



STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

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LT. GOVERNOR

October 15, 2015

John Koskinen, Commissioner
Internal Revenue Service
1111 Constitution Avenue N.W.
Washington D.C. 20224

Dear Commissioner Koskinen:

I am writing on behalf of the State of Michigan to ask for your assistance on a matter that is currently pending before the Internal Revenue Service (IRS). The State of Michigan is the sponsor of several public retirement systems in our state, providing retirement benefits for judges, state police, legislators, state employees, and public school employees. This request for assistance relates to the Michigan Public School Employee Retirement System (MPERS), which has more than 700 school districts and 200,000 public school employees participating.

Our State has been diligent in its federal tax filings and compliance with regard to these retirement systems, and even when making state law changes, we have been very careful to be mindful of the federal tax implications and requirements related to those changes, including most recently, legislation revising the calculation and administration of MPERS in 2010 and 2012.

Beginning in 2008, the IRS began to issue Private Letter Rulings (PLRs) to governmental entities and employees related to mandatory employee contributions to health care plans, including Section 115 health care trusts. In 2010, in order to preserve the longevity and sustainability of retiree health care for public school employees, the State crafted and passed reform legislation that required every public school employee to contribute 3% of their compensation to a newly created Section 115 health care trust that would provide retiree health care benefits to those retirees who qualified for such benefits.

In 2012, further reform legislation was passed that provided a one-time irrevocable option for certain eligible employees in MPERS to opt out of retiree health care entirely. Any employee opting out of health care became eligible for an increased employer match to his or her deferred compensation plan account. Employees who did not opt out of the health care plan continued to be required to meet all aspects of the retiree health care plan, one component of which is the requirement that they continue to make the 3% mandatory employee contribution as provided in the 2010 legislation.

The several PLRs clearly and uniformly provide that mandatory employee contributions in these cases are not subject to income tax or FICA tax. The State, public school districts and public school employees believe that the 2010 and 2012 reforms that result in mandatory employee contributions meet the IRS requirements for exemption from these taxes.

The State, as plan sponsor on behalf of MPERS, has intended since the enactment of the 2010 legislation to file for its own PLR related to those changes. Both the 2010 and 2012 laws, however, have been challenged on state constitutional and other grounds, none of which relate to federal tax matters. Because the laws were the subject of pending litigation, the State

elected not to file a PLR request until the litigation was resolved. As such, the State continued to wait for a final state court ruling before submission of its PLR request.

While that litigation remains pending, a small number of school districts that make employee contributions to the MPSERS system have filed claims with the IRS for refunds of the FICA tax amounts that they paid. Kathleen Rodegeb, whom I understand to be the Government Liaison for Michigan within the Federal, State, and Local Government area of the IRS has indicated that these claims will be denied with respect to the 2012 statutory changes.

It appears that, if the IRS were to make a determination on the FICA refund claims, there may be dozens of differing federal tax treatments, including different employers, employees, time periods, appeals, etc., that are applied to employers and employees that are similarly, indeed identically, situated: they are all making the exact same type of mandatory contributions to the Section 115 health care trust as required under the 2010 and 2012 changes. Please note that the "mission of the Office of Governmental Liaison and Disclosure is to improve tax administration by efficiently partnering with other government agencies and by effectively administering the Disclosure statutes." In furtherance of that mission, it may be better for the IRS and the State, as well as the multiple taxpayers involved, to have all of the public school employers and public school employees treated the same way for federal tax purposes.

Accordingly, I am respectfully asking that the IRS hold the current claims related to the 2012 law in abeyance pending the filing and decision on the State's upcoming PLR request. The State will be filing that request no later than the end of 2015 related to the treatment of the contributions made under the 2012 law.

It is my understanding that some of these decisions may be issued soon, so I appreciate your prompt attention to this matter. If you have any specific questions with respect to this request, please contact Brom Stibitz, Chief Deputy Director of the Department of Technology, Management, and Budget at 517-373-1004 or StibitzB@michigan.gov.

Sincerely,



Rick Snyder
Governor