

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4804B Twin Peaks, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** Intermittent by NOTAM 0715 to 2330 local time daily; other times by NOTAM.

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

\* \* \* \* \*

**R-4810 Desert Mountains, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

\* \* \* \* \*

**R-4812 Sand Springs, NV [Amended]**

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4813A Carson Sink, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4813B Carson Sink, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** Intermittent by NOTAM 0715 to 2330 local time daily; other times by NOTAM.

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4816N Dixie Valley, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

**R-4816S Dixie Valley, NV [Amended]**

\* \* \* \* \*

By removing the current times of designation and using agency and substituting the following:

**Time of designation.** 0715 to 2330 local time daily; other times by NOTAM

**Using agency.** USN, Naval Strike and Air Warfare Center, Fallon, NV.

\* \* \* \* \*

Issued in Washington, DC, on September 2, 2009.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E9-22139 Filed 9-14-09; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-127270-06]

**RIN 1545-BF81**

#### Damages Received on Account of Personal Physical Injuries or Physical Sickness

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the exclusion from gross income for amounts received on account of personal physical injuries or physical sickness. The proposed regulations reflect amendments under the Small Business Job Protection Act of 1996. The proposed regulations also delete the requirement that to qualify for exclusion from gross income, damages received from a legal suit, action, or settlement agreement must be based upon “tort or tort type rights.” The proposed regulations affect taxpayers receiving damages on account of personal physical injuries or physical sickness and taxpayers paying these damages.

**DATES:** Written (paper or electronic) comments must be received by December 14, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-127270-06), room 5203, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-127270-06), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-127270-06).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Sheldon A. Iskow, (202) 622-4920 (not a toll-free number); concerning the submission of comments and/or requests for a public hearing, Richard Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to reflect amendments made to section 104(a)(2) of the Internal Revenue Code (Code) by section 1605(a) and (b) of the Small Business Job Protection Act of 1996, Public Law 104-188, (110 Stat. 1838 (the 1996 Act)), and to delete the “tort or tort type rights” test under § 1.104-1(c) of the Income Tax Regulations.

As amended, section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. These proposed regulations conform the regulations to these statutory amendments and clarify the changes for taxpayers and practitioners.

#### 1. The 1996 Act Amendments

Section 1605(a) of the 1996 Act amended section 104(a)(2) to provide expressly that punitive damages do not qualify for the income exclusion. The amendment was a response to divergent court opinions, some holding that punitive damages are received “on account of” a personal injury. See H.R. Conf. Rept. 104-737 (1996) at 301. The amendment is consistent with *O’Gilvie v. United States*, 519 U.S. 79 (1996), holding that punitive damages are not compensation for personal injuries and do not satisfy the “on account of” test under section 104(a)(2).

Section 1605(a) also amended section 104(a)(2) to provide that the income exclusion generally is limited to amounts received on account of personal “physical” injuries or “physical” sickness. Section 1605(b) of the 1996 Act further amended section 104(a) to provide that, for purposes of section 104(a)(2), even though emotional distress is not considered a physical injury or a physical sickness, damages not in excess of the amount paid for “medical care” (described in section 213(d)(1)(A) or (B)) for emotional distress are excluded from income.

The proposed regulations reflect these statutory amendments. The proposed regulations also provide that a taxpayer may exclude damages received for emotional distress “attributable” to a physical injury or physical sickness. See H.R. Conf. Rept. 104-737 (1996) at 301.

## 2. The Tort Type Rights Test

The proposed regulations also eliminate the requirement that “personal injuries or sickness” be “based upon tort or tort type rights.” That requirement in § 1.104–1(c) was intended to ensure that only damages compensating for torts and similar personal injuries qualify for exclusion under section 104(a)(2). In *United States v. Burke*, 504 U.S. 229 (1992), the Supreme Court interpreted the tort type rights test as limiting the section 104(a)(2) exclusion to damages for personal injuries for which the full range of tort-type remedies is available. The Court held that section 104(a)(2) did not apply to an award of back pay under the pre-1991 version of Title VII of the 1964 Civil Rights Act because the damages awarded under the statute provided only a narrow remedy and thus did not compensate for a tort type injury. The *Burke* interpretation precluded section 104(a)(2) treatment for similar personal injuries redressed by “no-fault” statutes that do not provide traditional tort-type remedies. Many critics thought the *Burke* remedies test was too restrictive.

Later legislative and judicial developments eliminated the need to base the section 104(a)(2) exclusion on tort and remedies concepts. First, *Commissioner v. Schleier*, 515 U.S. 323 (1995), interpreted the statutory “on account of” test as excluding only damages directly linked to “personal” injuries or sickness. Second, the 1996 Act restricts the exclusion to damages for “personal physical” injuries or “physical sickness.”

Accordingly, under the proposed regulations, damages for physical injuries may qualify for the section 104(a)(2) exclusion even though the injury giving rise to the damages is not defined as a tort under state or common law. Nor does the section 104(a)(2) exclusion depend on the scope of remedies available under state or common law. In effect, the regulations reverse the result in *Burke* by allowing the exclusion for damages awarded under no-fault statutes.

### Proposed Effective/Applicability Date

These regulations are proposed to apply to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may apply these proposed regulations to amounts paid pursuant to a written binding agreement, court decree, or

mediation award entered into or issued after September 13, 1995, and received after August 20, 1996. If applying the proposed regulations to damages received after August 20, 1996, results in an overpayment of tax, the taxpayer may file a claim for refund within the period of limitations under section 6511.

Notwithstanding the date these regulations are proposed to become effective, the 1996 Act amendments to section 104(a)(2), including the amendment restricting the exclusion to amounts received on account of personal physical injuries or physical sickness, are effective for amounts received after August 20, 1996, except for any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995. Since the 1996 Act amendments, courts have applied the statutory effective date in holding that amounts received on account of nonphysical injuries are not excludable. *Hennessey v. Commissioner*, T.C. Memo 2009–132; *Green v. Commissioner*, T.C. Memo 2007–39. These regulations propose to conform existing regulations to amended section 104(a)(2). To the extent that existing regulations conflict with amended section 104(a)(2), the statute controls. See *Murphy v. Internal Revenue Service*, 493 F.3d 170, 176 n\* (D.C. Cir. 2007).

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (either a signed paper original with eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request

comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** In § 1.104–1, paragraph (c) is revised to read as follows:

#### § 1.104–1 Compensation for injuries or sickness.

\* \* \* \* \*

(c) *Damages received on account of personal physical injuries or physical sickness—*(1) *In general.* Section 104(a)(2) excludes from gross income the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness. Emotional distress is not considered a physical injury or physical sickness. However, damages for emotional distress attributable to a physical injury or physical sickness are excluded from income under section 104(a)(2). Section 104(a)(2) also excludes damages not in excess of the amount paid for medical care (described in section 213(d)(1)(A) or (B)) for emotional distress. For purposes of this paragraph (c), the term *damages* means an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution.

(2) *Cause of action and remedies.* The section 104(a)(2) exclusion may apply to damages recovered for a physical personal injury or sickness under a statute, even if that statute does not provide for a broad range of remedies. The injury need not be defined as a tort under state or common law.

(3) *Effective/applicability date.* This paragraph (c) applies to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after the date these regulations are published as final regulations in the **Federal Register**. Taxpayers also may apply these proposed regulations to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after September 13, 1995, and received after August 20, 1996. If applying these proposed regulations to damages received after August 20, 1996, results in an overpayment of tax, the taxpayer may file a claim for refund before the period of limitations under section 6511 expires.

Notwithstanding the date these regulations are proposed to become effective, the statutory amendments to section 104(a) under section 1605 of the Small Business Job Protection Act of 1996, Public Law 104-188, (110 Stat. 1838), are effective for amounts received after August 20, 1996, except for any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

\* \* \* \* \*

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9-22221 Filed 9-14-09; 8:45 am]

BILLING CODE 4830-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2008-0690; FRL-8956-7]

### Approval and Promulgation of State Implementation Plans: Alaska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve numerous revisions to Alaska's State Implementation Plan (SIP) relating to the motor vehicle inspection and maintenance program for control of carbon monoxide (CO) in Anchorage

and Fairbanks. The State of Alaska submitted three revisions to the Alaska SIP: a March 29, 2002 submittal containing minor revisions to the Statewide Inspection and Maintenance Program, a December 11, 2006 submittal containing more substantial revisions to the Statewide Inspection and Maintenance Program, and a June 5, 2008 submittal containing major revisions to the Statewide Inspection and Maintenance Program discontinuing the Inspection and Maintenance Program in Fairbanks as an active control measure in the SIP and shifting it to contingency measures. EPA is proposing to approve these submittals because they satisfy the requirements of the Clean Air Act (hereinafter the Act or CAA).

Also in this action, EPA is proposing a technical correction to the boundary description for the Fairbanks CO maintenance area, to correct a transcription error in the boundary description.

**DATES:** Written comments must be received on or before October 15, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2008-0690, by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *Mail:* Gina Bonifacino, EPA, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Gina Bonifacino, Office of Air, Waste, and Toxics (AWT-107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R10-OAR-2008-0690. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Gina Bonifacino, (206) 553-2970, or by e-mail at [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

#### Table of Contents

- I. Background
- II. Proposed Actions
  - A. 2008 Submittal
  - B. 2006 Submittal
  - C. 2002 Submittal
  - D. 110(k)(6) Correction
- III. Statutory and Executive Order Reviews

#### I. Background

##### *Fairbanks North Star Borough Maintenance Area Planning History*

The urban portion of the Fairbanks North Star Borough (FNSB or Fairbanks) was designated in 1990 as a nonattainment area for CO and classified as moderate. On March 30, 1998, Fairbanks was reclassified as a serious nonattainment area for failing to attain the ambient eight-hour CO