
NOTICE 07-05

**EFFECT OF CHANGES MADE DURING
THE 2007 LEGISLATIVE SESSION ON
NOTICE 05-04 AND NOTICE 05-05**

This Notice is being issued to advise interested parties that because of action taken during the 2007 Legislative Session, part of Notice 05-04, Kansas Income Tax Treatment of Certain Payments from the Kansas Public Employees Retirement System (KPERs), issued by the Department of Revenue on May 20, 2005, has been revised. A related notice, Notice 05-05, Kansas Income Tax Treatment of Certain Payments from the Regents Retirement Plan, issued by the Department of Revenue on June 2, 2005, continues to be in full effect.

INTRODUCTION

On May 20, 2005 the Kansas Department of Revenue issued Notice 05-04, Kansas Income Tax Treatment of Certain Payments from the Kansas Public Employees Retirement System (KPERs). In the section of the Notice captioned "Roll-Over Payments" the Notice provided that lump-sum payments received from KPERs and rolled over into a privately held account lose their tax exempt status and become subject to Kansas income tax. Specifically, the last paragraph of this section of the Notice stated:

Because rollover of a KPERs payment deposited into a qualified retirement account is not included in federal adjusted gross income in the tax year when the KPERs payment was made and it has lost its characterization as a KPERs payment, payments from that account are not exempt from Kansas income tax. Therefore, no modification is made on the Kansas income tax return for a payment from a rollover account.

On June 2, 2005 the Department issued Notice 05-05, Kansas Income Tax Treatment of Certain Payments from the Regents Retirement Plan. In the section of the Notice captioned "Transfer and Roll-Over Payments" the Notice provided that lump-sum payments received from the Regents Retirement Plan and rolled over into a privately held account lose their tax exempt status and become subject to Kansas income tax. Specifically, the Notice stated:

Because rollover of a Plan payment deposited into a qualified retirement account is not included in federal adjusted gross income in the tax year when the Plan payment was made and it has lost its characterization as a Plan payment, payments from that account are not exempt from Kansas income tax. Therefore, no modification is made on the Kansas income tax return for a payment from a rollover account.

CHANGES DURING THE 2007 LEGISLATIVE SESSION

The Joint Committee on Pensions, Investments and Benefits recommended introduction of Senate Bill 180 into the 2007 Legislative Session. As introduced the Bill affected the roll-over of a lump sum payment received from either KPERs or the Regents retirement plan. The Bill amended K.S.A. 74-4923 by inserting new language, in *italics*, to provide in part, that:

(b) Any annuity, benefit, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. or 74-4951 et seq., and amendments thereto, *including, but not limited to, for all taxable years beginning after December 31, 2000, amounts received as a lump-sum payment at retirement as provided in K.S.A. 74-4918, 74-4964 or 74-4964a, and amendments thereto, and all earnings thereof, and amounts received as lump-sum or annuitized payment from the retirement plan sponsored and maintained by the state board of regents pursuant to K.S.A. 74-2925, and amendments thereto, and all earnings thereof,* shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state, *and such lump-sum payment at retirement and such amount received as a lump-sum or annuitized payment shall retain such tax exempt status even if a retirant elects to roll over such lump-sum payment at retirement or such amount received as a lump-sum or annuitized payment into a qualified retirement account whether segregated from or commingled with other retirement funds . . .*

Following introduction of the Bill the provisions of SB 180 were amended. In ~~strike-out~~ and **bold** text the amended language read as follows:

(b) Any annuity, benefit, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. or 74-4951 et seq., and amendments thereto, *for all taxable years beginning after December 31, 2000, amounts received as a lump-sum payment at retirement as provided in K.S.A. 74-4918, 74-4964 or 74-4964a, and amendments thereto, and all earnings thereof,*~~and amounts received as lump sum or annuitized payment from the retirement plan sponsored and maintained by the state board of regents pursuant to K.S.A. 74-2925, and amendments thereto, and all earnings thereof. . . .~~ [shall be exempt from Kansas income tax] *and such lump-sum payment at retirement ~~and such amount received as a lump-sum or annuitized payment,~~ and **all earnings thereof,** shall retain such tax exempt status even if a retirant elects to roll over such lump-sum payment at retirement ~~or such amount received as a lump-sum or annuitized payment,~~ **and earnings,** into a qualified retirement account whether segregated from or commingled with other retirement funds . . .*

The amended provisions of SB 180 were subsequently combined with provisions from other bills into Senate Substitute for House Substitute for HB 2457. The Conference Committee Report Brief for Senate Substitute for House Substitute for House Bill No. 2457 notes:

SB180 was recommended for introduction by the Joint Committee on Pensions, Investments and Benefits. . . .

Reference to the State Board of Regents Retirement Plan was removed by the Senate Committee, leaving only reference to the Kansas Public Employees Retirement Plan, the Kansas Police and Fireman's Retirement Plan, and the Retirement Plan for Judges which are part of the Kansas Public Employees Retirement System. The Senate Committee also added clarification that earnings are to be exempt from state taxes.

As finally passed and enrolled the amended provisions of HB 2457 affect only the roll-over of a lump sum payment received from KPERS. The amended statute, K.S.A. 74-4923 now states, in part, as follows:

(b) Any annuity, benefit, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 et seq. or 74-4951 et seq., and amendments thereto, *including but not limited to, for all taxable years beginning after December 31, 2000, amounts received as a lump-sum payment at retirement as provided in K.S.A. 74-4918, 74-4964 or 74-4964a, and amendments thereto, and all earnings thereof*, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state, *and such lump-sum payment at retirement, and all earnings thereof, shall retain such tax exempt status even if a retirant elects to roll over such lump-sum payment at retirement, and earnings, into a qualified retirement account whether segregated from or commingled with other retirement funds . . .*

EFFECT OF LEGISLATIVE CHANGES ON NOTICE 05-04 AND NOTICE 05-05

Because of the amendments to K.S.A. 74-2923 the provisions of Notice 05-04 found in the section captioned "Roll-Over Payments" have been revised to provide that amounts received by a KPERS member as a lump sum payment and subsequently rolled over into a qualified retirement account, whether segregated from or commingled with other retirement funds, are exempt from Kansas income tax. [See Revised Notice 05-04] The other provisions of Notice 05-04 that deal with "Direct One-Time Payments" and with "Monthly Payments" are still valid.

Because language which referred to the retirement plan sponsored and maintained by the State Board of Regents deleted from the introduced version of Senate Bill 180 are not included in the amendments to K.S.A. 74-2923 passed by the Kansas Legislature, the treatment of lump-sum or annuitized payments from this plan has not changed. The provisions of Notice 05-05 remain in full force and effect.

CLARIFICATION OF NOTICE 05-05

The section of Notice 05-05 captioned "Transfer and Roll-Over Payments" provides, in part, that:

At any time before retirement, a participant can transfer funds accumulated under the Plan from one alternate investment provider to another, subject to the

established policies of the approved companies and in accordance with applicable Internal Revenue Service requirements. Because these transfers are not included in federal adjusted gross income no modification is made on the Kansas income tax return.

For a participant who has terminated employment, the Plan's transferability rules continue to govern funds accumulated under the Plan. However, if the participant later participates in another employer's Internal Revenue Code Section 403(b) defined-contribution retirement plan, the transferability rules of the subsequent employer's plan will govern funds accumulated under the Plan. Because these transfers are not included in federal adjusted gross income no modification is made on the Kansas income tax return.

Advice has been requested about a situation where a retiree "rolls over" monies in a mandatory Plan account to an account or carrier that is approved and receives voluntary Plan contributions, or rolls over monies from one voluntary account to another. As long as these roll-overs are made in accordance with the Plan's transferability rules, these monies retain their tax exempt status. Therefore, when the money is distributed to the retiree it is not subject to Kansas income taxes.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about income tax, please contact:

Taxpayer Assistance Center
Kansas Department of Revenue
915 SW Harrison St., 1st Floor
Topeka, KS 66612-1588
Phone: 785-368-8222
Hearing Impaired TTY: 785-296-6461
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