

RESOLUTION NO. 542

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, staff recommends amendments to Section 5.14 of the FPDR Administrative Rules to Section 5.14 to comply with Oregon House Bill 2857 signed into law July 14, 2021 regarding the State Tax Remedy; and

WHEREAS, the amendments were posted on the FPDR website; and

WHEREAS, a public Question and Answer Session on the amendments was also held on October 19, 2021 and there were no objections to the proposed amendments; and

WHEREAS, the Board has considered and recommends the amendments to Section 5.14 of the FPDR Administrative Rules as shown on Exhibit "A", attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendation of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Section 5.14 of the FPDR Administrative Rules be amended as shown on Exhibit "A".

ADOPTED by the Board of Trustees on the 16th day of November 2021.



Samuel Hutchison
FPDR Director

"EXHIBIT "A"



FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

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Oregon State Tax Remedy Benefits – Proposed Rule Amendments
November 16, 2021

5.14.01 – DEFINITIONS

“Beneficiary.” The term “Beneficiary” shall mean a person, other than a Member, who receives an FPDR benefit.

5.14.02 – BENEFITS ELIGIBLE FOR ADDITIONAL STATE TAX REMEDY BENEFIT

(A) In accordance with ~~ORS 238.362 to 238.364 and ORS 237.635 to 237.637~~ **Oregon Revised Statutes**, to qualify for an additional state tax remedy benefit a Member or Beneficiary must be receiving an FPDR benefit that:

- (1) Is a retirement, death, or nonservice-connected disability benefit; and
- (2) Is based on the service of a Member in one of the following categories:
 - (a) The Member was first sworn with the Bureau of Police or Bureau of Fire and Rescue before July 14, 1995; or
 - (b) The Member received FPDR service credit for service as a police officer or fire fighter under the Public Employees Retirement System of the State of Oregon before July 14, 1995, in accordance with Section 5.4.11 of these Administrative Rules.

5.14.03 – PERSONS ELIGIBLE FOR ADDITIONAL STATE TAX REMEDY BENEFIT

In addition to receiving an eligible benefit as defined in Section 5.14.02 of these Administrative Rules, and in accordance with ~~ORS 238.372 to 238.382 and ORS 237.635 to 237.637~~ **Oregon Revised Statutes**, a Member or Beneficiary must be an Oregon resident to qualify for an additional state tax remedy benefit.

~~(A) As required by ORS 237.374 to 238.376, residency shall be determined only once per calendar year, effective for the first month benefits are payable and in January of each year thereafter. A Member or Beneficiary who becomes an Oregon resident after January 1 shall not be eligible for the state tax remedy benefit until the following calendar year. A Member or Beneficiary who ceases to be an Oregon resident after January 1 shall remain eligible for the state tax remedy benefit for the remainder of the calendar year.~~

(A) Establishing Residency in the First Year of Benefit Payments

In the first calendar year a benefit meeting the criteria in Section 5.14.02 of these Administrative Rules is payable, the Member or Beneficiary receiving the benefit shall sign an affidavit attesting that:

- (1) They are an Oregon resident and benefit payments will be subject to Oregon income tax, in which case a state tax remedy benefit in the percentage amount defined in ~~ORS 238.364 and 238.366~~ **Oregon Revised Statutes** shall be payable ~~immediately~~ **in that calendar year, unless FPDR receives written notification from the Member or Beneficiary before April 16 of that calendar year that they have ceased to be an Oregon resident. In that case, the state tax remedy benefit shall cease to be payable no later than the first day of the second calendar month following receipt of the notice, in accordance with Oregon Revised Statutes;** or
- (2) They are not an Oregon resident and benefit payments will not be subject to Oregon income tax, in which case no state tax remedy benefit shall be payable in that calendar year, **unless FPDR receives written notification from the Member or Beneficiary before April 16 of that calendar year that they are now an Oregon resident. In that case, a state tax remedy benefit in the percentage amount defined in Oregon Revised Statutes shall become payable no later than the first day of the second calendar month following receipt of the notice, in accordance with Oregon Revised Statutes.**

(B) Establishing Residency in Subsequent Calendar Years

Beginning in the second calendar year that a benefit meeting the criteria in Section 5.14.02 of these Administrative Rules is payable, the Member or Beneficiary may satisfy the Oregon residency requirement for an additional state tax remedy benefit by either filing tax return form OR-40 as an Oregon resident for the preceding calendar year or by signing an affidavit attesting to their Oregon residency.

- (1) As required by ~~ORS 238.378~~ **Oregon Revised Statutes**, FPDR shall annually request Members' and Beneficiaries' tax filing status from the Oregon Department of Revenue. FPDR will request the information each December.
 - (a) If a **Member or B**eneficiary has filed tax return form OR-40 as a full-year Oregon resident for the preceding calendar year, a state tax remedy benefit in the percentage amount defined in ~~ORS 238.364 and 238.366~~ **Oregon Revised Statutes** shall be payable in the following calendar year, **unless FPDR receives written notification from the Member or Beneficiary before April 16** ~~unless the beneficiary notifies FPDR in writing by January 15~~ **of the following calendar year that they have ceased to be an Oregon resident before December 31. In that case, the state tax remedy benefit shall cease to be payable no later than the first day of the second calendar month following receipt of the notice, in accordance with Oregon Revised Statutes.**
 - (b) If a **Member or B**eneficiary has not filed an Oregon tax return, or has filed tax return form OR-40-N as a nonresident or tax return form OR-40-P as a partial year Oregon resident, the **Member or B**eneficiary shall remain or become

ineligible for the state tax remedy benefit in the following calendar year, unless **FPDR receives written notification from the Member or Beneficiary before April 16** ~~the beneficiary notifies FPDR in writing~~ **of the following calendar year that they are now an Oregon resident. In that case, a state tax remedy benefit in the percentage amount defined in Oregon Revised Statutes shall become payable no later than the first day of the second calendar month following receipt of the notice, in accordance with Oregon Revised Statutes.** ~~by January 15 that they became an Oregon resident before December 31, or as provided in Section 5.14.03(C)(2) of these Administrative Rules below.~~

(2) A Member or Beneficiary may ~~sign~~ **submit** an affidavit **before April 16 each calendar year** attesting to their Oregon residency and certifying that their benefit payments are subject to Oregon income tax. **If a complete and signed affidavit is received by FPDR before April 16,** ~~FPDR must receive the signed affidavit by January 15 for the beneficiary to remain or become eligible for a state tax remedy benefit in the percentage amount defined in ORS 238.364 and 238.366~~ **Oregon Revised Statutes shall become payable no later than the first day of the second calendar month following receipt of the notice, in accordance with Oregon Revised Statutes.** ~~in that calendar year. Affidavits are valid until the end of for one the~~ calendar year.

5.14.04 – APPEALS PROCESS

~~(A) Members or Beneficiaries, or their authorized representatives, may appeal an FPDR determination of ineligibility for the state tax remedy benefit for a particular calendar year by submitting a written request for reconsideration to the Director by March 31 of that year. If the Director determines that the Member or Beneficiary is eligible, a state tax remedy benefit in the percentage amount defined in ORS 238.364 and 238.366 shall become payable for that year and benefits shall be paid retroactively to January 1.~~

~~(B) Members or Beneficiaries, or their authorized representatives, may appeal the Director's determination of ineligibility for the state tax remedy benefit for a particular calendar year by submitting a written appeal to the Director in a manner acceptable to the Office of Administrative Hearings within sixty (60) days after the Member or Beneficiary, or their authorized representative, receives written notification of the denial by the Director. The procedures for the appeal will be governed by FPDR Administrative Rule 5.4.08.~~