



**U.S. Department of Justice**

Office of Justice Programs

Office of the General Counsel

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*Washington, D.C. 20531*

DEC 09 2010

The Honorable William J. Wilkins  
Chief Counsel  
Internal Revenue Service  
U.S. Department of Treasury  
111 Constitution Avenue, NW  
Washington, D.C. 20224-0002

Re: John R. Justice Student Loan Repayment Act

Dear Mr. Wilkins:

I write on behalf of the Bureau of Justice Assistance ("BJA") of the Office of Justice Programs, U.S. Department of Justice, and at the behest of the designated state administrative agencies (SAA) that will administer awards made under the John R. Justice Student Loan Repayment Act, (the "JRJ Act"), 42 U.S.C. §3797cc-21. I am inquiring whether certain repayment benefits made under the JRJ Act by BJA through the SAAs to lending institutions on the behalf of qualifying prosecutors and public defenders ("beneficiaries") in their states are includible in a beneficiary's gross income for federal income-tax purposes. It is my understanding that you are the Internal Revenue Service officer to whom such a request is to be made.

In general, the JRJ Act authorizes the Attorney General of the United States to make student loan repayments on certain qualifying loans (as defined by the JRJ Act) on behalf of a borrower (beneficiary) to the holder of such loans in accordance with the provisions of the JRJ Act. Payments are to be made only to the holder of the loan and not the individual beneficiary. In consideration for the repayment benefit paid on their behalf, the beneficiaries will execute a service obligation agreement, wherein the beneficiary commits to public service as a public defender or prosecutor (for an initial term of three years). The JRJ Act limits the amount of repayment benefits to \$10,000 for any borrower (beneficiary) in any calendar year, or an aggregate of \$60,000 in the case of any one borrower (beneficiary). 42 U.S.C. §3797cc-21(d)(3).

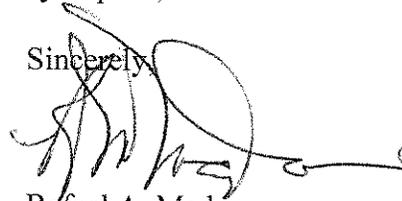
This is the first year for which this program has been appropriated and the nature of the program is unique to the Office of Justice Programs grant portfolio in that this agency has not previously administered a loan repayment program. In order to facilitate the administration of the program both at the federal and state levels, I request a revenue ruling (or separate rulings, as you deem convenient or necessary) or an official written opinion (or opinions) as to the following questions:

- a. Are JRJ loan repayment benefit payments made on behalf of a qualifying beneficiary considered taxable income to the beneficiary?
- b. Should the SAA issue a 1099 Misc. form to the beneficiary? If so, which form should be used?
- c. What effect, if any, will repayment benefits have on a beneficiary's use of available tax deductions for educational expenses? If the benefits are considered taxable income, can the benefits be included in the amount paid by the beneficiary thereby entitling the beneficiary to a tax deduction or credit?

Should you have any questions, or wish to discuss this request or the JRJ program with me, please do not hesitate to let me know. I may be reached on 202-307-6235, or by e-mail at [Rafael.A.Madan@usdoj.gov](mailto:Rafael.A.Madan@usdoj.gov).

Thanking you in advance for your consideration of my request, I remain

Sincerely,

A handwritten signature in black ink, appearing to read 'Rafael A. Madan', with a long horizontal flourish extending to the right.

Rafael A. Madan  
General Counsel



OFFICE OF  
CHIEF COUNSEL

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

MAR 25 2008

Rafael A. Madan, General Counsel  
Department of Justice  
Office of Justice Programs  
Office of the General Counsel  
Washington, DC 20531

Attn: Donna Feinberg

Dear Mr. Madan:

This is in response to your letter on behalf of the Bureau of Justice Assistance (Bureau) of the Office of Justice Programs, U.S. Department of Justice, relating to the federal tax treatment of certain payments made under the Public Safety Officers' Benefits Act (PSOB Act), 42 U.S.C. §§ 3796 to 3796d-7.

Section 3796(a) of the PSOB Act provides that when the Bureau determines that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line-of-duty, the Bureau shall pay a lump-sum benefit to the survivors of the statutorily eligible public safety officer.

Section 3796(b) of the PSOB Act provides that when the Bureau determines a public safety officer has become permanently and totally disabled as the direct result of a catastrophic injury sustained in the line-of-duty, the Bureau shall pay a lump-sum benefit to the officer.

Section 3796(c) of the PSOB Act provides that the Bureau may make, prior to final action, an interim benefit payment to the individual who will probably be entitled to receive a benefit under subsection (a).

Section 3796d-1 of the PSOB Act authorizes educational assistance benefits to spouses and dependents of statutorily eligible public safety officers who have either died or become permanently and totally disabled as the direct result of an injury sustained in the line-of-duty.

Section 3796(e) of the PSOB Act provides that the recipient of any interim benefit is liable for repayment of any amount disbursed if no final benefit is paid. However, the Bureau may waive all or part of the repayment if hardship would result from the repayment. Similarly, § 3796(m) of the PSOB Act provides that the Bureau may suspend or end collection action on an amount disbursed in error under subsection (a) or (c), where such collection would be impractical or cause undue hardship to the debtor who acted in good faith.

You have asked three specific questions with respect to whether certain payments made under the PSOB Act are excludible from the recipients' gross income and whether "waiver" by the Bureau of certain repayment obligations under the PSOB Act results in taxable income.

First, you ask whether the disability benefit payments made pursuant to § 3796(b) of the PSOB Act are excludable from gross income.

Rev. Rul. 77-235, 1977-2 C.B. 45, considered the federal tax treatment of benefits paid to certain surviving dependents under § 701(a) (now § 3796(a)) of the PSOB Act of a public safety officer who died as the direct and proximate result of a personal injury sustained in the line-of-duty. The ruling concluded that the benefit paid pursuant to § 3796(a) is an amount received under a statute in the nature of a workmen's compensation act and excludible from gross income under § 104(a)(1) of the Code.

Section 104(a)(1) provides that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 104-1(b) of the Income Tax Regulations states that § 104(a)(1) excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. Section 104(a)(1) does not apply to a retirement pension or annuity to the extent it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a non-occupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

Section 104(a)(1) applies to both disability payments and death benefits. Section 3796(b) of the PSOB Act makes payments to an employee for personal injuries or sickness incurred in the course of employment and is not determined with reference to the employee's age, length of service or prior contributions. Accordingly, § 3796(b) qualifies as a statute in the nature of a workmen's compensation act and, like the death benefits discussed in Rev. Rul. 77-235, the disability benefits paid are excludable from the recipient's gross income under § 104(a)(1) of the Code.

The second question you ask is whether the educational assistance benefits under § 3796d-1 of the PSOB Act provided to spouses and dependents of dead or disabled public safety officers are excludable from gross income.

The educational assistance benefits paid under § 3796d-1 of the PSOB Act are paid pursuant to a statute as a direct and proximate result of personal injury or death incurred in the course of employment. They are not based on the employee's age, length of service or prior contributions and meet the statutory requirements of § 104(a)(1) of the Code. Accordingly, educational assistance benefits are also excludable from the recipient's gross income.

Finally, you ask whether amounts the Bureau determines not to collect pursuant to section 3796(m) are taxable to the recipient.

Section 3796(m) of the PSOB Act provides that the Bureau may suspend or end collection action on amounts disbursed in error under subsections (a) or (c), where such collection would be impractical or cause undue hardship to a debtor who acted in good faith. Rev. Rul. 78-46, 1978-1 C.B. 22, provided that the discharge of the liability for repayment by the recipient of an interim benefit under § 701(b) (now § 3796(e)) of the PSOB Act in the event no final benefit is paid is in the nature of a relief payment because of a showing of an economic hardship made for the promotion of the general welfare and does not result in income to the recipient for federal income tax purposes. In our view, § 3796(m) is essentially the same as § 3796(e) of the PSOB Act. Accordingly, as in Rev. Rul. 78-46, when the Bureau suspends or ends collection action of benefit payments under § 3796(m) because of a showing of economic hardship, the discharge of the liability for repayment is in the nature of a relief payment made for the promotion of the general welfare, and is not includible in the gross income of the recipient for federal income tax purposes.

We hope this information is helpful. If we may be of further assistance, please contact me or Stephanie Caden of my staff on (202) 622-3355.

Sincerely,



Alan Tawshunsky  
Deputy Division Counsel/Deputy Associate  
Chief Counsel (Employee Benefits)  
Office of Division Counsel/Associate Chief  
Counsel  
(Tax Exempt & Government Entities)



U.S. Department of Justice

Office of Justice Programs

Office of the General Counsel

Washington, D.C. 20531

AUG 02 2007

The Honorable  
Donald L. Korb  
Chief Counsel  
Internal Revenue Service  
U.S. Department of the Treasury  
1111 Constitution Avenue, NW  
Washington, D.C. 20224-0002

re: *Request for ruling/opinion on Public Safety Officers' Benefits Act*

Dear Mr. Korb:

I write on behalf of the Bureau of Justice Assistance of the Office of Justice Programs, U.S. Department of Justice, to request a revenue or letter ruling (or other official written opinion) as to each of three separate points, all arising in connection with the Public Safety Officers' Benefits Act (the "PSOB Act"), 42 U.S.C. §§ 3796 to 3796d-7, which is administered by the Bureau. Specifically (as I describe more fully, below), I inquire whether certain payments made under the PSOB Act are includible in recipients' gross income for federal income-tax purposes and whether "waiver" by the Bureau of certain repayment obligations under the PSOB Act results in taxable income under federal law. I understand that you are the Internal Revenue Service officer to whom a request such as mine is to be made.

By way of background, I am pleased to advise you that, generally speaking, the PSOB Act authorizes— (1) a one-time, lump-sum death-benefit payment to statutorily-eligible survivors of each federal, State, or local public safety officer who dies as a direct and proximate result of a line-of-duty injury;<sup>1/</sup> (2) a one-time, lump-sum disability-benefit payment to each such officer who becomes totally and permanently disabled as a direct and proximate result of such an injury;<sup>2/</sup> and (3) educational-benefits payments to statutorily-eligible children and spouses (or surviving spouses) of each officer described in (1) or (2), above.<sup>3/</sup> Additionally, the PSOB Act contains (among other things) two different, though somewhat related, provisions authorizing

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<sup>1/</sup> See 42 U.S.C. § 3796(a).

<sup>2/</sup> See *id.* § 3796(b).

<sup>3/</sup> See *id.* § 3796d-1.

“waiver” of certain repayment obligations arising under it.<sup>4/</sup> The PSOB Act program has been in existence for thirty-some years and to date has occasioned three revenue rulings of which I am aware – two relating to the death-benefit payments made under 42 U.S.C. § 3796(a),<sup>5/</sup> and another relating to the “waiver” of repayment, under 42 U.S.C. § 3796(e), of interim benefit payments made under 42 U.S.C. § 3796(c), in the event that final payment is not authorized.<sup>6/</sup>

Through the years, the Bureau has received many requests for tax advice from recipients of the various PSOB Act benefit payments – typically, advice as to whether such payments are includible in their gross income for federal income-tax purposes. Although (of course), the Bureau does not provide tax advice to any party (including recipients of PSOB Act benefit payments), when the payments at issue are death-benefit payments under 42 U.S.C. § 3796(a), or when there has been a “waiver” of repayment obligations under 42 U.S.C. § 3796(e), the Bureau has been able to assist PSOB Act program beneficiaries by pointing to the revenue rulings cited above and to IRS Pub. No. 559 (Survivors, Executors, and Administrators), and suggesting that the recipients may wish to consult their own tax advisors to ascertain the applicability of these rulings, if any, to their own respective situations.

When the specific PSOB Act payments at issue, however, are *not* death-benefit payments made under 42 U.S.C. § 3796(a), or when the specific “waiver” of repayment obligations by the Bureau under the PSOB Act is *not* pursuant to 42 U.S.C. § 3796(e), the Bureau has not been (and is not) able to offer the foregoing level of assistance to PSOB Act beneficiaries. Accordingly, I request a revenue ruling (or perhaps separate rulings, as you may determine to be convenient) or an official written opinion (or opinions) as to the includibility in gross income, for federal income-tax purposes, of the following:

- a. Disability-benefit payments made pursuant to 42 U.S.C. § 3796(b);<sup>7/</sup>
- b. Educational-benefits payments made pursuant to 42 U.S.C. § 3796d-1;<sup>8/</sup> and

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<sup>4/</sup> *Id.* § 3796(e), (m).

<sup>5/</sup> Rev. Rul. 77-235, 1977-2 C.B. 45; Rev. Rul. 79-397, 1979-2 C.B. 322.

<sup>6/</sup> Rev. Rul. 78-46, 1978-1 C.B. 22; *see Waterhouse v. Comm'r*, 68 T.C.M. (CCH) 744, 748 (1994).

<sup>7/</sup> Without opining in any way as to its correctness *vel non*, I note that *Claisse v. Comm'r*, 69 T.C.M. (CCH) 2546, 2548 - 2549 (1995), suggests that benefits under 42 U.S.C. § 3796(b) may not be excludible from gross income for federal income-tax purposes.

<sup>8/</sup> 42 U.S.C. § 3796d-1 terms the educational-benefit payments “financial assistance,” and provides that such “financial assistance . . . shall be computed on the basis set forth in section 3532 of title 38, United States Code,” *id.* § 3796d-1(a)(2), and that it “shall be reduced by the sum of [certain] educational assistance benefits,” among other things, *id.* § 3796d-1(a)(3)(A). Please be advised that “educational assistance benefits” is a defined term under the PSOB Act’s implementing regulations, at 28 C.F.R. § 32.33, which were significantly revised effective September 12, 2006.

c. Amounts the Bureau determines not to collect, pursuant to 42 U.S.C. § 3796(m).<sup>2/</sup>

Should you have any questions, or wish to discuss this request or the PSOB Act program with me, please do not hesitate to let me know. I may be reached on 202-307-6235, or by e-mail at [Rafael.A.Madan@usdoj.gov](mailto:Rafael.A.Madan@usdoj.gov). On a personal note, I mention that I, too, am an "alumnus" of Thompson Hine, having been an associate here in its Washington office until 1991, when I came to the Department of Justice.

Thanking you in advance for your consideration of my request, I remain

Sincerely,

A handwritten signature in black ink, appearing to read 'Rafael A. Madan', with a long horizontal flourish extending to the right.

Rafael A. Madan  
General Counsel

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<sup>2/</sup> See 28 C.F.R. § 32.6(d) (eff. Sept. 12, 2006) (establishing a "good cause shown" standard for "waiver" of repayment obligations under 42 U.S.C. § 3796(m)).