

**NEW JERSEY DIVISION OF TAXATION
REGULATORY SERVICES BRANCH
TECHNICAL ADVISORY MEMORANDUM**

TAM - 2011- 15

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TAX: GROSS INCOME TAX

**TOPIC: SICK LEAVE INJURY (SLI) PAMENTS MADE UNDER
THE STATE OF NEW JERSEY BENEFIT PROGRAM**

Sick Leave Injury (SLI) payments are made pursuant to N.J.S.A. 11A:6-8 of the Civil Service Act, as implemented by N.J.A.C. 4A:6-1.6 and 1.7. SLI is defined as the granting of time and the provision for monetary compensation to a New Jersey State employee due to a medically verified disability resulting in injury/illness sustained as a direct result of employment.

SLI payments differ from payments made pursuant to the New Jersey Workers' Compensation Act (WCA). N.J.S.A. 34:15-1 et seq. The essential difference is that payments made under the WCA are wage replacement, while SLI benefits provide wage continuation for a period up to 12 months.

Workers' compensation payments are considered wage replacement, meaning they are based on a schedule of compensation calculated on a rate of an employee's weekly wage depending on the injury sustained, and not on the employee's full salary. SLI payments are wage continuation, meaning that an employee receives his or her full salary for up to a year from the date of the injury. SLI payments do not constitute compensation for actual injury sustained by the employee. Also, as provided in the SLI statute, if an employee is awarded workers' compensation or disability benefits, the SLI payments are reduced by the amount of such workers' compensation or disability benefits.

The courts in *In the Matter of Dykas*, 261 N.J. Super. 626, 619 A.2d 660 (App. Div. 1993) and *In the Matter of Bennett*, 335 N.J. Super. 518, 762 A.2d 1070 (App. Div. 2000) have distinguished between SLI and WCA benefits. The Court in *In the Matter of Dykas* stated that "It is clear that SLI benefits are designed only for the purpose of providing income stabilizing and continuation for a designated period of time to employees with work-related injuries or illnesses; the benefits are not intended to compensate employees for their injuries or illnesses." In the *In the Matter of Bennett* decision, the Court opined that "sick leave injury benefits do not come from the same mold of remedial social legislation as do workers' compensation benefits."

Based upon the holdings in these cases, SLI benefits do not constitute payments in the nature of workers' compensation. Rather, SLI benefits are properly viewed as salary continuation and not compensation for work-related injuries.

The distinction between wage replacement and wage continuation triggers different treatment under the New Jersey Gross Income Tax Act. While payments made pursuant to the workers' compensation law are excluded from income pursuant to N.J.S.A. 54A:6-6, wage continuation is taxable in accordance with N.J.S.A. 54A:5-1(a), which consistently has been held to include "sick pay."

Therefore, wage compensation provided under the New Jersey Sick Leave Injury (SLI) Program is taxable for New Jersey gross income tax purposes. State employees who receive SLI payments must include them in wages on their New Jersey gross income tax return.

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