



Oregon

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TO: Members of the PERS Board

FROM: Yong Yang, Research Policy Coordinator, Policy Analysis and Compliance Section
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Adoption of Rule for the Tax Remedy Rule:
OAR 459-013-0310 *Payment of Increased Benefits under ORS 238.372 to 238.384*

OVERVIEW

- Action: Adoption of amendment for OAR 459-013-0310 Payment of Increased Benefits under ORS 238.372 to 238.384.
- Reason: Amend the rule to account for additional data from the Oregon Department of Revenue.
- Policy Issue: None identified.

BACKGROUND

As provided in ORS 238.362 to ORS 238.378, PERS benefits are increased to account for Oregon personal income tax for individuals who had established PERS membership before July 14, 1995. This benefit increase is also known colloquially as Tax Remedy. The Oregon Legislature, in 2011 and 2013, made changes to the tax remedy statute such that retirees whose PERS benefits are not subject to Oregon personal income tax are not eligible to receive tax remedy. PERS is authorized to exchange information with the Oregon Department of Revenue (DOR) for the purpose of evaluating whether someone's PERS benefits are subject to Oregon personal income tax.

After a system upgrade, DOR is now able to provide additional data on retirees who filed a partial year tax return (40P), specifically, the beginning and end dates the retiree was in the state. The proposed amendments to the rule outline how PERS staff will use this additional data in determining tax remedy eligibility. Currently, in order to determine residency for a retiree who filed a 40P, the determination is based on the prior year filing to presume the retiree moved in or out of the state. With more precise data, the determination can be made based on the current year's filing.

For individuals who filed a 40P, PERS will treat the person as an Oregon resident if the end-date field on the tax return is blank or the last day of the year; PERS will treat the person as a non-resident if the end-date field on the tax return is other than the last day of the year.

The amendments also take into consideration certain filing requirements. When a married Oregon resident files a joint return with a non-Oregon resident spouse, they are required to file a non-resident return (40N). Similarly, when a married retiree who is an Oregon resident for the entire year files a joint return with a spouse who was an Oregon resident for a partial year, they must file a 40P. Included in the data obtained from DOR is the amount of pension and annuity income reported on 40Ns and 40Ps for state income tax purposes. Under the rule amendment, a retiree will be considered an Oregon resident if the reported pensions and annuities income on a 40N or 40P return is equal to or greater than the amount of PERS benefits distributed in the same tax year; if the reported pensions and annuities income is less than the amount of PERS benefits distributed in the same tax year, the retiree will be considered a non-resident; except in the case of 40P joint filers, the retiree will still be considered an Oregon resident if the resident end-day on the tax return form is left blank or is the last day of the year.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on February 25, 2025, at 2:00 p.m. The public comment period ended February 28, 2025, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

IMPACT

Mandatory: No

Benefit: Provides clarification on how PERS will use the additional DOR data to make tax remedy eligibility determinations.

Cost: There are no discrete costs attributable to these rules.

RULEMAKING TIMELINE

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| January 27, 2025: | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| February 3, 2025: | Secretary of State publishes the notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins. |
| January 31, 2025: | PERS Board notified that staff began the rulemaking process. |
| February 25, 2025: | Rulemaking hearing to be held remotely at 2:00 p.m. |
| February 28, 2025: | Public comment period ends at 5:00 p.m. |
| March 31, 2025: | Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel. |

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to adopt the Tax Remedy Rule, as presented.
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.4. Attachment 1 – *OAR 459-013-0310 Payment of Increased Benefits under ORS 238.372 to 238.384*