

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 8A.104(5) and 8A.438, the Department of Administrative Services hereby amends Chapter 64, "Benefits," Iowa Administrative Code.

This amendment reflects a change to the tax-sheltered annuity plan required by 2008 Iowa Acts, chapter 1171, which broadens the coverage of the plan to include employees of public school districts, area education agencies, and community colleges.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment are impracticable because these changes are noncontroversial.

This amendment shall become effective February 18, 2009.

The following amendment is intended to implement Iowa Code section 8A.438 as amended by 2008 Iowa Acts, chapter 1171, section 57.

The following amendment is adopted.

Amend rule 11—64.12(8A) as follows:

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

64.12(1) No change.

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 ~~2003~~ Iowa Code Supplement section 8A.438.

"Employee" means ~~a full-time or part-time nontemporary~~ 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 ~~2003~~ Iowa Code Supplement 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 ~~2003~~ Iowa Code Supplement section 8A.438.

"Salary reduction ~~agreement form~~" means the tax-sheltered annuity ~~agreement form~~ signed by the participating employee to begin or change payroll deductions.

64.12(3) Eligibility.

a. *Initial eligibility.* Any ~~full-time or part-time nontemporary~~ employee who ~~is regularly scheduled to work for 20 or more hours per week and who works for the department of education, or the board of regents administrative office, or a participating employer~~ is eligible to ~~defer compensation under this rule.~~ 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 ~~deferral~~ reduction of compensation.* Any employee who terminates the ~~deferral~~ reduction of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4) "a" and "b" and 64.12(6) "~~b.~~" "a."

64.12(4) Enrollment and termination.

a. Enrollment. ~~Employees~~ State employees may enroll in the ~~tax sheltered annuity~~ plan at any time. ~~Employees are responsible for selection and monitoring of their investments.~~ Participating employers may establish different enrollment periods, as long as the periods conform to IRC Section 403(b) and the applicable federal regulations. ~~The request for a salary reduction agreement form must be submitted to the employing agency's personnel assistant or payroll office for approval in accordance with subrule 64.12(11). A satisfactorily completed enrollment form must be received by the personnel assistant no later than the fifteenth day of a calendar month in order for deductions to begin with the first paycheck of the following month.~~

b. Forms submission. ~~The State personnel assistant~~ assistants shall provide the plan administrator with the ~~applicable enrollment salary reduction~~ form in a timely manner.

c. Termination of participation in the plan salary reductions. A participating employee may terminate ~~participation in the plan 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 ~~agency of employment~~ investment provider. ~~It is the responsibility of each agency to inform its employees where and how they may obtain these forms. The plan administrator shall prescribe the forms and advise agencies as to their availability.~~

64.12(5) Tax status.

a. FICA and IPERS. The amount of compensation ~~deferred~~ reduced under the salary reduction ~~agreement 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 ~~deferred~~ reduced under the ~~agreement 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) ~~Deductions~~ Reductions from earnings.

a. ~~When deducted.~~ ~~Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation shall be deducted from the first paycheck of the month, the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals will not be deducted from the third paycheck of a month.~~

~~b. a.~~ Deferral Salary reduction amount changes. Participating employees may increase or decrease their ~~monthly deferral salary reduction~~ amount by providing to ~~the employing agency's~~ their personnel assistant or payroll office written notice on a form required by the plan administrator. ~~Contributions can~~ Salary reduction amounts may be changed to permit a one-time lump sum ~~deferral contribution~~ from the last paycheck due to termination of employment.

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

~~d. c.~~ Minimum salary reduction amount deferred. ~~The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be \$25. 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. ~~Identification number.~~ ~~Each participating company shall be assigned an identification number by the plan administrator.~~

~~b. a.~~ Time of payment. ~~The plan administrator~~ Participating employers shall transmit payments to ~~the companies~~ amounts within 15 business days after the ~~last workday of each~~ 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 ~~cancels participation in~~ 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. Termination of employment Distribution eligibility. An employee ~~who has terminated state employment (including retirement) must make arrangements directly with the company to defer distributions or withdraw funds under any option available in the policy.~~ 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 ~~that the company allow the withdrawal of~~ 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 deferrals to a TSA~~ 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.

~~*e. Method of payment.* The employee must notify the company of the intent to withdraw funds.~~

~~*c. Federal and state withholding taxes.* It shall be the~~ is the company's responsibility of the company or mutual fund provider, when making payments to the former an employee, to withhold the required federal and state income tax ~~based on W-4P,~~ 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.

~~*e. 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) Group plans.**~~

~~*a. Availability.* 2003 Iowa Code Supplement section 8A.311 provides that the director may arrange for the purchase of group contracts for employees.~~

~~*b. Size of groups.* One or more employees shall constitute a group under this plan.~~

~~**64.12(10) 64.12(9) General.**~~

~~*a. Orientation and information meetings.* Agencies 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. ~~The presence of a representative of a company will be interpreted as solicitation.~~~~

~~*b. Location of policies.* The company shall send the original policy to the employee.~~

~~*e. Number of companies.* Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.~~

~~*d. b. Company changes.*~~

(1) If a participating employee wishes to ~~change deferrals~~ redirect contributions to another company, the employee shall submit ~~forms~~ a form to the ~~plan administrator~~ personnel assistant or payroll office in accordance with paragraph 64.12(6) ~~“b.”~~ “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. ~~It is the responsibility of the employee and the company’s agent to coordinate this change with the affected companies.~~

~~(3) — An employee may change companies at any time during the calendar year.~~

~~e. c. Deferred compensation or tax-sheltered annuity participation—maximum contribution. Employees~~ 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.

~~f. — Employee termination from a tax sheltered annuity eligible agency. When an employee leaves an agency that is eligible for tax sheltered annuity participation under IRC Section 403(b), no further tax sheltered annuity deductions will be allowed.~~

~~g. 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(11) Forms. The administration of the TSA plan shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.~~

~~a. — Salary reduction agreement. This form shall authorize the plan administrator to make a stated dollar deduction from the participating employee’s compensation as part of an IRC Section 403(b) contract.~~

~~b. — Application for policy. The company to which the participating employee elects to defer compensation shall supply a policy application form. The participating employee shall complete the application. The completed application forms shall show the owner and beneficiary of the policy to be the participating employee.~~

~~64.12(12)~~ 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(13)~~ 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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