

# Congress of the United States

December 17, 2008

Washington, DC 20510

The Honorable Michael J. Astrue  
Commissioner of Social Security  
6401 Security Boulevard  
Baltimore, MD 21235

The Honorable Douglas Shulman  
Commissioner of Internal Revenue  
1111 Constitution Ave., NW  
Washington, DC 20224

Dear Commissioners Astrue and Shulman:

The Missouri Congressional delegation would like to thank you for sending representatives from the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to brief our offices on December 12, 2008, regarding the State of Missouri's Section 218 agreements with the SSA. While we found the session to be helpful and informative, it also raised a number of significant questions that clearly cannot be answered at this point. As your representatives acknowledged, Missouri's situation is complex and confusing, and your agencies are working with the State to clarify the situation before taking further action. We appreciate your agencies' acknowledgement of Missouri's unique situation and therefore, we request that the agencies take no further enforcement actions until these questions are adequately answered and sufficient clarity is provided to the school districts and employees.

During the December 12 session, your representatives provided an overview of the State's historical implementation of Section 218 of the Social Security Act. Throughout Missouri's 50 year history of Section 218, numerous modifications were made that affected retirement benefit coverage for public school employees. In fact, there are several variations even among school districts. Due to its long history and complexity, your representatives acknowledged that Missouri's situation with respect to its 218 agreements is unique compared to other states. As a result, there is no way of knowing how many public school employees would be affected by the change in interpretation and what the impact on affected employees might be.

While the State's execution and administration of Section 218 agreements has been confusing and uneven at times, and perhaps incorrect, it is unclear whether your agencies provided adequate oversight and guidance until the IRS initiated a compliance audit in 2004. According to your offices, Section 218 application and enforcement has been questionable for well over a decade, but your agencies failed to work with the State to rectify the situation. In fact, a 1996 audit (Audit Report #A-04-95-06013) by the SSA Office of Inspector General (OIG) found that federal oversight had been "erratic" despite the statutory responsibilities of SSA and the IRS. To address these findings, the IRS began to take a more systematic approach to conduct examinations of public employers to ensure compliance with Federal Insurance Contributions Act (FICA) tax withholdings. We appreciate that SSA and the IRS have taken action in recent years to address these problems but more importantly, the agencies also have recognized the potential devastating consequences to Missouri public school employees and districts. At the meeting, the IRS ruled out the possibility of recovering back taxes, penalties, or interest



due to the circumstances surrounding Missouri's section 218 agreements. We fully support this decision.

We were pleased to hear that the IRS and SSA are convening a working group with the Missouri Office of the State Administrator and the Public School Retirement System (PSRS) to study the problem and recommend a course of action to address it. We understand that the first meeting of the working group is to convene this week and will report on a course of action after 60 days. While we appreciate your efforts through this working group, we have significant concerns with this process. We believe that 60 days may not be enough time to assess the situation given its complexities and to develop a workable plan. Further, we are very concerned about providing adequate time for Missouri school districts and employees to conform to any new guidance. It should be noted that, right now, current and potential public school employees are in the process of weighing career decisions in preparation for signing contracts in February. It is unfair to ask these employees to make such important life decisions without full knowledge and adequate time to assess the impact of potential changes on their monthly paychecks and their future retirement income.

Given the significant and numerous questions with the State's Section 218 agreements and the timetable set for the working group, there are significant questions about the July 1, 2009, deadline that was established for the state's school districts to come into compliance with changes stemming from the 218 agreements. We are pleased that the State of Missouri and your agencies recently acknowledged concerns with the deadline. The Missouri Office of Administration's November 21, 2008, letter noted that the July 1, 2009, deadline would not allow enough time for Missouri school districts to begin conforming to the guidance from SSA and IRS and requested a delay until July 2010. The State's letter also laid out 9 issues that needed to be addressed before any action could be taken. In response to this request, SSA and IRS sent a letter on December 2, 2008, stating that you would revisit the State's request after the working group has reviewed the Section 218 agreement issues after 60 days. You also concurred that "there are many issues that need to be addressed" and thanked the State for "identifying some of these issues..."

Due to the numerous questions and issues raised at our December 12, 2008, meeting with your representatives, we respectfully request a written response by no later than Tuesday, December 30, 2008, that addresses our two most significant concerns. First, we ask that the IRS clearly state that it does indeed commit to its plan to not assess or collect any back tax penalties or interest and will take tax compliance actions and enforcement in a prospective manner when sufficient clarity on the 218 agreements is provided. Second, given the sensitivity to timing of the schools' contract negotiations, we request that the SSA and IRS eliminate any set implementation deadline, including the proposed July 1 deadline, until there is a clear understanding of what changes should be made.

We hope that we can work with the IRS and SSA to go forward in a way that is fair and reasonable to all involved and protects the integrity of the State of Missouri and Federal retirement and tax systems. We are especially concerned about the employees and school

districts that have minimal control over the situation and are the most impacted by these decisions.

Again, thank you for briefing the delegation and for working to resolve this issue in a fair and reasonable manner. We look forward to continuing to work together for a resolution and would ask to be briefed by a representative of the working group on their findings when they complete their work. Please contact Melissa Garza at (202) 224-6154 or [Melissa\\_Garza@McCaskill.Senate.Gov](mailto:Melissa_Garza@McCaskill.Senate.Gov) to schedule the briefing.

Respectfully,



Claire McCaskill  
United States Senator

Christopher S. Bond  
United States Senator



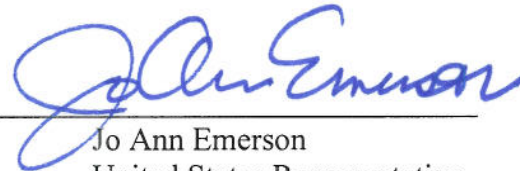
Sam Graves  
United States Representative



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CC: Thomas J. Sadowski, Director of Accounting State of Missouri