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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 #3)

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 subdivision, and 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 #3 agreement (a detailed explanation of your district's §218 agreement is attached). On the date your district executed its agreement, all district positions were under either the Public School Retirement System (PSRS) or the Non-Teachers Retirement System (now PEERS). The only employees excluded from §218 Social Security coverage are:

- PSRS members working in any position.

All other employees are covered by social security under your 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 PSRS contributions.

It is important that you bring your school district into compliance with the above 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.

There may be instances where a district employee holds two positions which have different withholding requirements. 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 part-time as a "Bus Driver." Payroll systems may need to be modified to allow for such multiple withholding situations.

If any district wants to correct prior year's 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 Forms W-2C with SSA and Forms 941c with 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.oa.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@oa.mo.gov.

Social Security Treatment of Missouri Public School Employees For Districts that executed §218 Agreements after 8/12/84.

Summary of positions excluded:

In school districts that executed §218 agreements after 8/12/84, the only employees excluded from §218 social security coverage are:

- PSRS members working in any position. (Note: PSRS annuitants are “PSRS members” only if they have been allowed to start new PSRS memberships.)

The rest of this document explains why.

Significant dates:

- 08/13/84 - PSRS eligibility was expanded to all school district positions (1984 SB 407). Only four school districts executed §218 agreements after 8/12//84.

Positions under a retirement system:

- Missouri’s §218 agreement excludes positions covered by a retirement system.
- On the dates these §218 agreements were executed, all school district positions were positions under both PSRS and NTRS/PEERS because any employee who occupied any position could become a member of either PSRS or NTRS/PEERS by virtue of his/her occupancy of any position. (SL §30001.321(C)).
- On the dates these §218 agreements were executed, PSRS positions were defined as any position occupied by a certified teacher. Thus, PSRS members working in any position in these school districts are excluded from §218 social security coverage because they are part of the PSRS §218 excluded retirement system group.
- On the dates these §218 agreements were executed, NTRS/PEERS positions were defined as any position not occupied by a certified teacher. Thus, absent §218 provisions covering the NTRS/PEERS §218(d)(4) retirement system coverage group, the NTRS/PEERS positions would also be excluded from §218 social security coverage. However, all four of the school districts that executed §218 agreements after 8/12/84 include §218(d)(4) coverage of NTRS/PEERS positions (see “§218(d)(4) retirement system coverage group” below).
- PSRS ineligibles are employees, working in any school district position, who do not qualify for PSRS membership. PSRS ineligible would normally be excluded from §218 coverage absent a §218 modification covering them. None of these school districts’ §218 agreements cover PSRS ineligible, however, all four of them cover the NTRS/PEERS §218(d)(4) retirement group. Because NTRS/PEERS covered PSRS ineligible on the dates these §218 agreements were executed, the PSRS ineligible are in positions under both PSRS and NTRS/PEERS (SL §30001.340(D) and §30001.350(A)). Consequently, the PSRS ineligible in these four school districts are covered by §218 social security as part of the NTRS/PEERS §218(d)(4) retirement system coverage group (see “§218(d)(4) retirement system coverage group” below).
- NTRS/PEERS ineligibles are employees in any position who do not qualify for NTRS/PEERS membership. NTRS/PEERS ineligible would normally be excluded from §218 coverage absent a modification covering them. However, when a retirement system group is covered under §218(d)(4), both members and ineligible are covered (SL §30001.340(D)). Because all four of these school districts’ §218 agreements cover the NTRS/PEERS §218(d)(4) retirement system coverage group, the NTRS/PEERS ineligible are covered by §218 social security (see “§218(d)(4) retirement system coverage group” below).

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Social Security Treatment of Missouri Public School Employees For Districts that executed §218 Agreements after 8/12/84.

Positions under a retirement system (continued):

- **Rehired PSRS annuitants:** When determining the treatment of rehired PSRS annuitants, it is important to understand that the “exclusion” from coverage for retired annuitants only applies in the case of “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, rehired PSRS annuitants are normally PSRS “ineligibles.” 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:
 - In these four school districts, rehired PSRS annuitants who were allowed to start new PSRS memberships are treated the same as any other PSRS member; they are excluded from §218 social security coverage because all school district positions were under PSRS on the dates these §218 agreements were executed.
 - In these four school districts, rehired PSRS annuitants who were not allowed to start new PSRS memberships are PSRS ineligible and would normally be excluded from §218 coverage absent a §218 modification covering them. However, all four of these school districts’ §218 agreements cover the NTRS/PEERS §218(d)(4) retirement group and because NTRS/PEERS covered PSRS ineligible on the dates these §218 agreements were executed, the rehired PSRS annuitant PSRS ineligible are in positions under both PSRS and NTRS/PEERS (SL §30001.340(D) and §30001.350(A). Consequently, the rehired PSRS annuitant PSRS ineligible in these four school districts are covered by §218 social security as part of the NTRS/PEERS §218(d)(4) retirement system coverage group (see “§218(d)(4) retirement system coverage group” below).
- **Rehired NTRS/PEERS annuitants:** In these school districts, rehired NTRS/PEERS annuitants working in any position are covered by §218 social security because they are in positions under NTRS/PEERS and are covered as part of the NTRS/PEERS §218(d)(4) retirement system coverage group (see §218(d)(4) retirement system coverage group below).

§218(b)(5) absolute coverage group:

- In these four school districts, because all school district positions were under a retirement system on the dates their §218 agreements were executed, there are no §218(b)(5) absolute coverage groups.

§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 school districts’ §218 agreements, or modifications to them, provide §218(d)(4) social security coverage of PSRS positions.
- All four of these school districts’ §218 agreements provide §218(d)(4) coverage of NTRS/PEERS positions.
- Because all positions in these school districts are under both PSRS and NTRS/PEERS, all employees who are not members of PSRS are covered by §218 social security as part of the NTRS/PEERS §218(d)(4) retirement system coverage group.