBJECT: Tax Status of New Death Gratuity Payment Authority

Background

On October 16, 1996, Benefits Administration Letter 96-109 provided you with information about a new death gratuity created by Public Law 104-108 and effective September 30, 1996. This legislation gives department and agency heads the authority to pay up to \$10,000 as a death gratuity to the personal representative of an employee who dies from an injury sustained in the line of duty on or after August 2, 1990. When we provided you that information in October, the Internal Revenue Service (IRS) had not ruled on whether these payments would be subject to Federal income tax.

Taxation of the Death Gratuity

The IRS has now issued a ruling that a death gratuity payment, while not subject to Federal income tax withholding, is fully subject to Federal income tax if the death occurred on or after August 20, 1996. If death occurred earlier, a \$5,000 exclusion will generally apply.

Additional Details

The attached memorandum from OPM Director James B. King to heads of departments and independent agencies gives further details about the ruling.

Disposition of This Letter

The information in this letter will be incorporated at a later date into Chapter 70, Death of an Employee, of the *CSRS and FERS Handbook for Personnel and Payroll Offices*.

Mary M. Sugar, Chief
Agency Services Division
Retirement and Insurance Service

February 20, 1997

MEMORANDUM FOR HEADS OF DEPARTMENTS AND INDEPENDENT AGENCIES

FROM:

JAMES B. KING §

DIRECTOR

SUBJECT:

Tax Status of New Death Gratuity Payment
Authority

Section 651 of Public Law 104-208, the Omnibus Consolidated Appropriations Act, effective September 30, 1996, gives department and agency heads the authority to pay up to \$10,000 as a death gratuity to the personal representative of an employee who dies from an injury sustained in the line of duty.

On October 15, 1996, we issued a memorandum to all heads of departments and independent agencies, concerning the death gratuity, including information regarding the tax status of the gratuity payment. At that time, however, the Internal Revenue Service had not yet made a determination on whether these payments would be subject to Federal income tax.

The IRS has now issued a ruling that a death gratuity payment, while not subject to Federal income tax withholding, is fully subject to Federal income tax if the death occurred on or after August 20, 1996. If death occurred earlier, a \$5,000 exclusion will generally apply. The IRS explained its finding as follows.

Section 101(b) [of the Internal Revenue Code], for persons dying before August 20, 1996, provides that gross income does not include amounts received by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee. Section 101(b) has been repealed for persons dying on or after August 20, 1996, by section 1402 of the Small Business Job Protection Act of 1996, Pub. L. 104-188.

The aggregate amount excludable under § 101(b), with respect to an employee dying before August 20, 1996, is limited to \$5,000 regardless of the number of employers or the number of beneficiaries. If there is more than one beneficiary receiving an employee's death benefit, the \$5,000 exclusion must be allocated in the same proportion as the amount received by or the present value of the amount payable to each bears to the total death benefits paid or payable by or on behalf of the employer or employers. Sections 1.101-2(a) and (c) of the Income Tax Regulations. The

\$5,000 exclusion applies to the first \$5,000 received. J.C. Nordt Co., Inc. v. Commissioner, 46 T.C. 431 (1966).

Accordingly, the availability of the exclusion with respect to the death gratuity payments (but only for employees dying before August 20, 1996) depends on what other amounts, if any, have already been paid by one or more employers with respect to that employee. Civilian employees of federal departments or agencies receive many benefits, at least one of which may, depending on facts or circumstances, be a death benefit excludible under § 101(b).

Thus, we conclude that a death gratuity payment made under section 651 of Public Law 104-208 with respect to an employee who died before August 20, 1996, qualifies as an item that may be taken into account in computing the \$5,000 exclusion under section 101(b) of the Code. The exclusion would apply for death gratuity payments made with respect to employees who died before August 20, 1996, to the extent that prior payments from the employer (or employers) of the employee had not used up the \$5,000 exclusion.

For death gratuity payments made with respect to employees who have died on or after August 20, 1996, no exclusion under section 101(b) of the Code is available.

Agencies may give this information to recipients of the gratuity payment. Any tax questions they may have should be directed either to the recipient's tax consultant or to the IRS. James S. Green, OPM's Associate General Counsel (Compensation), (202) 606-1700, is available to answer general questions about the gratuity provision.
