



STATE OF VERMONT
OFFICE OF THE STATE TREASURER

FY 2016 IRS Determination Letters- Proposed Amendments to Retirement Statutes

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

As noted by the IRS, a favorable determination means that the IRS has rendered an opinion that the plan's terms (as stated in the plan document or in Vermont's case, state statutes) meet the IRS requirements to be treated as a tax-exempt plan. It is a risk management tool. It provides the plans protection from the risk that the IRS will determine that the plan's written terms for the period covered by the determination letter don't satisfy the applicable tax qualification requirements. Again, as noted by the IRS "without the benefit of the favorable determination letter:

- The IRS could retroactively disqualify the plan back to the date of any defective amendments and the plan could lose the benefits of being tax-qualification for all affected years; or
- The plan sponsor would have to enter into a special closing agreement with the IRS and agree to pay relatively expensive sanctions to preserve the plan's tax-qualified status."

Clearly non-compliance could have serious implications to the State and the members of the retirement systems. The good news, however, is that the Retirement Boards and the Treasurer's Office have made good use of this risk management tool and have favorably completed the determination letter process several times since at least the 1990s. In doing so, we have been required to make certain amendments to update the plans (through statute) to maintain our continued compliance.

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.

These are summarized as follows with proposed language provided by the law firm of Locke Lord LLP that assisted us with this process. We can provide further documentation or language to Legislative Council.

State System (VSERS):

1. Section 472a(i) is amended by adding the following to the end thereof:
“For distributions made after December 31, 2009, a non-spouse beneficiary who is a designated beneficiary under Section 401(a)(9) of the Code may establish an individual retirement account into which all or a portion of a death distribution from the retirement system to which such non-spouse beneficiary is entitled can be transferred directly.”
2. Section 465(b) is amended by adding a new subsection (j) to read as follows:
“(i) The survivor(s) 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.”
3. Section 479(f) is amended by adding the following sentence to the end thereof.

“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.”

Teachers’ System (VSTRS):

1. Section 1943a(i) is amended by adding the following to the end thereof:

“For distributions made after December 31, 2009, in accordance with Section 402(c)(11) of the Code, a non-spouse beneficiary who is a designated beneficiary under Section 401(a)(9) of the Code may establish an individual retirement account into which all or a portion of a death distribution from the retirement system to which such non-spouse beneficiary is entitled can be transferred directly.”
2. Section 1940(b) is amended by adding a new subsection (3) to read as follows:

“(3) The survivor(s) 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.”
3. Section 1944(i) is amended by adding the following sentence to the end thereof:

“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.”

Municipal System (VMERS):

1. Section 5063a(i) is amended by adding the following to the end thereof:

“For distributions made after December 31, 2009, in accordance with Section 402(c)(11) of the Code, a non-spouse beneficiary who is a designated beneficiary under Section 401(a)(9) of the Code may establish an individual retirement account into which all or a portion of a death distribution from the retirement system to which such non-spouse beneficiary is entitled can be transferred directly.”

2. Section 5063(a)(j) is amended by adding the following to the end thereof:

“The survivor(s) 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.”