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MEMORANDUM

TO: Missouri School Districts with §218 Agreements
FROM: Vandee DeVore, Assistant Social Security Administrator
DATE: October 22, 2008
RE: Social Security & Medicare Withholding (Category #1)

The Social Security Administration (SSA) has determined that many Missouri school districts have been improperly excluding some employees from social security coverage when the employees were working in positions covered by the district's Section 218 agreement. A Section 218 agreement is a written voluntary agreement between the State, the political subdivisions, and the SSA to provide Social Security and Medicare coverage for state and local government employees. Under Missouri Section 218 agreements, the only school district positions excluded from social security coverage are those positions that were under a retirement system (defined by state law) on the date the district executed its Section 218 Agreement. Missouri school district agreements fall into three categories:

1. Agreements executed before 11/1/1965
2. Agreements executed from 11/1/1965 to 8/12/1984
3. Agreements executed after 8/12/1984

Social security coverage for Category #1 and #2 agreements is identical, whereas coverage for Category #3 agreements is somewhat different. Your district has a Category #1 agreement (a detailed explanation of your district's §218 agreement is attached). On the date your district executed its agreement, the following positions were positions under the Public School Retirement System (PSRS) and are therefore excluded from social security coverage:

Teacher, Teacher-secretary, Substitute Teacher, Supervisor, Principal, Supervising Principal, Superintendent or Assistant Superintendent, Nurse, or Librarian

PSRS members working in any other position must be covered by social security under your school district's Section 218 agreement. The only time rehired PSRS annuitants are excluded from social security is when they are allowed to start new PSRS memberships and are making current contributions to PSRS. State law (§169.561 RSMo) requires members of PSRS to be defined as contributing members.

It is important that you bring your school district into compliance with the above withholding practices beginning July 1, 2009 (the 2009-2010 school year). The IRS will be specifically addressing this issue in employment tax audits of fiscal years beginning in 2009 and forward. The only employees your school district will exclude from social security coverage after 6/30/09 are PSRS members working in the

positions of teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian. These positions are defined as follows:

- **Teacher:** A position in which the occupant is required by State law, on the date the District executed its §218 agreement, to have a Missouri teaching certificate, or, if the position was created after the District executed its §218 agreement, on the date such new position was created. If the **State** does not initially require the occupant of a position to have a Missouri teaching certificate but later imposes such requirement, then that position will not be a “teacher” position for §218 purposes and it will remain covered by §218 social security. If a **District** imposes a teacher certification requirement on a position for which State law does not require teacher certification, then that position will not be considered a “teacher” position for §218 purposes and it will remain covered by §218 social security. For example, State law does not require “hall monitors,” “study hall monitors,” “teacher’s aides,” “instructional aides,” “coaches,” etc., to have Missouri teaching certificates, thus, individuals occupying such positions are not “teachers” for §218 purposes and are covered by §218 social security.
- **Teacher-Secretary:** A position whereby the individual works part-time in a “teacher” (as defined above), and part-time as a secretary. The term “Teacher-Secretary” does not include “substitute teachers” who also work “part-time as “secretaries” because the job duties and qualifications for a “teacher” are substantially different than those for a “substitute teacher.” Thus, the term “Teacher-Secretary” would include only “part-time teachers” who also work as “part-time secretaries.”
- **Substitute Teacher:** A position whereby the occupant stands in for a teacher on a temporary basis. Individuals in this position are required to have a Missouri “substitute certificate of license to teach.”
- **Supervisor:** A position whereby the occupant is certificated and is employed in the supervision of instruction, or in teaching and in the supervision of instruction.
- **Principal, Supervising principal, Superintendent or assistant superintendent:** Individuals in these positions are required by State law to have both teaching certificates and administrator certificates.
- **Nurse:** A position requiring Missouri Registered Nurses (RN) certification. This would not include LPN positions because the LPN position is a different position with different State certification requirements and legally restricted nursing duties; LPNs may only work under the direction of a doctor or RN. When the PSRS statutes were written, State law specified that it was illegal to apply the term “nurse” to anyone other than a “registered” nurse.”
- **Librarian:** A position requiring Missouri librarian certification. The Missouri Department of Elementary and Secondary Education (DESE) currently refer to the librarian position as “Library Media Specialist” and to the certification as “Library Media Specialist Certification.”

Positions initially covered by the §218 Agreements are part of an absolute coverage group and cannot become exempt from Social Security coverage even if State law is changed to include such positions under the retirement system subsequent to the agreement. Some of these positions include, but are not limited to, bus driver, coach, cook, and custodian. Rehired annuitants are also an area where districts may need revision of withholding practices (see attached §218 explanation for specific information).

There may be instances where a district employee holds two positions which have different withholding rules. An example of this would be a Substitute Teacher who is excluded from Social Security as a member of PSRS, but who is covered by Social Security when working as a part-time Bus Driver. Payroll systems may need to be modified to allow for such multiple withholding situations.

If any district wants to correct **prior** year Social Security coverage for erroneously excluded employees, it must voluntarily pay the associated social security taxes for such prior years. It is at the discretion of each district to determine prior year coverage. Some issues to consider include:

- the district’s ability to verify employee wages for previous years
- compliance in filing W2C and 941C forms with the IRS
- filing of Forms W-2C with SSA will result in automatic Social Security tax assessments by IRS if Forms 941C are not filed.

The State of Missouri will compile a website of frequently asked questions for this issue. Please check the www.oe.mo.gov/acct website often for updates under the *State Social Security Administration* heading. If you have additional questions that are not addressed on that site, you may email your questions to 218agreements@oe.mo.gov.

Social Security Treatment of Missouri Public School Employees For Districts that executed §218 Agreements before 11/01/65.

Summary of positions excluded:

In school districts that executed §218 agreements before 11/01/65, the only employees excluded from both §218 social security coverage and from “mandatory social security” coverage are:

- PSRS members (including rehired PSRS annuitants with new PSRS memberships) working in the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian.”

The rest of this document explains why.

Significant dates:

- 11/01/65 - NTRS/PEERS began operations (RSMo §169.610(1)).
- 07/01/00 - NTRS/PEERS became a social security equivalent retirement plan when it began paying 1.51% (now 1.61%) of employee’s high 3 salary years (see Revenue Procedure 91-40).

Positions under a retirement system:

- Missouri’s §218 agreement excludes positions covered by a retirement system.
- On the dates these §218 agreements were executed, PSRS was the only retirement system in existence.
- On the dates these §218 agreements were executed, PSRS positions were defined by RSMo §169.010(6) as: “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian.” Thus:
 - In these school districts, the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, and librarian” are excluded from §218 social security coverage because they were positions under a retirement system on the dates these §218 agreements were executed. A §218 modification covering PSRS ineligible is required to cover non-PSRS members in these positions (see “PSRS ineligible” below).

Note: Individuals performing part-time services in these PSRS positions occupy the same position as those performing full-time services because the only difference between them is the number of hours worked. For example, full-time teachers and part-time teachers are required by State law to have teaching certificates and their job duties are substantially the same.
 - In these school districts, all positions other than the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, and librarian” (i.e. bus driver, coach, secretary, teacher’s aide) are covered for social security as part of the §218(b)(5) absolute coverage group (see “§218(b)(5) absolute coverage group:” below). PSRS members in these positions are covered by §218 social security.
- When NTRS/PEERS began operations on 11/01/65, it covered all employees who were not covered by PSRS and who worked 20 or more hours per week, including PSRS ineligible. However, because NTRS/PEERS was not in existence on the dates these §218 agreements were executed, its introduction did not alter existing §218 coverage; see “§218(b)(5) absolute coverage group” below.

Social Security Treatment of Missouri Public School Employees For Districts that executed §218 Agreements before 11/01/65.

Positions under a retirement system (continued):

- PSRS ineligibles for these school districts are employees in the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian,” but who do not qualify for PSRS membership. PSRS ineligible is excluded from §218 social security coverage because they are in positions that were under a retirement system on the dates these §218 agreements were executed. However, §218 coverage may be provided to PSRS ineligible via a §218 modification. Since all of these school districts executed modifications covering PSRS ineligible, PSRS ineligible are covered by §218 social security.
- Rehired PSRS annuitants: When determining the treatment of rehired PSRS annuitants, it’s important to understand that the “exclusion” from coverage for retired annuitants only applies to “mandatory social security,” it does not apply to social security coverage under a §218 agreement. Because PSRS membership terminates upon retirement and cannot be reactivated, in these districts rehired PSRS annuitants working in the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian” are PSRS “ineligible.” RSMo §169.050(4) and §169.560. However, some rehired PSRS annuitants are allowed to start new PSRS memberships and are therefore PSRS members. RSMo §169.561. Consequently, we must first determine whether or not the PSRS annuitant was allowed to start a new PSRS membership. Thus:
 - In these school districts, rehired PSRS annuitants who were not allowed to start new PSRS memberships are PSRS ineligible and are therefore covered by §218 social security.
 - In these school districts, rehired PSRS annuitants who were allowed to start new PSRS memberships are treated the same as any other PSRS member:
 - If they are working in the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian,” they are excluded from §218 coverage because they are in positions that were under a retirement system on the dates these §218 agreements were executed.
 - If they are working in any other position (i.e. bus driver, coach, secretary, teacher’s aide), they are covered by §218 social security as part of the §218(b)(5) absolute coverage group because §218 coverage trumps “mandatory social security’s” exclusion for rehired annuitants.
- Rehired NTRS/PEERS annuitants: Because NTRS/PEERS was not in existence on the dates these §218 agreements were executed, rehired NTRS/PEERS annuitants are covered as part of the §218(b)(5) absolute coverage group (see “§218(b)(5) absolute coverage group” below).

§218(b)(5) absolute coverage group:

- In these school districts, all positions other than the PSRS positions of “teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, nurse, or librarian” are covered by §218 social security as part of the §218(b)(5) absolute coverage group because they were not positions under a retirement system on the dates these §218 agreements were executed (i.e. bus driver, coach, secretary, teacher’s aide).
- Once §218 coverage is provided to a coverage group, it may not be terminated. Thus, the 1984 expansion of PSRS to these §218(b)(5) absolute coverage positions did not terminate the §218 social security coverage of anyone in these positions.
- Rehired PSRS annuitants working in these §218(b)(5) absolute coverage positions are covered by §218 social security.

Social Security Treatment of Missouri Public School Employees For Districts that executed §218 Agreements before 11/01/65.

§218(d)(4) retirement system coverage group:

- In Missouri, §218 social security coverage of retirement system positions may only be provided via a majority vote referendum under §218(d)(4); see SL §30001.323.
- None of these §218 agreements, or modifications to them, provide §218(d)(4) coverage of PSRS positions.
- None of these §218 agreements, or modifications to them, provide §218(d)(4) coverage of NTRS/PEERS positions. Even though NTRS/PEERS began covering all non-PSRS positions on 11/01/65, a §218 modification is not required because all non-PSRS positions were already covered as part of the §218(b)(5) absolute coverage group.