

Department of the Treasury—Internal Revenue Service

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

THIS CLOSING AGREEMENT under and pursuant to section 7121 of the Internal Revenue Code (“I.R.C.”) by and between the Public Schools of Michigan listed in the Addendum (“Taxpayers”), which is made a part hereof, and the Commissioner of Internal Revenue:

WHEREAS, the State of Michigan originally created a system providing retirement benefits for employees of the State’s public school and other education-related entities under Michigan Public Act 136 of 1945, and the retirement system was reestablished and renamed the Michigan Public School Employees Retirement System (“MPERS”) by Michigan Public Act 300 of 1980, codified as Chapter 38 of the Michigan Code;

WHEREAS, pursuant to Michigan Public Act 77 of 2010 (“PA 77”), the Public School Employees’ Retirement System Health Care Trust (“Trust”), a trust whose gross income is excludable under I.R.C. § 115, was created for the purpose of funding retiree health benefits for employees in the Michigan Public School Employees’ Retirement System Health Care Plan (“Plan”);

WHEREAS, pursuant to PA 77 section 2a(2), Trust assets may be used solely to pay for expenses for medical care, as defined under I.R.C. § 213(d), incurred after retirement (“health benefits”) and for administrative expenses of the Plan and Trust;

WHEREAS, MPERS was amended by Michigan Public Act 75 of 2010 (“PA 75”) to require a 3 percent mandatory reduction in employees’ compensation to be contributed to the Trust as an employer contribution from July 1, 2010, through September 3, 2012;

WHEREAS, on July 1, 2010, Taxpayers began withholding the required 3 percent amount and contributing the same to the Trust;

WHEREAS, PA 75 was found to be unconstitutional under the Michigan Constitution by the Michigan Supreme Court;

WHEREAS, MPERS was further amended by Michigan Public Act 300 of 2012 (“PA 300 of 2012”) to provide the same retiree health benefits as PA 75, and to provide employees with the opportunity to make a one-time irrevocable election to opt out of the future right to receive retiree health benefits;

WHEREAS, pursuant to PA 300 of 2012, as amended by Michigan Public Act 359 of 2012 (“PA 359 of 2012”), employees were permitted to make a one-time irrevocable election during the period beginning September 4, 2012, and ending January 9, 2013, to opt out of the future right to receive retiree health benefits;

WHEREAS, the one-time irrevocable election to opt out of the future right to receive retiree health benefits became effective on the first day of the pay period that began on or after February 1, 2013;

WHEREAS, employees who opted out of the future right to receive retiree health benefits under the Plan are no longer subject to a 3 percent reduction in their compensation;

WHEREAS, employees who did not opt out of the future right to receive retiree health benefits under the Plan continue to be subject to a 3 percent reduction in their compensation for the duration of their employment with Taxpayers;

WHEREAS, Taxpayers and the Commissioner desire to enter into this Agreement to address their tax obligations with respect to employees who did not exercise the one-time irrevocable election to opt out of the future right to receive retiree health benefits under the Plan and who continue to be subject to a 3 percent reduction in their compensation;

WHEREAS, in connection with signing this Agreement, for taxable years 2013 through 2020 for which the period of limitations on claims of credit or refund under I.R.C. § 6511 has not expired, Taxpayers will file a Form W-2c (Corrected Wage and Tax Statement) to reduce the amount of income and wages shown in boxes 1, 3, and 5 for each employee who did not opt out of the future right to receive retiree health benefits under the Plan and whose 3 percent contributions were treated as taxable employee contributions and will inform each affected employee that he or she may file a Form 1040-X (Amended U.S. Individual Income Tax Return) to obtain a refund of the income taxes withheld on the 3 percent contributions;

WHEREAS, the determinations set forth above are hereby agreed to by Taxpayers.

NOW IT IS HEREBY DETERMINED AND AGREED for Federal income tax purposes as follows:

1. For taxable years 2013 through 2026, for employees who did not opt out of the future right to receive retiree health benefits under the Plan and who continue to be subject to a 3 percent reduction in their compensation, amounts deducted from the employees' compensation and contributed to the Trust are treated as employer contributions and are not treated as income under I.R.C. § 106.

2. For taxable years 2013 through 2026, for employees who did not opt out of the future right to receive retiree health benefits under the Plan and who continue to be subject to a 3 percent reduction in their compensation, amounts deducted from the employees' compensation and contributed to the Trust are not treated as "wages" for purposes of FICA taxes under I.R.C. § 3121(a), or income tax withholding under I.R.C. § 3401(a).

3. This Agreement constitutes resolution under the Internal Revenue Code of the specific matters discussed herein. No inferences shall be made with respect to whether this resolution satisfies other Federal or state laws.

4. This Agreement and resolution of the issues herein do not qualify as an examination or inspection under I.R.C. §§ 7602 or 7605(b), or as an audit for purposes of Section 530 of the Revenue Act of 1978.

This matter is final and conclusive except that:

a. It may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

b. It is subject to the Internal Revenue Code provisions that expressly provide that effect be given to their provisions (including any stated exception under I.R.C. § 7122) notwithstanding any other law or rule of law; and

c. With respect to a taxable year ending after the date of this Agreement, it is subject to any law enacted after the date of this Agreement that applies to that taxable year.

By signing, the above Parties certify that they have read and agreed to the terms set forth herein.

* * * * *

Taxpayers:

By: _____

Date Signed: _____

Printed Name: _____

Title: Authorized Representative for Taxpayers

Commissioner of Internal Revenue:

By: _____

Date Signed: _____

Printed Name: _____

Title: _____