



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295

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ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

April 18, 2019

Thomas R. Kearns  
[REDACTED]

RE: [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Kearns:

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) to deny your request to waive the accrued interest owed on your outstanding pension loan balance as determined by the Division of Pensions and Benefits (Division). The Board initially reviewed and denied your request to waive the accrued interest assessed on the remaining payment owed on your loan balance at its meeting of January 16, 2019. You appealed the Board's decision via letter dated February 10, 2019. In your appeal, you argue that you should not be held liable for the State's failure to deduct your final loan payment. Also, you assert that the Board failed to offer you a 3 month cure period that the Internal Revenue Code (IRC) Section 72 (p)(2)(C) allows. At its meeting of March 20, 2019, the Board considered your appeal of that decision and determined that there are no material facts in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the PERS Board at its April 17, 2019 meeting.

The Board has reviewed your written submissions and the relevant documentation, and finds that the statutes, regulations and relevant case law governing the PERS do not permit the Board to waive the accrued interest on the outstanding loan balance.

### **FINDINGS OF FACT**

The record establishes that you were enrolled in the PERS in July 1978 as a result of your employment with the Departmental of Environmental Protection (DEP). Prior to your retirement, you took a pension loan from your PERS account and were issued a check dated January 31, 2001 in the amount of \$15,000.00, which was paid via check number 066085. Interest was calculated at 4.00% per year.<sup>1</sup> A Certification of Payroll Deductions (certification) was issued to your employer noting that your loan deductions would begin on February 24, 2001, for a total of 73 payments in the amount of \$215.60. At that time, your employer should have provided you with a copy of the Certification.

On June 18, 2002, the Division received your retirement application requesting an Early Retirement effective July 1, 2002. On July 26, 2002, DEP submitted the Certification of Service and Final Salary-Retirement form, certifying your last date of service would be on June 30, 2002, and that your pension and your loan deductions would continue through pay period #14, 2002. On February 6, 2003, a second Certification of Service and Final salary-Retirement was submitted by DEP, indicating that your last date of service would be on June 30, 2003, and that deductions including your loan payment would continue through pay period #15, 2003. Your employer filed a second certification because your employment was extended for a period of one year which changed the last date of your employment and therefore your retirement date was amended to July 1, 2003.

In a Quotation of Retirement Benefits dated February 13, 2003, you were notified that you could continue to pay your monthly loan deduction into retirement or pay the outstanding loan balance by remitting a check in the amount of \$2,352.87. This payoff assumed that loan deductions would continue through pay period #15, 2003. That date was based on the information certified by DEP, which indicated deductions would continue through that pay period. However, the last loan payment was made on biweekly pay period #14, 2003, and no loan deduction was made on pay

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<sup>1</sup> The interest rate of 4.00% was set by the State Treasurer pursuant to N.J.S.A. 43:15A-34.

period #15, 2003, as anticipated in the payoff amount provided to you by the Division. As its meeting on February 19, 2003, the PERS Board approved your Early retirement effective July 1, 2003. On June 9, 2003, the Division received your payment of \$2,352.87. Therefore, on June 11, 2003, the Division issued a certification to DEP, indicating that your loan deductions should discontinue based upon the loan payoff, expected to be as of pay period #15, 2003. Your employer also should have provided you with a copy of the notice.

On February 15, 2018, the Division notified you that a review of your PERS membership account revealed that you had an existing loan balance in the amount of \$215.60 as of July 1, 2003, your retirement date. This amount reflected the loan payment anticipated for pay period #15, 2003 when you were provided with the loan payoff information; however, this payment was never made. Therefore, the Division notified you that the principal owed would be withheld from your March 1, 2018 retirement check and that the accumulated interest would be determined and deducted from your April 1, 2018 check.

On February 23, 2018, you wrote to the Division indicating that you were willing to pay the principal but asked for a waiver of any accrued interest. Subsequently, you were provided with a notice that interest is owed in the amount of \$170.96. The interest period is from July 1, 2003 through March 31, 2018 and an interest rate of 4.00 percent was used to determine the amount of interest. On April 10, 2018, the Division informed you that they were unable to waive any interest for the outstanding loan balance. Additionally, in accordance with the Correction of Errors N.J.S.A. 43:15A-54 and N.J.S.A. 43:15A-34 and 34.1, the IRC and applicable regulations, interest must be paid on the loan balance until the loan is fully paid. You were provided with appeal rights to the PERS Board.

You filed an appeal to the PFRS Board on April 30, 2018 noting that you retired on July 1, 2003 with the understanding that all your obligations were paid and included documentation confirming your payment of \$2,352.87. You argue that it was not your fault that the last payment was not made before you retired and that you were appealing the decision to charge you interest.

On December 16, 2018, you were notified that the PERS Board would consider your appeal of the accrued interest at its meeting on January 16, 2019. The Board considered your submission as well as all relevant documentation and denied your request to waive the accrued interest owed on the outstanding loan balance. The basis of the Board's decision was set forth in its letter dated January 22, 2019.

Thereafter, you appealed the Board's determination. In the appeal, you note your prior arguments as well as your assertion that based upon your research the Board failed to offer you a 3 month cure period which you claim is warranted per IRC Section 72 (p)(2)(C). The Board considered your appeal at its meeting of March 20, 2019. The Board determined that there were no material facts in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law which constitutes the Board's Final Administrative Determination.

#### **CONCLUSIONS OF LAW**

N.J.S.A. 43:15A-34 governs the repayment of a PERS member's pension loan and states in part that "[t]he rate of interest for a loan requested by a member prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall be 4% per annum on any unpaid balance thereof." After the enactment of Chapter 92, the State Treasurer sets "a commercially reasonable rate" on January 1 of each calendar year. Ibid. Further:

Loans shall be made to a member from the member's aggregate contributions. The interest earned on such loans shall be treated in the same manner as interest earned from investments of the retirement system.

[N.J.S.A. 43:15A-34.]

N.J.S.A. 43:15A-34.1 governs the payment of loans carried into the member's retirement:

In the case of any member who retires without repaying the full amount so borrowed, the Division of Pensions and Benefits shall deduct from the retirement benefit payments the same monthly amount which was deducted from the compensation of the member immediately preceding retirement until the balance of the amount

borrowed together with the interest is repaid. In the case of a pensioner who dies before the outstanding balance of the loan and interest thereon has been recovered, the remaining balance shall be repaid from the proceeds of any other benefits payable on the account of the pensioner either in the form of monthly payments due to his beneficiaries or in the form of lump sum payments payable for pension or group life insurance.

The PERS is a “qualified governmental defined benefit plan pursuant to sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended, or such other provision of the federal Internal Revenue Code, as applicable, regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service.” N.J.S.A. 43:3C-18(a). The Director of the Division is “authorized to modify the provisions of the [PERS], when a modification is required to maintain the qualified status of the [PERS] under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service (IRS).” N.J.S.A. 43:3C-18(c).

IRC Section 401(a) and federal tax law require that pension loans comply with IRC Section 72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within 5 years of issuance and IRC Section 72(p)(2)(A) prohibits total outstanding loan amounts from exceeding \$50,000. Ibid. If a member fails to repay the pension loan within the 5-year period or the amount exceeds the IRS limit, then the loan becomes a “deemed distribution” taxable as income to the member and subject to additional penalties. IRC Section 72(p)(1). The deemed distribution does not cancel the loan obligation, which still must be repaid to the Plan, with applicable interest. See Rev. Proc. 2016-51, Section 6.02(1).

The PERS Board is also aware that the issue of the repayment of loans in retirement implicates more than just your loan. Because the PERS is a federally tax-qualified plan, as required by N.J.S.A. 43:3C-18(a), the PERS’s failure to comply with all the requirements of the IRC could result in the IRS determining that the PERS would no longer be a tax-qualified plan under IRC Sections 401(a) and 414(d). To that end, the Board is aware that the State Treasurer

and Director of the Division, in accordance with his authority and responsibility under N.J.S.A. 43:3C-18(c) to keep the PERS tax-qualified, signed a Closing Agreement with the IRS. In addition to setting forth methods to repay certain loans, the Closing Agreement reiterates that the plan is subject to IRC Section 72(p). Even when a loan is not properly repaid under the provisions of IRC Section 72(p), and there is a reported deemed distribution, the deemed distribution would not relieve a member of the obligation to repay the loan, with interest.

In your appeal, you assert that it was the State's neglect and not your fault that there was a remaining balance owed on your loan obligation. Also, that based upon your research the Board failed to offer you a 3 month cure period which as you claim is permitted per IRC Section 72 (p)(2)(C). While the Board acknowledges that the Division did not withhold the remaining loan payment from your pension check, interest accrues on any unpaid loan balance pursuant to N.J.S.A. 43:15A-34 and N.J.S.A. 43:15A-34.1. Thus, the Board finds that the cure period is not applicable here. Therefore, per the statutory requirements that govern the loan there is additional interest that accrued on your loan that must be repaid.

While the Board noted that the remaining payment on your loan was not carried into retirement and that this last payment was not deducted from your monthly retirement benefit, N.J.S.A. 43:15A-54, provides for the correction of errors, stating, in pertinent part:

If any change or error results in an employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive, then on discovery of the error, the retirement system shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

While the Board noted your arguments, it has no authority to grant your request to waive and/or refund the amount of accrued interest charged on your loan as doing so could harm the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008). Reducing interest on the outstanding loan balance would violate N.J.S.A. 43:15A-34 and N.J.S.A. 43:15A-34.1, IRC Section 72(p), and the State's Closing Agreement with

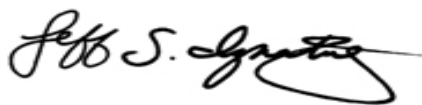
the IRS, which could result in the PERS no longer being considered a tax-qualified plan, which would affect the entire State, all employers in the PERS, and every member and retiree.

As noted above, the PERS Board has considered your written submissions and because this matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right, if you wish to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,



Jeff Ignatowitz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-9/JSI

C: DAG A. Chung (ET); DAG R. Kelly  
C. Chianese (ET); D. Dinkler (ET); M. Kusmierczyk (ET)