

5703-7-08

Deduction of disability and survivor benefits.

(A) Division (A)(4) of section 5747.01 of the Revised Code provides that a taxpayer may deduct, to the extent otherwise included in federal adjusted gross income, disability and survivor's benefits. As used in that division and this rule, "disability and survivor's benefits" are benefits received pursuant to a contributory or non-contributory employee disability and survivor plan and require, as a precondition to the receipt of such benefits, the establishment of the employee's permanent or presumed permanent inability to engage in gainful employment for which qualified by training or experience as a result of a physical or mental impairment. The deduction does not apply to any amount which the taxpayer receives either as a beneficiary of another person or as a survivor of another person where the amount either represents or is attributable to a payment from any form or type of deferred compensation plan, retirement plan, retirement account, or retirement trust.

(B) Disability benefits neither include any "sick pay" or similar temporary wage and salary continuation payments nor any payments received under a plan, regardless of the nature of such plan, if the plan deems the payments to be, or in lieu of, retirement benefits, annuities, or distributions. Payments initiated as disability benefits are retirement benefits, annuities, or distributions subject to separate Ohio tax treatment when, by virtue of the attained age of the employee or any other cause, the plan no longer requires the precondition of physical or mental impairment for the receipt of the benefits.

(C) Survivor benefits do not include any payments received under a plan, regardless of the nature of the plan, if the plan either deems the payments as other than survivor payments or authorizes payments without the precondition of the death of a covered employee. Annuities, lump sum settlements, retirement payments, or other similar benefits received by a beneficiary or survivor under an option or election made by an employee and commencing upon such employee's death, are not survivor benefits.

(D) The following examples illustrate the applicability of this rule:

(1) The taxpayer is employed by an employer having a plan which, based upon the facts and circumstances, constitutes a disability plan. The plan does not contain a provision setting forth an attained age after which a recipient of income under the disability plan need not show continuing proof of disability. That is, regardless of a recipient's age, upon request of the disability plan administrator the recipient must provide evidence of continuing disability. The employee becomes disabled and is eligible for, and receives, disability income benefits pursuant to the plan. Under these facts the individual is eligible to deduct such income to the extent the income is included in the individual's federal adjusted gross income. As long as the individual is disabled, the individual has deductible disability benefits.

- (2) Same facts as in paragraph (D)(1) of this rule except that the individual dies and the individual's surviving spouse subsequently receives the income. Under these facts, the surviving spouse is eligible to deduct such income as survivor benefits to the extent the income is included in the surviving spouse's federal adjusted gross income.
- (3) The taxpayer is employed by an employer having a plan which, based upon the facts and circumstances, constitutes a disability plan. The disability plan documents contain an "attained age" provision. Prior to reaching the specified attained age, a recipient of disability income benefits must provide yearly to the disability plan administrator evidence of continuing disability, but on and after reaching the attained age, the recipient will continue to receive the benefits without providing to the disability plan administrator evidence of continuing disability. Three years prior to reaching the attained age taxpayer becomes disabled and is eligible for, and receives, disability income benefits pursuant to the plan. Under these facts, the individual has deductible disability benefits, to the extent the benefits are included in the individual's federal adjusted gross income, only for the three years prior to reaching the attained age. Upon reaching the attained age, the individual no longer has deductible disability benefits; rather, the individual has retirement income.
- (4) Same facts as in paragraph (D)(3) of this rule except that one year after the individual becomes disabled the individual dies and the individual's surviving spouse subsequently receives the income. Under these facts, the surviving spouse may deduct such income as survivor benefits to the extent the benefits are included in the surviving spouse's federal adjusted gross income, but only for the two years following the decedent's death. After two years, the surviving spouse will receive income which, had the decedent not died, would have been retirement income which the decedent would have received after reaching the attained age. Income received after reaching the attained age does not qualify as deductible disability benefits; so, the surviving spouse cannot treat the receipt of this income as survivor benefits.
- (5) The taxpayer, a married individual, retires from employment and elects to receive a retirement benefit monthly payment for the remainder of the taxpayer's life and then for life of the taxpayer's spouse if the spouse survives the taxpayer's death. This type of retirement payment program is often called a "joint and survivorship annuity" retirement plan program. The taxpayer dies, and the taxpayer's spouse survives the taxpayer's death. The spouse, as the taxpayer's survivor, subsequently receives the monthly retirement payment. The spouse, even though the survivor of the taxpayer, is not receiving income on account of the taxpayer's disability, but rather is receiving a continuation of the taxpayer's retirement income. As such, the surviving spouse does not have deductible survivor benefits.

- (6) Lee is a partner in a partnership and has established and funded a Keogh plan. Lee has designated Pat as Lee's beneficiary. Pat is entitled to the plan proceeds should Lee die prior to withdrawing all funded amounts and accrued earnings and gains. Prior to having withdrawn all such amounts, Lee dies. Pat elects to take a lump sum withdrawal from the Keogh plan. Because this lump sum amount represents the payment of contributions, earnings, and gains from a retirement plan, Pat is not entitled to the deduction provided by division (A)(4) of section 5747.01 of the Revised Code.
- (7) Lee's employer provides to its full-time employees ("covered employees") a survivor program which provides that, if an employee dies, the employer will pay to an individual so designated by the covered employee a survivor benefit. The benefit amount is based solely upon (i) the covered employee's length of service with the employer and (ii) the covered employee's salary. If the covered employee dies, the individual whom the covered employee previously designated to receive the survivor program benefit can select to receive from the employer (i) a lump sum, (ii) a life annuity, or (iii) a joint and survivor annuity. Lee has designated Pat as the individual who will receive the survivor benefit should Lee die while a covered employee. While a covered employee, Lee dies away from work and during non-work hours. With respect to Lee's employer's survivor program, Pat chooses to receive a joint and survivor annuity; Pat names Chris as the survivor of the joint and survivor annuity. Because at the time of Lee's death Lee was an employee of an employer providing survivor benefits on account of the death of a covered employee, Pat can deduct as survivor benefits all survivor program amounts Pat receives from Lee's employer. Pat is entitled to this deduction even if, at the time of Lee's death, (i) Lee was entitled to retire with full retirement benefits and/or (ii) Lee's death was not employment related. On the other hand, should Pat subsequently die and should Chris survive Pat's death, Chris is not entitled to this deduction. See *Swabby v. Limbach* (Feb. 4, 1988), BTA No. 85-C-227.

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