Chapter 54 Administration of Retired Public Safety Officer Retirement Distribution for Health Insurance

100 Purpose

The purpose of this regulation is to provide the administrative framework for implementing the special tax exclusion made available by Section 845 of the Pension Protection Act of 2006 to an "eligible retired public safety officer" of all qualifying retirement systems administered by the Board of Trustees of the Public Employees' Retirement System.

101 Description of Tax Exclusion

Section 845 of the Pension Protection Act of 2006 amends IRC §402 to allow an "eligible retired public safety officer" to make an election to exclude from federal gross income up to $3,000 of his or her retirement plan benefits if such amount is deducted from the retired member's benefit and paid directly by the retirement plan for health insurance or long term care insurance premiums. For this purpose, all eligible retirement plans must be treated as a single plan, i.e., a retiree gets only one $3,000 exclusion per calendar year.

The income exclusion is only available if and to the extent the retirement plan agrees to deduct and then remit qualifying premiums directly to the insurance provider. Statutory authority as found in Miss. Code Ann. §25-11-129, 25-13-31 and 21-29-307 allows a retired member receiving a retirement benefit to authorize deductions from his or her retirement benefit for the payment of **employer or system sponsored group health insurance**, subject to the rules and regulations adopted by the Board of Trustees of the Public Employees' Retirement System on behalf of the retired members of the Public Employees' Retirement System (PERS), the Mississippi Highway Safety Patrol Retirement System (MHSPRS), and the Municipal Retirement Systems (MRS) . This tax exclusion is only available to those Eligible Retired Public Safety Officers who have health insurance premiums deducted by PERS from their retirement or disability benefits.

102 Definition of Retired Public Safety Officer

"Retired Public Safety officer" means an individual who served and retired from public service by reason of disability or attainment of normal retirement age with a public agency in an official capacity as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew, as those terms are defined in section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 which is codified in 42 U. S. C. 3796b(8)(A) and as interpreted from time to time by the Department of Justice.

1. The term **"official capacity"** means an individual who served a public agency in an official capacity only if
   a. he was officially authorized, recognized, or designated by such agency as functionally within or part of it; and
   b. his acts and omissions, while so serving, were legally those of such agency, which legally recognized them as such.

2. The term **"law enforcement officer"** means an individual who was involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to police, corrections, probations, parole and judicial officers.

    a. The term **"involved"** means an individual who was involved in crime (an act or omission punishable as a criminal misdemeanor or felony) and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he was an officer of a public agency and, in that capacity, had legal authority and responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who were alleged or found to have violated the criminal laws, and was recognized by such agency, or the relevant government to have such authority and responsibility.
    b. The term **"criminal laws"** means that body of law that declares what acts or omissions are crimes and prescribes the punishment that may be imposed for the same.
    c. The term **"correctional facility"** means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses.

3. The term **"firefighter"** means an individual who
    a. Was trained in (i) suppression of fire; or (ii) hazardous-materials emergency response; and
    b. Had the legal authority and responsibility to engage in the suppression of fire, as an employee of the public agency he served, which legally recognized him to have such.

4. The term **"chaplain"** means a clergyman or other individual trained in pastoral counseling who served as an officially recognized or designated member of a legally organized police or fire department.

5. The term **"member of a rescue squad or ambulance crew"** means an officially recognized or designated public employee member of a rescue squad or ambulance crew.

6. Examples of positions that appear to be "Public Safety Officers," assuming the above conditions are met:

    Police officer (including a member of the Mississippi Highway Safety Patrol)
    Firefighter
    Chaplain of a police or fire department
    Sheriff
    Deputy Sheriff
    Constable
    Regular Member of a rescue squad or ambulance crew
    Narcotics Agent

Department of Wildlife, Fisheries & Parks Conservation Officer
Department of Wildlife, Fisheries & Parks Game Warden
Corrections Officer
Parole Officer
Department of Transportation Enforcement Officer
Department of Transportation Weight Enforcement Officer
Forestry Commission Forest Ranger
Gaming Commission Enforcement Agent
Public Service Commission Regulated Carrier Enforcement Officer
State Hospital Security Officer
University Police Officer
Tax Commission ABC Enforcement Agent
Tax Commission Scale Enforcement Officer
Judge whose responsibility it was to adjudicate criminal matters
Attorneys whose responsibility it was to prosecute criminal matters

103 Eligible Retired Public Safety Officer

The election is only available to individuals who, by reason of disability or attainment of normal retirement age, retired from service as a Public Safety Officer.

1. **Attainment of Normal Retirement Age**

   a. PERS- For purposes of this regulation, and except as otherwise provided by the Internal Revenue Service, the "attainment of normal retirement age" under the Public Employees' Retirement System shall be defined as
      (i) having twenty-five (25) or more years of creditable service if the member entered PERS-covered service before July 1, 2007;
      (ii) having four (4) or more years of membership service at age 60 or later if the member entered PERS-covered service before July 1, 2007;
      (iii) having eight (8) or more years of membership service at age 60 or later if the member entered PERS-covered service on or after July 1, 2007;
      (iv) having thirty (30) or more years of creditable service if the member entered PERS-covered service on or after July 1, 2011.

   b. MHSPRS - For purposes of this regulation, and except as otherwise provided by the Internal Revenue Service, the "attainment of normal retirement age" under the Mississippi Highway Safety Patrol Retirement System shall be defined as the age at which an eligible Public Safety Officer retires on an unreduced benefit, i.e., someone who retired with 5 or more years of membership service at age 55 or older, or someone who retired with 25 or more years of service regardless of age. Any Retired Public Safety Officer whose retirement benefit was subject to an early retirement benefit reduction at the time of retirement is not eligible for this election, i.e., someone who retired with 20 or more but less than 25 years of service.

c. MRS - For purposes of this regulation, and except as otherwise provided by the Internal Revenue Service, all members who have retired or will retire under one of the Municipal Fire and Police Retirement Systems will be considered to have "attained normal retirement age."

2. **Disability retirement benefits eligible for the exclusion**

A Retired Public Safety Officer receiving a disability retirement allowance is eligible for the tax exclusion up to the allowable limit for premiums withheld to the extent that his or her disability retirement benefit is taxable. Duty-related disability benefits paid are already tax-exempt, and thus amounts withheld for health insurance premiums would not be subject to the tax-exclusion provisions of Section 845 of the Pension Protection Act of 2006. However, if any portion of a disabled Retired Public Safety Officer's disability benefit is taxable, an election may be made to exclude amounts withheld for the payment of eligible insurance premiums to the extent such benefits would otherwise be taxable.

104 Premiums eligible for the exclusion

To be eligible for the tax exclusion, insurance premiums must be withheld from the retirement benefit of the Eligible Retired Public Safety Officer. Such premiums may be for the benefit of the retiree and his or her spouse and/or dependents. Only the Eligible Retired Public Safety Officer may elect to have the insurance premiums excluded from taxation.

105 Qualified health insurance plans

1. While federal law allows a governmental retirement plan to agree to deduct and then remit premiums directly to the provider of an accident or health insurance plan or qualified long-term care insurance contract, state law only allows PERS, on behalf of retirees of the retirement plans administered by the Board, to make such premium deductions for **employer or system sponsored group health insurance** in accordance with PERS Board Regulation 52. Therefore, an election may only be made with regard to such health insurance premiums.

2. For purposes of the election for the tax exclusion provided by Section 845 of the Pension Protection Act of 2006, an employer-provided accident or health insurance plan receiving the payments may be an insured plan as well as a self-insured plan.

106 Election

1. **When the election must be made -** An Eligible Retired Public Safety Officer may elect to have the tax exclusion apply in any taxable year to eligible premiums withheld from his or her retirement or disability retirement benefit and paid by the retirement plan directly to the insurance provider. An Eligible Retired Public Safety Officer will make the election on the retiree's IRS Form 1040, in accordance with the instructions thereto.

2. **Amount of Tax Exclusion-** An Eligible Retired Public Safety Officer is only permitted to have actual eligible insurance premiums excluded from taxation in an aggregate amount from all plans not to exceed $3,000, even if he or she is receiving benefits from more than one retirement plan, e.g., a defined benefit plan such as PERS, MHSPRS or MRS, and an IRC Section 457 (Mississippi Deferred Compensation Plan) or 403(b) plan.

107 Responsibility for Income Taxes

1. In administering the tax exemption, PERS is only responsible for performing the administrative functions associated with the deduction and payment of qualifying health insurance premiums. The retired member is and remains responsible for income tax liability for retirement benefits paid pursuant to the retirement plans administered by PERS. PERS has no responsibility for tax liability, including interest and penalties that may arise from an Eligible Retired Public Safety Officer's participation in this tax exclusion.

2. By making the election, the Retired Public Safety Officer agrees that any benefit or privilege granted under this election is subject to change or revocation, and that PERS is not responsible for any consequence of any change in the availability of the exclusion, including unexpected tax liability, interest, and penalties.

108 Effective Date

As the provisions of Section 845 of the Pension Protection Action of 2006 are effective for eligible distributions made in tax years beginning on or after January 1, 2007, and as the Board of Trustees determines that this regulation only confers a benefit to those Retired Public Safety Officers eligible for the tax exclusion, the effective date of this regulation shall be January 1, 2007.

(History: Adopted effective January 1, 2007; amended effective January 19, 2009; amended effective July 1, 2011)

Chapter 54 Administration of Retired Public Safety Officer Retirement Distribution for Health Insurance

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    Narcotics Agent
    Department of Wildlife, Fisheries & Parks Conservation Officer
    Department of Wildlife, Fisheries & Parks Game Warden
    Corrections Officer
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    Department of Transportation Enforcement Officer

Department of Transportation Weight Enforcement Officer
Forestry Commission Forest Ranger
Gaming Commission Enforcement Agent
Public Service Commission Regulated Carrier Enforcement Officer
State Hospital Security Officer
University Police Officer
Tax Commission ABC Enforcement Agent
Tax Commission Scale Enforcement Officer
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Attorneys whose responsibility it was to prosecute criminal matters

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(i) having twenty-five (25) or more years of creditable service if the member entered PERS-covered service before July 1, 2007;

(ii) having four (4) or more years of membership service at age 60 or later if the member entered PERS-covered service before July 1, 2007;

(iii) having eight (8) or more years of membership service at age 60 or later if the member entered PERS-covered service on or after July 1, 2007;

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2. ~~The IRS has not issued final regulations to date on the application of or administration of Section 845 of the Pension Protection Act. PERS has proceeded with implementation of the exclusion based on its understanding of the information available with the anticipation that the administration of this provision may require revisions and adjustments as the applicable provisions of the Pension Protection Act are interpreted and clarified. By making the election, the Eligible Retired Public Safety Officer acknowledges that changes may be required and that changes could affect the Retired Public Safety Officer's eligibility for the exclusion.~~ By making the election, the Retired Public Safety Officer agrees that any benefit or privilege granted under this election is subject to change or revocation, and that PERS is not responsible for any consequence of any change in the availability of the exclusion, including unexpected tax liability, interest, and penalties.

108 Effective Date

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