

Testimony regarding House Bill 4112

My name is Don Domes and I am a Licensed Tax and Small Business Consultant from Hillsboro, Oregon.

House Bill 4112 addresses a persistent PERS issue with the portion of a retirement benefit that is tied to being subject to Oregon Income Taxes. PERS presently tells people denied the benefit that there is an appeal process but PERS doesn't have statutory authority to make any adjustment until an entire year has passed. PERS has at least two ways to determine that a person is an Oregon Resident: The first is via a timely filed tax return with the Oregon Department of Revenue. The second is via a simple PERS Residency Status Certification Form where a person signs under perjury that they are an Oregon Resident subject to Oregon Income Tax. The tax return has to be filed by Oct. 15 or the PERS Residency Status Certification Form has to be filed with PERS by Dec. 15. If one or the other of these are not completed by the due dates then the entire next year benefit is reduced.

One method to identify PERS recipients that don't owe Oregon Income Tax is to use data provided by ODR. That data is not available until after Oct. 15. If PERS identifies a retiree using ODR data that might not be subject to Oregon Income Tax they then send out a letter in early November. That letter usually arrives in mid-November. If a person has left on vacation or misses the letter for some reason and does not file the Oregon Resident subject to Oregon Income Tax form by December 15 their entire following year benefit is reduced! The letter that PERS sends out informing the person of the reduction often comes in late December. The letter advises that an appeal can be submitted.

In a situation that I encountered, an appeal was created and abundant evidence was provide that the person was an Oregon Resident subject to Oregon Income Tax. The first appeal was denied. The PERS response letter said the appeal denial could be appealed. The second appeal was denied and that letter again said an additional appeal was possible. An addition appeal was submitted. This process continued. Eventually it was disclosed that PERS has no statutory authority to honor the appeals and restore the benefit until the start of the next year! Essentially if the filing dates are not met in the prior year the appeal could not be honored. This was verified by two Law Firms.

PERS needs statutory authority to honor these appeals and adjust the benefit every 3 months rather than just annually so they can base their determination of "benefits subject to Oregon Income tax" on the facts. The present rules only allow for a new determination annually. The appeal process remedy is essentially a sham until a whole year has passed! This has frustrated and is highly unfair for those who can be verified as retirees subject to Oregon Income Tax.

This is like missing the due date for a paper in school and the teacher says that another paper can be submitted. When that paper is submitted it is denied and then you are told you can submit another paper. When that paper is submitted it is denied and then you are told you can submit again. Can you imagine the insanity? The teacher finally tells you they have no statutory authority to give you a grade other than F no matter how many appeals you file and that you need to wait until next year to retake the class.

I now advise all PERS retirees that are Oregon residents to file the PERS Residency Status Certification Form annually. This probably creates more paperwork for PERS, but it is the only method I have found to assure the retiree that they won't be caught in this endless loop.

Respectfully submitted, Don W. Domes, Licensed Tax Consultant