

October 20, 2003

Re: No-Fault Lost of Earnings Claims

Dear

As a follow-up to our discussion in regard to the correct calculation of loss of earnings claims, this is to confirm that the disability offset is taken against the maximum monthly payment (80% of salary or \$2,000 under basic no-fault limits, whichever is less) in determining the wage loss payment. The following example illustrates the manner in which a disability offset is applied when such disability benefits are taxable:

Gross Monthly Earnings	\$3,000
Monthly Maximum	2,500
Less Disability Benefits Offset	<u>(714)</u>
	\$1,786
Less 20% Offset	<u>(357)</u>
First Party Benefits Due	\$1,429

Accordingly, if the disability benefits are taxable, the disability offset is taken prior to the 20% statutory offset. It should be noted that New York State Disability Benefits are taxable unless otherwise proven.

We trust that the foregoing information is of assistance.

Very truly yours,

Christopher Maloney
Associate Insurance Examiner
Property Bureau