THE LEGAL REPORT

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EVERY LITTLE BIT . . . H E L P S

Public Safety Retiree Health Insurance Premium Payments

The Healthcare Enhancement for Local Public Safety retirees provisions contained in the Pension Protection Act of 2006 (commonly known as "HELPS") allow eligible retired public safety officers to use up to $3,000 per year from their qualified governmental pension plan or 457 account to pay for health or long term care insurance premiums on a pre-tax basis.

An Explanation HELPS

Internal Revenue Code § 402(l), which was added by § 845(a) of the Pension Protection Act of 2006, provides for an exclusion from gross income for distributions from certain retirement plans ("Eligible Government Plans") used to pay qualified health insurance premiums of an eligible retired public safety officer. The exclusion, which became effective January 1, 2007, applies with respect to an eligible retired public safety officer who elects to have qualified health insurance premiums deducted from amounts distributed from an Eligible Government Plan and paid directly to the insurer. Qualified health insurance premiums include premiums for accident and health insurance or qualified long-term care insurance contracts for the eligible retired public safety officer and his or her spouse and dependents. The distribution is excluded from gross income to the extent that the aggregate amount of the distributions does not exceed the amount used to pay the qualified health insurance premiums of the eligible retired public safety officer and his or her spouse and dependents. An "Eligible Government Plan" is a governmental plan described in § 414(d) that is either: a § 401(a), § 403(a), or § 403(b) plan; or an eligible governmental plan under § 457(b). Section 402(l) applies to distributions in taxable years beginning after December 31, 2006.

Question 1. Who is an eligible retired public safety officer for purposes of the exclusion under § 402(l)?

Answer: An employee is an eligible retired public safety officer for purposes of the exclusion under § 402(l) only if the employee is an individual who separated from service, either by reason of disability or after attainment of normal retirement age, as a public safety officer with the employer who maintains the Eligible Government Plan from which the distributions to pay qualified health insurance premiums are made. The terms of the Eligible Government Plan from which the participant will be receiving the distributions apply in determining whether a public safety officer has separated from service by reason of disability or after attainment of normal retirement age.

Question 2. **Who is a public safety officer?**

Answer: For purposes of § 402(l), the term "public safety officer" means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew. See § 1204(9)(A) of the Omnibus Crime Control and Safe StreetsAct of 1968 (42 U.S.C. 3796b(9)(A)).

Question 3. **Under what circumstances are the provisions of § 402(l) available for eligible retired public safety officers?**

Answer: The favorable tax treatment under § 402(l) is available only when an eligible retired public safety officer elects to have an amount subtracted from his or her distributions from an Eligible Government Plan and such amount is used to pay qualified health insurance premiums. *The employer sponsoring the Eligible Government Plan is not required to offer such an election.*

Question 4. **Can the accident or health plan receiving the payments of qualified health insurance premiums be a self-insured plan?**

Answer: Yes. The U.S. Department of the Treasury has recently announced that qualified health insurance will include employer provided coverage under both insurance or an employer's self-funded plan.

Question 5. **Will an eligible retired public safety officer be entitled to favorable tax treatment under § 402(l) with respect to benefits attributable to service other than as a public safety officer?**

Answer: Yes. Benefits attributable to service other than as a public safety officer are eligible for favorable tax treatment under § 402(l), as long as the individual separates from service as a public safety officer, by reason of disability or after attainment of normal retirement age, with the employer maintaining the Eligible Government Plan.

Question 6. **If an eligible retired public safety officer dies, are amounts subtracted from distributions made to the decedent's surviving spouse or dependents eligible for favorable tax treatment under § 402(l)?**

Answer: No. Section 402(l) provides that the distribution is not includible in the gross income of an employee who is an eligible retired public safety officer. Thus, the exclusion would not extend to amounts subtracted from distributions to other distributees.

Question 7. **Is an eligible retired public safety officer limited in the amount that the officer can exclude from gross income for distributions from an Eligible Government Plan used to pay qualified health insurance premiums?**

Answer: Yes. The aggregate amount that is permitted to be excluded, with respect to any taxable year, from an eligible retired public safety officer's gross income by reason of § 402(l) is limited to $3,000. For purposes of applying this $3,000 limitation, distributions with respect to the eligible retired public safety officer that are used to pay for qualified health insurance premiums from all Eligible Government Plans are aggregated.

As always, it is prudent for Retirement Systems to consult with their service professionals in the implementation and administration of these provisions. Adoption of comprehensive policies and procedures will assist in the proper withholding and payment of qualified health and long-term care insurance premiums and will promote compliance with state and federal rules and regulations, including the Pension Protection Act and the Internal Revenue Code.

Retirement Systems should anticipate that the IRS will provide further clarification and guidance on the administration of these provisions and that further discussion and legislation may be proposed relating to non-public safety governmental retirees.

While the ability to pay a portion of health insurance premiums on a pre-tax basis may not eliminate the burdens of rising health care costs, . . . every little bit HELPS.

IMPORTANT NOTE: This summary is intended to be informational only and is intended to provide a general overview. Reference should be made to the law and regulations in addressing specific questions. Trustees are encouraged to familiarize themselves with the provisions of the Act and how they may affect governmental plan administration. In certain cases, plans may need to be amended in order to take advantage of the pension reform provisions. This information should not be considered the rendering of legal advice or other professional services and Trustees should consult with their plan professionals regarding the implications of this law.