

interoffice

MEMORANDUM

to: PERS Coalition
from: Greg Hartman
subject: PERS Lump Sum Recipients; *City of Eugene/Strunk* Reconciliation
Our File 5415-237
date: April 17, 2007

Recently PERS began mailing invoices to individuals who had taken lump sum distributions from PERS demanding what is often a substantial repayment due to the *City of Eugene/Strunk* reconciliation process. The purpose of this memo is to give some general overview of the options that may be available to members who receive these invoices. The first and most important thing we should tell people is that if they have questions about legal issues surrounding this process they should seek advice from their own attorney. While we can provide general guidance such as that contained in this memo, and have filed lawsuits which may obtain some relief for these individuals that is not a substitute for consultation with their individual attorney. Subject to that caveat, following are some general observations. Individuals who receive these invoices have four options:

(1) They can pay the invoice. Some of the invoiced amounts are relatively small and some members may be in a position to pay the invoices without undue financial strain. If a member pays the invoice and it later turns out that PERS was in error in sending the invoice then they will get their money back and we will attempt to make certain that they are paid interest for the time that PERS has their money.

(2) The notice itself indicates that members have the right to appeal this determination and may do so within 60 days. Individuals who feel that this invoice is improper, unfair, or who generally want to communicate how they feel about this process can certainly pursue an administrative appeal if they care to. They can also wait to file their appeal until a time fairly close to the 60-day deadline. If nothing else this will allow the litigation process to proceed for some additional time and perhaps reach some resolution, at least at the trial court level.

(3) The notice indicates that PERS is exploring the possibility of permitting a tax-free rollover back into PERS to satisfy this liability. Presumably many of the people who took these lump sum distributions rolled them over into another tax-free vehicle, such as an IRA. If they withdraw funds from their IRA to make this payment to PERS then they will be responsible for paying taxes on the IRA withdrawal. I strongly urge members not to do that at this point because it's not at all clear that we will be able to recover those taxes even if we are successful in the pending litigation. In almost every instance members will be better off to take advantage of this rollover opportunity than to have the immediate tax burden placed on any withdrawal from their tax-deferred accounts. I have requested additional information from PERS on how this process will work and will share it upon receipt.

(4) The member can do nothing. I realize that this may be a tempting option for at least some PERS retirees, particularly those who feel that this entire process is inconsistent with their rights. Though I know this option may be tempting, I would not suggest that it is generally appropriate. My assumption is that PERS will at some point take additional collection efforts and if they do so, are likely to ask for additional costs incurred in that collection effort. Ignoring the invoice could simply make things more difficult for the member.

There are undoubtedly individuals who will not be able to make this payment because at this point they don't have the funds available, whether in tax-deferred accounts or not. Even if that is the case I don't think ignoring the invoice is a very wise course of action. I suggest they would be better served to communicate to PERS that they are without funds to make this payment, even if they wanted to. At this point I don't know what reaction PERS will have to receiving that information but at some point they're going to have to deal with these issues.

I will keep you updated on any additional information I receive about this process.

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