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TAX TRAP By Scott A. O'Mara

Everyone should be aware of the existence of a tax trap which can emanate from a bookkeeper or accountant on the level of taxable income which is left when there is a finding of a job-related injury which precludes a worker from being able to perform his or her substantial duties as approved by various retirement systems.

Under the government's retirement systems — such as the County Employees Retirement Law (CERL) of 1937, CalPERS and other city retirement systems — the Internal Revenue (IRS) has established that once a work injury is proven to be job-related by the retirement system, and the injury creates a level of impairment which precludes a worker from being able to perform his or her substantial duties, the first 50% of the income received relative to the retirement is not subject to taxation pursuant to IRS rules. The concept behind this rule is dependent upon a special finding by the retirement systems to create economic security for certain groups of people — such as firefighters, police officers, California Highway Patrol officers and deputy sheriffs — as injuries to these people may affect their employability because the unique education and experience required for them to do their jobs does not create wide job opportunities.

Unfortunately, there is a segment of so-called specialists who are doing tax returns for safety workers, and who try to draw a parallel between the level or percentage of disability a worker receives through Workers' Compensation, and the level of disability which is thought to represent the level of income which is non-taxable. The permanent impairment percentage — which is determined by the Workers' Compensation system — is separate and distinct from the 50% of non-taxable income through the retirement system.

Members who follow the legally-incorrect belief that the level or percentage of disability which a worker has through the Workers' Compensation system is equal to the same level of nontaxability through the retirement system are subjecting themselves to IRS penalties and sanctions.

Therefore, if you have an injury or condition which is job-related, and that injury or condition precludes you from being able to do your substantial duties — and the government agency or retirement system agrees with this contention — the first 50% of your retirement will not be subject to taxation, pursuant to IRS rules, and this has no bearing on the percentage of disability received in your Workers' Compensation case. Anyone who contends otherwise is simply setting a tax trap to fall into. We have seen situations where the knowledge of the tax preparer was incorrect, causing penalties and sanctions to be assessed against the victimized worker.

Therefore, *avoid the tax trap.*

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NOTICE: Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine
