

H. 304 Talking Points
Current as of
4.8.2015

1. FY 2016 IRS Determination Letters—Proposed Amendments to Retirement Statutes in Regard to H. 304

- Sponsors of qualified governmental plans, pursuant to Internal Revenue Code Section 401(a), who want the IRS to review their plan document to ensure it meets the applicable tax qualification requirements, may do so by submitting documentation to obtain an IRS Determination Letter. Although the IRS determination letter process is voluntary, there are sound reasons that led all three Retirement Board of Trustee to take this action:
 - It minimizes the risk that the IRS will disqualify the plan on audit because the plan document doesn't satisfy the applicable tax-qualification requirements, and
 - It provides a mechanism to keep plans current with federal law
 - The Boards recently completed the process for all three retirement plans with a favorable status in all cases. This determination letter process was applicable to the plans and related documents submitted in conjunction applications filed during amendment cycle ending 1/31/14 and will be in effect through 1/31/19. Once again, we have a few minor amendments that must be made in this legislative session to maintain the tax-exempt status of the plans, all to keep us current with IRS requirements. All are of a routine nature and do not add cost to the systems.
- A. The proposed language pertaining to “nonspouse beneficiaries” in regard to the Vermont Retirement Systems complying with IRS rules can be found on pages 2, 6, and 11 of H.304 reads:**

“For distributions made after December 31, 2009, a nonspouse beneficiary who is designated beneficiary under 26, U.S.C § 401 (a)(9) may establish an individual retirement account into which all or a portion of a death distribution from the Retirement System to which such nonspouse beneficiary is entitled can be transferred directly.”

Explanation: This provision permits a beneficiary to establish an IRA to which distributions from the Retirement System upon death of the Member can be transferred without penalty.

In the current State Statute, spouses had this option but it was not available for nonspouse beneficiaries. The proposed language brings us current with IRS practice permitting this option for nonspouse beneficiaries. Since this is a transfer of distribution related to the

death of a member, there is no impact on the financial health of the retirement system. This change is cost-neutral.

NOTE: This will affect all three of the Retirement Systems—the VSERS (State), VSTRS (Teachers), and VMERS (Municipal) Retirement Systems.

B. The proposed new language pertaining to “survivors of a member who dies...performing...military service” in regard to the Vermont Retirement Systems complying with IRS rules found Pages 1, 6, and 11 of H.304 reads:

“The survivors of a member who dies after December 31, 2006 while performing qualified military service shall be entitled to any additional benefits, other than benefit accruals related to the period of qualified military service, that would have been provided under the Plan had the member resumed employment and then terminated employment on account of death.”

Explanation: This provision permits a the survivors of a member to have access to the additional benefits that would have been provided through the Vermont Retirement system had the member resumed their employment and then terminated employment on account of death. In short, it provides survivorship benefits for those who would have received benefits had they resumed their employment.

This change will codify a practice already in place in the State and consistent with IRS rules—there is not cost to the system as this change is also cost-neutral.

NOTE: This will affect all three of the Retirement Systems—the VSERS (State), VSTRS (Teachers), and VMERS (Municipal) Retirement Systems.

C. The proposed new language pertaining to “survivors of a member who dies...performing...military service” in regard to the Vermont Retirement Systems complying with IRS rules found Pages 5 and 9 of H.304 reads:

“The aggregate actual contributions for medical benefits when added to the actual contributions for life insurance, if any, under the Plan, is limited to 25 percent of the total actual contributions made to the Plan (other than contributions to fund past service credits) after the date on which the Section 401(h) account is established.

Explanation: This relates to IRS requirements when Healthcare is provided through the Pension Fund. Although the State and Teachers (VSERS & VSTRS) provide healthcare

through a separate benefits fund, the IRS has requested this change nonetheless be made for both the State and Teachers systems. Since healthcare benefits are not provided in the municipal system, this revision is not relevant to that system. There is not cost to the system in regard to this change as it is cost-neutral.

NOTE: This will affect ONLY the VSERS (State), and VSTRS (Teachers) Retirement Systems and will have NO Affect on the VMERS (Municipal) as the VMERS system has no medical benefits.

2. Proposed Changes to the VMERS (Vermont Municipal Retirement System) Contribution Rates Effective FY 2016 in Regard to H. 304

NOTE: Proposed Changes can be found on page 12 in H. 304: “Vermont Municipal Employees’ Retirement System Rates for Fiscal Year 2016.”

Explanation: The VMERS Board of Trustees annually reviews the employer and employee contribution rates to determine if they are adequate to cover the future financial costs of the system. The employer rate is determined annually by the board while the employee rate is set by statute. Currently 24 V.S.A. § 5064(b) includes the following language setting the rate for employee contributions participating in the VMERS retirement system:

“ b) Member savings. Contributions deducted from the compensation of members together with any member contributions transferred from a predecessor system shall be accumulated in the fund and separately recorded for each member. Contributions shall be made by group A members at the rate of three percent of earnable compensation. Contributions shall be made by group B members at the rate of five percent of earnable compensation. Contributions shall be made by group C and group D members at a rate of 11 percent of earnable compensation.”

Due to better than expected actuarial performance, the VMERS pension fund was able to temporarily reduce these rates for employees for the last several years. In 2000 the Board asked the State Legislature to lower the employee contribution rates from 3 to 2.5 percent for group A; from 5 to 4.5 percent for group B; and from 11 to 9 percent for group C. The legislature subsequently approved the change for a five-year period. The Board again approached the legislature in 2005 about extending the lower rates until 2010 and the extension was passed.

These changes were based on an actuarial review of the funding of the system and a recommended rate changes by the VMERS board.

In 2010 an employee contribution rate change was enacted for group C, from 9 percent to 9.25 percent (Board recommendation was originally 9.5percent), effective 7/1/10. The employer contribution rate for that year was increased by .5 percent.

These rates continue to be reviewed annually by the consulting actuary and the VMERS Board, although no additional recommended changes were made for the years beginning 7/1/11 and 7/1/12. However, the Board did see a need to make a series of incremental increases to groups B, C and D beginning in the fiscal year effective 7/1/13 as reflected in the attached chart. No changes were made to group A. These recommendations were adopted by the Legislature. As noted in the chart, the Board of Trustees did adopt similar increases in the employer rates during the same period.

After careful consideration of the actuarial data and discussions with representatives of employee groups the Board of Trustees and the Treasurer's Office are proposing a slight increase in both employer and employee contribution rates for the next fiscal year for groups B,C and D (again no increase for group A). It should be noted that the rates are still below the rates set by statute as authorized in 1999 for groups A, B and C.

The Board worked with various employee groups in making these changes, recognizing that it was time to increase both the employer and employee contribution rates for the financial health of the system and to help stabilize the fund to continue to ensure the retirement security for municipal employees. The Board and the Treasurer very much appreciate employee groups stepping up to the plate, recognizing a shared interest in the long-term health of the system. Failure to act on this proposed language would cause the lower rates to sunset for A, B and C and the higher contribution rates set by statute would again take effect, causing hardship for municipal employees. We believe the rates, as currently applied, provide a balanced approach to maintain the financial stability of the VMERS pension system.

Proposed Changes for Employees' Contribution Rates For the Period of July 1, 2015—June 30, 2016 Shall Be:

Group A: 2.5% of Earnable Compensation (*Note: No Increase to Group A from the last Fiscal Year*)

Group B: 4.875% of Earnable Compensation

Group C: 9.875% of Earnable Compensation

Group D: 11.350% of Earnable Compensation

NOTE: These changes will ONLY affect the VMERS (Municipal) Retirement System.

3. Proposed changes in language to Retirement Statutes relating to “Peace Corps, Vista, or AmeriCorps” Service in H. 304

NOTE: Proposed Changes Found on Pages 3, 7, 9, 10 in H. 304.

Statute as it currently reads on the pages noted above: “Peace Corps, ~~or~~ VISTA, or AmeriCorps VISTA”

Proposed changes on the pages noted above would read: “Peace Corps, VISTA, or AmeriCorps”

Note: *(the change is the deletion of the word “VISTA” after “Americorps”)*

Explanation: This change is to comply with definitions of service in regard “Peace Corps, Vista, or AmeriCorps” service as described by U.S. Code and in their mentioning in Vermont Statute in regard to the three Vermont Retirement Systems, VSERS (State), VSTRS (Teachers), and VMERS (Municipal) Retirement Systems.

NOTE: This will affect all three of the Retirement Systems—the VSERS (State), VSTRS (Teachers), and VMERS (Municipal) Retirement Systems.

- **BELOW IS NEW LANGUAGE to be added to the version of H.304 that Passed the House.**
- **(Language Current As Of 4.8.2015)**

4. Proposed Changes to Disability Retirement found in Title 3, Chapter 16, the Vermont Employees Retirement System Statute: § 462 and § 463

NOTE: The below recommended changes to disability retirement will affect only the State Retirement System and will not affect, VSTRS (Teachers), or VMERS (Municipal) Retirement Systems. The Teachers’ and Municipal Systems will be reviewed by the Treasurer’s Office at a later date (not this session), as there are differences to their statutes that need to be reviewed.

Explanation of Additions/Changes from the Treasurer’s Office: The Treasurer’s Office worked closely with employee groups, the Commissioner of Human Resources, and the Attorney General’s Office to clarify the treatment of disability retirements within the state retirement

system and to add an income verification requirement for those retirees receiving disability retirement.

Disability retirement is a benefit that protects disabled employees who are not eligible for normal retirement. This protection is an essential fairness and provides retirement security. As fiduciaries to the retirement system the retirement boards must also take additional steps to ensure continuing eligibility, including verification of outside employment and adjustment to retirement benefits as needed. The proposed statutory change accomplishes this and also provides for re-employment rights when a retiree is deemed no longer disabled by the Medical Review Board.

The recommended changes do not impact the disability review process, which rest with the Medical review Board. But the proposed changes do offer remedy in cases where the individual is no longer disabled or is actively employed while receiving benefits.

The recommended changes do not add any additional costs to the state. In fact, the changes allow for a layer of protection in regard to potential fraud and therefore potential savings for the State.

The recommended changes were completed in partnership with the Department of Human Resources, the Attorney General's Office, Vermont State Employees Association and the Vermont Troopers Association.

The Treasurer's Office feels that the recommended changes in the language address deficiencies in the current statutory language in a fair and equitable manner, providing dignity to the member while maintaining a fiduciary responsibility to the State.

Proposed language additions/changes to H.304 would read:

Title 3, Chapter 16

§ 462. Reexamination of disability beneficiary

(a)

Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three year period thereafter, the retirement board may, and upon the member's application shall, require any disability beneficiary who has not reached his or her normal retirement date to undergo a medical examination, by the medical board or by a physician or physicians designated by the medical board, such examination to be made at the place of residence of such beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not reached his or her normal retirement date refuse to submit to such medical examination, the beneficiary's allowance may be discontinued until his or her withdrawal of such

refusal, and should the beneficiary's refusal continue for one year, all the beneficiary's rights in and to his or her pension may be revoked by the retirement board.

(b)

Should the medical board report and certify to the retirement board that any disability beneficiary has a residual functional capacity which might enable the beneficiary to return to work, and should the retirement board reasonably conclude that the beneficiary is engaged in or is, as a result of specific findings made by a certified vocational counselor, able to engage in a gainful occupation paying more than the difference between the beneficiary's retirement allowance and his or her average final compensation at retirement, the beneficiary's pension shall be reduced to an amount which, together with his or her annuity and the amount earnable by him or her, shall equal the beneficiary's average final compensation at retirement, adjusted for inflation each year following retirement on the same basis as for beneficiaries as provided in section 470 of this title; provided that: Should the beneficiary's earning capacity be later changed, his or her pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his or her annuity, equals the beneficiary's average final compensation at retirement. For the purposes of this subsection, "retirement allowance" shall mean the allowance payable without modification as provided in section 468 of this title.

- (1) The retirement board shall provide written notice and an opportunity to be heard to the beneficiary prior to any reduction of the beneficiary's pension under this subsection (b);
- (2) If the beneficiary has engaged in a gainful occupation subsequent to receiving disability retirement, the retirement board in its discretion may reject in whole or in part a vocational assessment of the beneficiary's ability to engage in a more gainful occupation and may rely in whole or in part on evidence of a beneficiary's actual earnings in determining the amount earnable by the beneficiary. In addition, if the retirement board's determination is based in whole or in part on a vocational assessment of ability to engage in a gainful occupation, the beneficiary shall be notified of his or her entitlement to the same reemployment rights as are available to State employees under the existing collective bargaining agreement entered into between the State and the applicable bargaining representative, or extension of such contractual benefits. Such rights shall commence as of the date of the determination and shall be based upon the reemployment rights said beneficiary would have had at the time they retired from State service. The reduction of pension amount will be held in abeyance until the reemployment rights have expired. In the event that the beneficiary is subsequently reemployed by the State, the beneficiary's retirement allowance shall cease, effective on the date when reemployment commences. In the event that the beneficiary is not subsequently reemployed by the State, the reduction of the beneficiary's pension shall commence the month following the month in which the beneficiary's reemployment rights expired;
- (3) In the event that a beneficiary's pension has been reduced and should the beneficiary's earning capability later change, his or her pension may be further modified; provided that no

reemployment rights shall be afforded to the beneficiary in connection with any later change and provided further that the new pension amount, together with the amount earnable by him or her, shall not exceed the beneficiary's average final compensation at retirement, adjusted for inflation; and

- (4) For the purposes of this subsection, "retirement allowance" shall mean the allowance payable without modification as provided in section 468 of this title.

(c)

Every recipient of disability benefits shall, annually on a date determined by the retirement board, file with the state treasurer a statement certifying, under penalty of perjury and in such form as the retirement board shall prescribe, the full amount of his or her earnings from earned income during the preceding calendar year. The state treasurer may request, and the beneficiary shall provide within 360 days of such request, additional financial information and records pertinent to the beneficiary's earned income. The beneficiary's statement and accompanying forms and schedules, and any other financial information and records provided by the beneficiary to the state treasurer shall be confidential. In the event that a beneficiary fails to submit the certification or any required or requested financial information or records pertinent to the beneficiary's earned income, the beneficiary's retirement allowance shall be suspended until all such information and records have been submitted, and in the event that the failure continues for one year, all the beneficiary's rights in and to his or her pension and any pending reemployment rights under this section may be revoked by the board. Notwithstanding any provision of this section 462, if the beneficiary's earned income for the preceding year exceeded the difference between the beneficiary's retirement allowance and his or her average final compensation at retirement, the beneficiary shall refund the portion of the preceding year's retirement allowance that is equal to the amount of the reduction specified in subsection (b), and the refund amount may be offset against the beneficiary's monthly pension benefits. Prior to suspension or revocation of the beneficiary's retirement allowance or reemployment rights or inception of any offset under this subsection (c), the retirement board shall provide the beneficiary with written notice and an opportunity to be heard.

Title 3, Chapter 16

§ 463. Reinstatement

(a)

~~Should a disability beneficiary be restored to service and should his or her annual earnable compensation then or at any time thereafter be equal to or greater than his or her average final compensation at retirement, or should any other beneficiary be restored to service, his or her retirement allowance shall cease, and the beneficiary shall again become a member of the retirement system, and he or she shall contribute thereafter at the same rate he or she paid prior to retirement. Anything in this subchapter to the contrary notwithstanding, upon his or her subsequent retirement, he or she shall be credited with all the service creditable to him or her at the time of his or her former~~

retirement. However, if such beneficiary is restored to membership after the attainment of the age of 55 years, his or her pension upon subsequent retirement shall not exceed the sum of the pension which he or she was receiving immediately prior to his or her last restoration to membership and the pension that may have accrued on account of membership service since his or her last restoration to membership, provided that the rate percent of his or her total pension on his or her subsequent retirement shall not exceed the rate he or she would have received had he or she remained in service during the period of prior retirement.

(b)

A member who has been reemployed is entitled to prior service credit upon depositing in the fund the contributions which would have been deducted from the member's compensation had he or she remained a member with interest as set forth in subdivision 473(c)(1) of this title. The member in order to qualify for the prior service credit must also deposit in the fund a sum equal to the contributions which would have been contributed by the state had he or she remained a member with interest as set forth in subdivision 473(c)(1) of this title.
