

**11—64.12(8A) Tax-sheltered annuities (TSAs).**

**64.12(1) Administration.** The director is authorized by 2003 Iowa Code Supplement section 8A.402 to administer a tax-sheltered annuity program for eligible employees.

**64.12(2) Definitions.** The following definitions shall apply when used in this rule:

“*Company*” means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under Iowa Code section 8A.438.

“*Employee*” means an employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system, or an employee of a participating employer.

“*Employer*” means the state of Iowa, a public school district in the state of Iowa, an area education agency in the state of Iowa, or a community college in the state of Iowa.

“*Participating employee*” means an employee participating in the plan.

“*Participating employer*” means an employer that has elected to join the state’s tax-sheltered annuity plan.

“*Plan*” means the tax-sheltered annuity plan authorized in Iowa Code section 8A.438.

“*Plan administrator*” means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

“*Plan year*” means a calendar year.

“*Policy*” means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and Iowa Code section 8A.438.

“*Salary reduction form*” means the tax-sheltered annuity form signed by the participating employee to begin or change payroll deductions.

**64.12(3) Eligibility.**

*a. Initial eligibility.* Any employee who works for the department of education, the board of regents administrative office, or a participating employer is eligible to participate in this plan. Participating employers may establish different eligibility requirements, as long as the requirements conform to IRC Section 403(b) and the applicable federal regulations. Final determination on eligibility shall rest with the plan administrator.

*b. Eligibility after terminating reduction of compensation.* Any employee who terminates the reduction of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4)“a” and “b” and 64.12(6)“a.”

**64.12(4) Enrollment and termination.**

*a. Enrollment.* State employees may enroll in the plan at any time. Participating employers may establish different enrollment periods, as long as the periods conform to IRC Section 403(b) and the applicable federal regulations. The salary reduction form must be submitted to the employing agency’s personnel assistant or payroll office for approval.

*b. Forms submission.* State personnel assistants shall provide the plan administrator with the salary reduction form in a timely manner.

*c. Termination of salary reductions.* A participating employee may terminate salary reductions by providing to the employing agency’s personnel assistant or payroll office written notification on a form required by the plan administrator.

*d. Availability of forms.* It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the investment provider.

**64.12(5) Tax status.**

*a. FICA and IPERS.* The amount of compensation reduced under the salary reduction form shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

*b. Federal and state income taxes.* The amount of earned compensation reduced under the form is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

**64.12(6) Reductions from earnings.**

*a. Salary reduction amount changes.* Participating employees may increase or decrease their salary reduction amount by providing to their personnel assistant or payroll office written notice on a form

required by the plan administrator. Salary reduction amounts may be changed to permit a one-time lump sum contribution from the last paycheck due to termination of employment.

*b. Maximum salary reduction limits.* Employees' salary reductions may not exceed the maximum limit set forth in federal law.

*c. Minimum salary reduction amount.* Participating employers may establish a minimum amount as long as the minimum conforms to IRC Section 403(b) and the applicable federal regulations.

**64.12(7) Companies.**

*a. Time of payment.* Participating employers shall transmit amounts within 15 business days after the end of the calendar month.

*b. Cooperation with third-party administrator.* Companies are required to cooperate with the plan's third-party administrator, including the provision of daily account information as well as any other data or information required for administration of the plan.

*c. Annual status report.* Each company shall provide to the participating employee at the employee's home address an annual status report stating the value of each participant's policy. This practice shall be continued even after the participating employee terminates or stops contributions to the plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

*d. Crediting of accounts.* Companies must minimize crediting errors and provide timely and reasonable credit resolution.

*e. Solicitation.* There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator or participating employer.

*f. Dividends.* The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

*g. Removal from participation.* Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

**64.12(8) Disposition of funds.**

*a. Distribution eligibility.* An employee is eligible for a distribution of funds based upon any of the following circumstances: severance of employment; reaching age 59½; becoming disabled; qualifying for a financial hardship; or becoming eligible for a reservist distribution. Distribution will be made in accordance with applicable IRS regulations.

*b. Financial hardship.* A participating employee may request to withdraw some or all of the salary reduction contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New contributions to the plan will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.

*c. Federal and state withholding taxes.* It is the company's responsibility, when making payments to an employee, to withhold the required federal and state income tax, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.

*d. Federal penalties.* Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.

**64.12(9) General.**

*a. Orientation and information meetings.* Employers may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings without employer approval.

*b. Company changes.*

(1) If a participating employee wishes to redirect contributions to another company, the employee shall submit a form to the personnel assistant or payroll office in accordance with paragraph 64.12(6) "a."

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy, if allowed under the participating employer's plan elections, in accordance with the plan's policies and applicable IRC Section 403(b) provisions.

*c. Deferred compensation or tax-sheltered annuity participation—maximum contribution.* State employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.

*d. Direct transfer/rollover.*

(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.

(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.

**64.12(10) Forfeiture.** IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

**64.12(11) Nontransferability.** The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

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