

From the Desk of Brian J. Boquist
Oregon State Senator

March 4, 2017

Senator Kathleen Taylor & Et Al
Senate Committee on Workforce

Chair Taylor & Et Al:

Thank you for hearing SB 464. It is a simple fair solution to a complex issue spanning four years.

The Legislature made adjustments to PERS in 2013 to correct a taxation issue known as the 'tax remedy.' In short, it was a payment correction regarding non-resident recipients that paid no Oregon taxes. Even with our antiquated DOR computer system at the time, we knew which tax payers were not paying Oregon taxes in regard to their retirement benefits. For whatever reason, some Oregon PERS recipients got identified incorrectly resulting in PERS initially disqualifying at least one if not more citizens due to the confusion. PERS took additional action in August 2015 to help clarify the situation forward looking to December 15, 2015. However, at least one, or possibly more individuals, got caught in the middle.

Bill example. In November 2013, the Boyer's were notified by PERS that Mrs. Boyer would lose her tax remedy payment because they filed a non-resident tax form indicating she paid no state taxes on her PERS benefits. PERS stated DOR provided them the information which DOR denies now. The Boyer's like many Oregonians in their 70s are snowbirds splitting time in Oregon with elsewhere. While they were out of the country, PERS issued an erroneous demand letter followed 48 days later by their decision to withhold Mrs. Boyer's tax remedy. Despite three years of effort far exceeding the roughly \$1500 error, the matter has never been resolved due to administrative rules and expired timelines with in the law. On September 8, 2016, the Oregon Department of Revenue issued a letter with 2012, 2013 and 2014 tax information clearly stating Mrs Boyer should never had been on any revocation list at PERS. We will never know how or why this happened in 2013.

Unfortunately, the present statute does not empower PERS to make any exceptions under the law. SB 464 allows that exception authority with a sunset of January 2, 2019. While have identified only one individual with this problem, it is possible a few others exist too. The issue before the Legislature is not about money but instead fairness to Oregon citizens.

Your Committee's assistance in resolving this fairness issue is most appreciated.

Sincerely,

Brian J. Boquist
State Senator
District 12



Oregon

Kate Brown, Governor

Department of Revenue
955 Center St NE
Salem, OR 97301-2555
www.oregon.gov/dor

Date: September 8, 2016

Letter ID: L1314399744

Account ID: [REDACTED]

Dear [REDACTED]

You asked for information about your PERS tax remedy eligibility.

Thank you for contacting the Oregon Department of Revenue. We have received your letter inquiring about the data exchange agreement with Public Employees Retirement System (PERS) and the information provided for their review of your retirement tax remedy eligibility. I have reviewed the information filed on your Oregon returns and have not been able to conclude as to why you are not eligible for the tax remedy. The following is the information that was filed with the Department and would have been provided to PERS upon request. The amount in the "Pension included in Oregon TI" is the amount of PERS pension reported in the as Oregon taxable income (TI) in the Oregon column of the nonresident return or, on the full year resident return, was fully taxable to Oregon.

<u>Tax year</u>	<u>Date filed</u>	<u>Return type</u>	<u>Joint return</u>	<u>Pension included in Oregon TI</u>
2012	05/23/2013	40NR	Yes	\$25,068
2013	10/10/2014	40	Yes	\$25,528
2014	10/08/2015	40	Yes	\$24,460

We are sorry for the inconvenience and hope you will find this information beneficial.

If you have further questions, please contact me.

Sincerely,

Daron P., Policy Coordination Unit
Personal Tax and Compliance
(503) 302-0433



SENATOR BRIAN BOQUIST
900 Court Street NE, S-305
Salem, Oregon 97301
(503) 986-1712

John Thomas, Chair
Pat West, Vice-Chair
Krystal Gema
Lawrence Furnstahl
Stephen Buckley
Public Employee Retirement System Board
11410 SW 68th Parkway
Tigard, OR 97223

June 27, 2016

Dear PERS Board,

I am writing to officially request that you adopt a new administrative rule to fix unforeseen problems with the administration of ORS 238.372. The legislature amended this statute in SB 822 (2013) to eliminate “the increased retirement benefits resulting from Oregon income taxation of payments if the person receiving payments does not pay Oregon income tax on those benefits and is not an Oregon resident.”¹ The PERS Board approved OAR 459-013-0310 to set out the process for administering this change. Unfortunately, this rule’s implementation was somewhat confusing and revealed an unforeseen and unintentional failure to follow the purpose of the statute. I ask that you enact a new administrative rule to fix this issue and correctly implement the intent of SB 822.

My constituent Antoinette Boyer is a PERS retiree who has lived in Oregon for 70 years. She receives a PERS pension, for which she pays Oregon income taxes. She and her husband John jointly filed their 2012 income taxes in Oregon on a nonresident tax form because John was not an Oregon resident that year and they were unaware of any Oregon tax form that allows a couple to file jointly with one spouse as a resident and one spouse as a nonresident. However, Ms. Boyer still paid Oregon income taxes on her PERS pension in 2012.

Due to the Boyer’s 2012 nonresident tax filing, PERS issued a Tax Remedy Decrease determination letter to Ms. Boyer on December 18, 2013, giving her until February 18, 2014 to file a request for review.² On January 24, 2014, PERS issued a notice to Ms. Boyer that they were removing her tax remedy benefit and it would only be restored if she successfully challenged their decision no later than February 14, 2014. Unfortunately, Ms. Boyer was traveling out of the country from November 2013 till April 2014 and was unable to file a request for review until April 17, 2014 when she returned. PERS ruled that her request was untimely and refused to consider the merits of her request.³

¹ Joint Committee on Ways and Means, *SB 822-A Budget Report and Measure Summary*, page 3, <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureAnalysisDocument/18886> (April 5, 2013); see also Senate Committee on Rules, *SB 822 Staff Measure Summary*, <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureAnalysisDocument/18172> (March 28, 2013).

² According to the Boyers, this is particularly disturbing because, on October 13, 2013, they were called by a man at PERS who asked if Ms. Boyer was a resident of Oregon. When Mr. Boyer responded that they were about to leave for Mexico for five months, the caller asked if their mail could be forwarded. Mr. Boyer said “no” and the caller hung up without telling him that PERS was about to send a time-sensitive letter. PERS disputes that this call occurred but has blocked the Boyers’ public records requests for details of any calls to their phone in early October.

³ These and other undisputed procedural facts in this case are laid out in *In the Matter of Antoinette J. Boyer*, PERS Appeal No. 155107-TR0916, OAH Case No. 1403715.



SENATOR BRIAN BOQUIST
900 Court Street NE, S-305
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Despite Ms. Boyer's failure to appeal the ruling on time (while she was out of the country), she was otherwise entitled to maintain her tax remedy benefit under SB 822 due to paying Oregon income taxes on her PERS pension in 2013. PERS staff says Ms. Boyer filed a residency status certification while out of the country on December 30, 2013 in which she stated "I am not a resident of the state of Oregon but I do pay personal income tax on my benefit from Oregon." However, Ms. Boyer has since explained that she stated she was not a resident of Oregon when she filed the form because she was traveling out of the country at the time. Regardless, she has consistently maintained in her communications to PERS that she paid personal income taxes on her PERS benefit in Oregon, as required by SB 822. PERS has not disputed this fact.

The current situation is that, while Ms. Boyer met the requirements in ORS 238.372 for receiving a tax remedy payment, she did not satisfy the requirements of PERS administrative rules (specifically OAR 459-013-0310). This situation is difficult because the reason that Ms. Boyer did not meet the requirements of the administrative rule is entirely procedural and due to the fact that she was unaware of the requirement while she was out of the country. This raises due process concerns. Ms. Boyer was treated unjustly even though PERS followed administrative rules correctly.

The best way to resolve this injustice is for the PERS Board to adopt a new administrative rule that addresses Ms. Boyer's situation. It could say something like: any PERS retiree who did not receive a tax remedy payment in 2014 can receive that payment retroactively if, during a limited window (perhaps 30 days?) from the adoption of this new rule, a PERS retiree files an application proving that they (1) satisfied the requirements of ORS 238.372 and (2) had good cause for failure to comply with the procedures in OAR 459-013-0310 (i.e. showing proof that they were unable to respond by the deadline because they were out of the country). The policy rationale for such a rule is that the first year of implement SB 822 was unique, somewhat confusing, and did not create a reasonable opportunity to comply for anyone who was traveling outside the country from November 2013 to April 2014. Further, there was an unforeseen and unintentional failure of the administrative rules to adequately implement the purpose of the statute.

Sincerely,

Brian Boquist
Senate District 12

PERSPECTIVES

Retired
Member
Edition

FAQs: Supreme Court ruling on COLA changes

Q1: What was challenged in the Oregon Supreme Court?

Two pieces of 2013 legislation, changes in the annual cost-of-living adjustment (COLA) and eliminating the tax remedy for those who do not pay Oregon state income tax because they do not reside in Oregon, were challenged in the Oregon Supreme Court.

In a decision released April 30, 2015, the Oregon Supreme Court upheld elimination of the tax remedy payments to non-residents. The COLA reductions were declared unconstitutional as applied to benefits earned prior to those bills' respective effective dates. However, the reduced COLA could be applied to the benefits earned after the bills became effective.

The Court also voided the supplementary payment program, which was part of the challenged legislation.

Q2: What did the 2013 legislation do to the COLA?

Senate Bill 822 (2013) and Senate Bill 861 (2013 Special Session) reduced the annual COLA to be applied to benefit payments. Previously, the COLA was capped at 2% annually and tied to changes in the Portland Consumer Price Index. These bills reduced the maximum COLA to, eventually, 1.25% on the first \$60,000 of benefits annually and 0.15% for amounts over \$60,000. Additionally, SB 861 provided an annual supplementary payment to benefit recipients over six years, starting in 2014.

Q3: What does this mean for current benefit recipients?

Benefit recipients whose benefits are based on an effective retirement date of May 1, 2013, or earlier, are entitled to restoration of their COLA under the prior rules: 2% annual cap tied to the Portland Consumer Price Index (CPI). Index adjustments above and below the 2% cap are "banked" for future years for Tier One/Tier Two benefit recipients.

Benefit recipients whose benefits are based on an effective retirement date of June 1, 2013, or later may have a blended COLA rate based on when their benefit was earned in relation to the effective dates of Senate Bill 822 and Senate Bill 861.

(continued on page 2)

"Tax remedy" for some benefit recipients

If you had eligible PERS service time before July 1995, you may currently receive or be eligible for a "tax remedy" increase in your monthly PERS benefit payment.

PERS is prohibited from paying the "tax remedy" increase to non-Oregon residents whose payments are not subject to Oregon personal income tax.

Oregon's Department of Revenue provides PERS with Oregon residency verifications annually for benefit recipients receiving the "tax remedy" increase.

PERS recipients who are not required to file personal tax returns or who have delayed filing personal tax returns (under extensions or for other reasons), but are eligible for the tax remedy increase, must verify residency with PERS before December 15, 2015, to receive the increase in 2016.

To verify your residency electronically, go to the PERS homepage. Then:

- Find the Resources column and click on Online Member Services (OMS).
- If you have an existing OMS account, click on the Log In link, and complete the log in process.
- If you do not have an OMS account, click on Open a New Account on the Log In page and provide the required information. Use your new User ID and Password to complete the Log In process.
- After you log in, select the View/Update Residency link, and complete the three steps to update and certify your residency.

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Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
<http://oregon.gov/PERS/>

December 18, 2013

[REDACTED]

PERS [REDACTED]

RE: Tax Remedy Decrease

Dear [REDACTED]

You currently receive an increase in your monthly PERS benefit as a statutory remedy for Oregon state income tax ("tax remedy").

Legislation passed in 2013 eliminated this tax remedy for benefit recipients who do not pay Oregon state income tax on their PERS benefits because they do not reside in Oregon. Recently, PERS received notification that you did not pay income taxes in Oregon because you are not an Oregon resident.

Therefore, your monthly PERS benefit is being adjusted to remove the tax remedy. Your gross monthly benefit will be reduced by \$123.96. Your adjusted monthly gross benefit will be \$2,075.95, effective with the payment you receive on January 1, 2014.

Pursuant to Oregon Administrative Rules (OAR) 459-001-0030, if you disagree with staff's determination you may request a review by writing to the PERS Director within 60 days after the date of this letter.

Your request must include the following information:

- A description of the determination you want reviewed.
- A short statement describing how and why you think the determination is wrong.
- A statement of facts that you believe show the determination is wrong.
- A list of any statutes, rules, or court decisions that you believe support your position.
- A statement of the action you seek.
- A request for review.

Oregon Revised Statutes are available from the Office of Legislative Counsel, or can be located on the Internet at <http://www.leg.state.or.us/ors/home.html>. Oregon Administrative Rules are available from the Oregon State Archives at http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_459/459_tofc.html.

When the Director receives your request, he may ask a Division Administrator to act on it. Your request for a review may be denied if it does not contain the required information. You will be mailed a response letter within 45 days after we receive your request.

You can find additional information on the PERS website at <http://oregon.gov/PERS>.

If you need further assistance, please contact PERS Customer Service at 888-320-7377.

Sincerely,

Benefit Payments Division

Ex 1



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:

11410 S.W. 68th Parkway, Tigard, OR

Mailing Address:

P.O. Box 23700

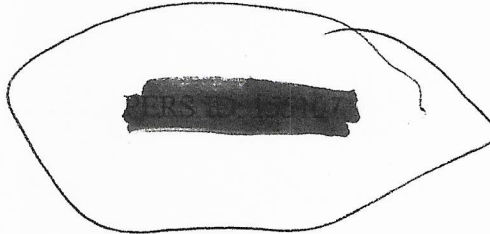
Tigard, OR 97281-3700

(503) 598-7377

TTY (503) 603-7766

<http://oregon.gov/pers>

November 6, 2013



Dear

You currently receive or may be eligible to receive an increase in your PERS benefit as statutory "remedy" for your benefit being subject to Oregon state income tax.

~~Recent legislation requires PERS to stop paying this remedy to persons who do not pay Oregon income taxes on their PERS benefits because they do not reside in Oregon.~~

Based upon the most recent Oregon tax return filing information we have received from the Department of Revenue, PERS is unable to determine your individual residency status and whether your PERS benefits are subject to Oregon income tax.

Please complete the enclosed form to declare your residency status and mail it to PERS no later than 30 days from the date of this letter. If PERS does not receive a completed form within the 30-day period, we will not pay the tax remedy portion of your benefit, as if you were a non-Oregon resident.

You can find additional information on the PERS website at <http://oregon.gov/pers>.

If you need assistance, please contact PERS Customer Service at 888-320-7377.

Thank you for your assistance.

Sincerely,

Benefit Payments Division

enclosure

Senate Bill 464

Sponsored by Senator BOQUIST (at the request of John and Toni Boyer) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Directs Public Employees Retirement Board to reimburse certain recipient of reduced payment under Public Employees Retirement System if recipient establishes that payment was subject to Oregon personal income tax.

Sunset January 2, 2019.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to payments under the Public Employees Retirement System subject to Oregon personal
3 income tax; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. If the Public Employees Retirement Board reduced the benefits payable to**
6 **a person under ORS 238.376 (1) on or before December 31, 2014, and the person establishes**
7 **to the satisfaction of the board that a payment that was reduced on or before December 31,**
8 **2014, was subject to Oregon personal income tax under ORS 316.127 (9), the board shall re-**
9 **imburse the person in the amount that the payment was reduced.**

10 **SECTION 2. Section 1 of this 2017 Act is repealed on January 2, 2019.**

11 **SECTION 3. This 2017 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
13 **on its passage.**

14

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.