

Niles Community Schools
Business Office



In 2010, Michigan Governor Jennifer Granholm signed Michigan Public Act 75 of 2010 into law that required, beginning July 1, 2010, a mandatory contribution from each active member of the Michigan Public School Employee Retirement Systems (MPERS) of 1.5% or 3%, depending on income level, of his or her compensation to a public employee retirement health care fund to help defray the costs of retiree healthcare. A lawsuit was filed to prevent enforcement of PA 75, and in August 2012, the Michigan Court of Appeals held that the mandatory contributions are unconstitutional. The State has appealed the Court of Appeals' decision to the Michigan Supreme Court, but the Michigan Supreme Court has yet to decide whether it will hear the case. Until the case is definitively resolved, the mandatory 1.5% or 3% contributions are being held in an escrow account.

In light of the lawsuit the district decided to consider these contributions FICA taxable wages and withheld FICA taxes. The district followed this course because if the state has to refund the contributions to the school districts, those contributions then become wages and must be taxed and distributed to the employees as such. Unfortunately, the Internal Revenue Service (IRS) will not make a ruling on this question until the lawsuit mentioned above is settled.

To make things more complicated the right to a refund of the FICA taxes paid on these contributions is expiring for the tax year of 2010. In order to protect your claim and the district's claim to a refund of FICA taxes on the contributions, we are filing a 'Protective Refund Claim' with the IRS.

Enclosed you will find a consent statement for the district to file a claim on your behalf for your refund of FICA taxes and the refund of the district's share. Please sign and date the form then return it to the district as soon as possible. When the lawsuit is settled the IRS will need to determine whether or not the contributions were FICA exempt. If so, the district will then certify with the IRS and they will then refund the claims to the district. The district will in turn refund your share of the FICA taxes to you and issue you a corrected W-2 for the tax year 2012, as required. Please know this does not affect your taxes for the year 2013 and you do not have to refile.

Thank you for your time. If you have any questions I can be reached at (269)683-0734.

Respectfully,

Thomas Skarbek, CPA
Director of Finance