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Public Service Pension Reduction Exemption Revised

Railroad Retirement Act spouse and widow(er)s' benefits, in addition to being reduced for social security entitlement, may also be reduced when a spouse or widow(er) is entitled to a public service pension unless certain exemption requirements are met.

These requirements for exemption from the public service pension reduction were, however, recently tightened by the Social Security Protection Act of 2004 (Public Law 108-203), signed into law on March 2, 2004.

The following questions and answers explain how the exemption requirements were changed for both social security and railroad retirement spouse and widow(er)s' benefits, and how the reduction is applied when the exemption requirement is not met.

1. For social security or railroad retirement purposes, what is considered a public service pension?

A public service pension is any periodic benefit payment, as well as lump-sum payments made in lieu of periodic pension payments, based on an individual's own employment with a Federal, State, or local government unit. Some examples are pensions paid to teachers, police officers, and civil service personnel on the basis of age or disability. Full salary benefits paid to a retired or resigned judge under the Federal Judiciary Retirement System are also considered public service pensions.

However, most military service pensions and payments from the Department of Veterans Affairs are not considered public service pensions and will not cause a reduction; and a pension paid by a foreign government or an interstate instrumentality also has no effect on a spouse or widow(er)'s annuity.

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2. How did the new legislation change the conditions under which a social security or railroad retirement spouse or widow(er)'s benefit could be exempt from the required public service pension reduction?

The new legislation requires that State and local government workers be covered by social security throughout their last 60 months of employment with the pension-paying government entity in order to be exempt from a reduction. Under prior law, a reduction generally did not apply to social security or railroad retirement spouse or widow(er)s' benefits if the government job that the public pension was based on was covered under the Social Security Act on the last day of public employment.

3. Does the new law have any effect on those who are already retired?

No. Those currently receiving social security or railroad retirement spouse or widow(er)s' benefits which have not been reduced because of the prior law's last-day-of-covered-employment exemption, will continue to receive their social security or railroad retirement benefits without any reduction.

4. How about those who are just about ready to retire?

Any State or local government worker who was eligible for a social security or railroad retirement spouse or widow(er)'s benefit and applied for that benefit before April 1, 2004, would avoid the reduction if her or his last day of government employment was covered by both social security and the government pension system, regardless of when that "last day" occurs.

Also, any State or local government worker whose last day of government employment was before July 1, 2004, and whose last day of employment was covered both by social security and the pension system would not have the reduction applied to her or his future claim for a railroad retirement spouse or widow(er)'s annuity.

5. Does the new law provide a transition or phase-in period for those who will not be retiring for a few years?

Yes. The new law also provides a transition for workers whose last day of government employment occurs within five years after the March 2, 2004, date of enactment. Any State or local government worker whose last day of government employment occurs after June 30, 2004, and before March 2, 2009, could have the requirement for 60 consecutive months of social security-covered government employment reduced. For these workers, the requirement for 60 consecutive months of social security-covered employment would be shortened by the total number of months that the worker

(More)

had in social security-covered government service under the same retirement system before the date of enactment, but not to less than one month. If the 60-month period is shortened, the remaining months of social security-covered service needed to fulfill the requirement must be performed after March 2, 2004, and must continue through the worker's last day of public service employment.

6. What's an example of how this transition period would work?

For example, the spouse of a railroad employee was working for a State government in a position not covered by social security on March 2, 2004. However, she had previously worked in a social security-covered job in the same retirement system for 12 months in 1997. Because she had previously worked in a social security-covered position for 12 months, the requirement that her last 60 months of employment be in a social security-covered position would be shortened to 48 months, or four years. If the spouse begins working after March 2, 2004, in a social security covered-position under the same retirement system as her prior government work, **and** works continuously in the covered position for at least the final 48-month period of her employment, **and** her last day of employment is **before** March 2, 2009, she would be exempt from the public service pension reduction.

All other State and local government employees working in positions not covered by social security, and who first switch to government employment covered by social security and their pension plan after June 30, 2004, would have to work in that social security-covered government employment for the entire final 60-month period of their government employment in order to qualify for the exemption.

7. What is the background of the public service pension reduction in spouse and widow(er)s' benefits and how does it affect such payments?

The public service pension reduction in social security and railroad retirement spouse and widow(er)s' benefits was effected by 1977 social security legislation which also applied to the tier I benefits of railroad retirement spouses and widow(er)s. The tier I portion of a railroad retirement annuity is based on railroad retirement credits and any social security credits an employee has acquired. It is computed under social security formulas and approximates what social security would pay if railroad work were also covered by that system. Tier I benefits are, therefore, reduced in the same manner as social security benefits when certain other benefits are also payable.

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Since a social security spouse or widow(er)'s benefit is reduced if the spouse or widow(er) is also entitled to a social security benefit based on her or his own earnings, it was considered equitable that a social security spouse or widow(er)'s benefit also be reduced for a public service pension based on the spouse's or widow(er)'s own non-social security earnings.

The recent change was made to correct a loophole in the law which was being exploited. An investigation in 2002 by the General Accounting Office (GAO) found almost 4,800 teachers in one State had switched or planned to switch to a clerical or janitorial position covered under social security on their last day of employment in order to avoid the reduction. The GAO found some school districts in that State even advertised and charged a fee (\$100-\$500) for teachers to take advantage of this loophole. One school district collected \$280,000 by charging fees to teachers who wanted to work in that district for one day to take advantage of the loophole.

8. How is the public service pension reduction applied to social security and railroad retirement spouse and widow(er)s' benefits?

For spouses and widow(er)s subject to the public service pension reduction, the tier I reduction is, under current law, equal to 2/3 of the amount of the public pension. The amount of the public service pension is the current gross amount, **before** any deductions for income tax withholding, Medicare premiums, health insurance or other benefits.

9. Are there any other provisions that would exempt social security and railroad retirement spouse and widow(er)s' benefits from the public service pension reduction?

The public pension reduction does not apply to a spouse or widow(er) who filed for and became entitled to her or his benefits before December 1977, or to a spouse or widow(er) whose public pension is **not** based on her or his own earnings.

Spouses and widow(er)s may also be exempt from the public pension reduction if **both** of two requirements are met.

The first requirement is that they began to receive or were **eligible** to receive their Federal, State or local government pension before December 1982. This means they must have met the age and service requirements for their pensions before December 1982, even though they did not apply for their pensions before then.

The second is that they meet all requirements for spouse and widow(er)s' benefits in effect under social security law in January 1977. At that time, for example, a divorced woman's marriage must

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have lasted at least 20 years, rather than 10 years as required today. Also, a husband or widower must have received at least one-half support from his wife.

Even if spouses and widow(er)s do not meet these criteria, they still may be exempt from the reduction beginning with social security or railroad retirement benefits payable December 1982 if they received or were eligible to receive their Federal, State, or local government pensions before July 1, 1983; **and** they were receiving at least one-half support from their spouses at the time their spouses retired or died. This provision applies to men and women.

10. Where can more specific information be obtained on how these pension offsets affect railroad retirement benefits?

Individuals who may be affected should contact the nearest field office of the Railroad Retirement Board for information as to how their public service pensions could affect their railroad retirement benefits.

Persons can find the address and phone number of the Board office serving their area by calling the automated toll-free RRB Help Line at 1-800-808-0772 or by checking the Board's Web site at www.rrb.gov. Most Board field offices are open to the public from 9:00 a.m. to 3:30 p.m., Monday through Friday, except on Federal holidays.

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