



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions
March 27, 2019

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Russell Fleming
[REDACTED]

RE: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Fleming:

I am writing in reference to Board of Trustees of the State Police Retirement System's (SPRS) denial of your request to waive the amount of accrued interest owed on the outstanding balance of your pension loan as determined by the Division of Pensions and Benefits (Division). The SPRS Board initially reviewed and denied your request to waive the accrued interest owed on your outstanding loan obligation at its October 9, 2018 meeting¹. At that time, you acknowledged receipt of the pension loan. Thereafter, you appealed the Board's decision². You contend that the State failed to continue your loan payments into retirement, and now, years later, the State is changing the original terms of the loan and charging you accrued interest which exceeds the original term of the loan. On January 22, 2019, the SPRS Board considered your appeal and determined that no material facts are in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the SPRS Board at its March 26, 2019 meeting.

¹ At that time you were represented by Steven J Kossup, Esquire.

² You indicated that you were no longer represented by Mr. Kossup.

The SPRS Board has reviewed your correspondence and the relevant documentation and finds that the laws governing the SPRS do not permit the Board to grant your request to waive the accrued interest charged by the Division on the outstanding balance of your loan obligation.

FINDINGS OF FACT

You were enrolled in the SPRS on February 11, 1982, as a result of your employment as a Trooper with the New Jersey State Police. In or about 1992, you began taking pension loans and continued doing so during your active SPRS membership. The record indicates that you took your final loan in the first quarter of 2007, prior to your retirement. Check number 501215 was issued to you on February 13, 2007 for \$6,080.00. This amount was added to your previous outstanding loan balance to determine the new payment schedule. A Certification of Extra Payroll Deductions (certification) was issued to your employer which included the new loan repayment schedule: 51 biweekly deductions of \$953.88 for a total of \$48,647.88 to begin on February 17, 2007. Interest was calculated at 4.00% per year³, based on a decreasing balance each month. Your employer should have provided you with a copy of the certification.

In December 2007, you filed an application for Special retirement requesting a January 1, 2008 retirement date. Your employer certified that your employment terminated on January 1, 2008. As noted above, repayment of the loan started February 17, 2007, and a total of 23 biweekly payments of \$953.88 were deducted from your payroll check and remitted to your SPRS account for your loan obligation prior to your retirement. In a Quotation of Retirement Benefits dated December 18, 2007, you were informed that you had an existing loan balance in the amount of \$26,132.58. The SPRS Board approved your Special retirement at its meeting on January 23, 2008. Once you retired and began receiving a pension, loan deductions were not taken from your pension check.

³ The interest rate for your loan is set by N.J.S.A. 53:5A-29.

On October 16, 2017, the Division notified you that a review of your SPRS membership account revealed that you had an existing loan balance in the amount of \$26,132.58 that was not carried into retirement. No loan payments were deducted from your pension checks. In that letter, you were informed that the Division would begin deducting monthly loan payments in the amount of \$1,723.51 beginning with your pension check dated November 1, 2017, to satisfy the outstanding loan obligation including accrued interest. On November 3, 2017, you wrote to the Division opposing the claim that you had an outstanding loan balance and requested a stay on the deductions from your retirement check, until you were provided with additional documentation regarding the loan obligation.

On November 11, 2017, Michael Kusmierczyk, Supervising Accountant with the Division responded to your letter and provided you with copies of screen prints and documents regarding your loan. Mr. Kusmierczyk explained that the Division is unable to reduce the monthly deduction or waive any interest assessed by the Division for the outstanding loan balance and that interest accrues until the loan is fully paid. In your case interest is due from your retirement date or January 1, 2008 until the expected completion date or September 30, 2019. Based upon the anticipated completion date of the current repayment schedule the total approximate interest would be \$14,021.05. The Division relied upon N.J.S.A. 53:5A-29, N.J.S.A. 53:5A-42, the Internal Revenue Code and applicable regulations which require that interest be paid on your loan balance, which is also a part of the loan agreement you entered into when the loan was taken. Lastly, you were provided with appeal rights to the SPRS Board.

On November 27, 2017, you appealed to the SPRS Board claiming that you are being penalized for the failure of the State of New Jersey to collect the loan obligation and that as a consequence you are being charged approximately 10 years of accrued interest which is significantly more than the amount of interest assessed on the original term of the loan. In support of your argument, you cited the NJ statute of limitations concerning debt collection. You argue that since

the debt was not collected within 6 years the debt cannot be considered active and therefore uncollectable. (N.J.S.A. 2A:14-1). Also, you cited the Fair Debt Collection Practices Act which states that "If I oppose the validity of the debt within 30 days of being notified no attempt on collection of the debt can be undertaken (Section 809, Paragraph B)." In a follow-up letter, you further explained that after your retirement, you accepted employment with a private contractor and left the country for the next 16 months and your finances were handled through a power of attorney. For this reason, you were unaware that your loan was not being repaid through your retirement checks.

On January 9, 2018, the Division provided you with information to eliminate your remaining loan balance. Specifically, the Division informed you that if you remit a check for \$27,798.14 by February 5, 2018 the final loan deduction would be with your retirement check dated March 1, 2018⁴. Subsequently, Acting Director John D. Megariotis also sent you a letter on January 16, 2018, indicating that your appeal of your outstanding loan balance is being held in abeyance until finalization of discussions with the Internal Revenue Service (IRS). The SPRS Board notes that after the January 16, 2018 letter to you, the State of New Jersey entered into a Closing Agreement with the IRS that identifies problems with pension loans and a method to correct the identified errors, while maintaining the tax-qualified status of the SPRS.

By letter dated May 31, 2018, Steven J. Kossup, Esquire, notified the Division's Board Office that he was representing you and requested documentation related to your outstanding loan obligation. In that same letter, Mr. Kossup requested additional information related to your loan. On June 20, 2018, the Division reaffirmed its position that in accordance with the New Jersey Statutes and regulations, interest continues to accrue until the balance of the loan is fully repaid. Mr. Kossup was provided with copies of the certifications for each loan issued to you from 2000 through 2007. However, the Division was unable to provide Mr. Kossup with copies of the loan applications or

⁴ Payments from your retirement checks continued because you did not submit a lump sum payment.

cancelled checks because the Division is only required to retain those documents for a period of seven years.

In August 2018, Mr. Kossup inquired on the status of your appeal. By letter dated September 6, 2018, both you and Mr. Kossup were notified that the SPRS Board would consider your appeal at its meeting on September 25, 2018. At its meeting on September 25, 2018, the SPRS Board considered Mr. Kossup's statements, your statements as well as the documentation regarding your appeal, including both your and Mr. Kossup's arguments that it was the Division's error in not deducting the loan from your retirement check, but you are being held responsible for the interest that has accrued and being charged more interest than required under the original schedule of the loan. Both you and Mr. Kossup referenced the Fair Debt Collection Practices Act and argue that the Board is precluded from collecting the 10 years of additional interest. Finally, it was asserted that the Board's action violates the statute of limitations pursuant to N.J.S.A. 2A:14-1.

After careful consideration, the SPRS Board denied your request to waive the accrued interest owed on the outstanding balance of your loan obligation. The basis of the SPRS Board's decision was set forth in its letter dated October 9, 2018.

Thereafter, you appealed the SPRS Board's determination and advised that you were no longer represented by Mr. Kossup. In your appeal you reiterated your argument that the State failed to deduct your loan payment from your retirement checks and that it is unfair that the State is now requiring you to pay the additional interest. At its meeting on January 22, 2019, the SPRS Board considered your arguments, determined that there were no material facts in dispute, and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which constitutes the Board's Final Administrative Determination.

CONCLUSIONS OF LAW

The SPRS loan program is governed by N.J.S.A. 53:5A-29 which states in pertinent part:

Loans shall be made to a member from the member's aggregate contributions. The interest earned on such loans shall be treated in the same manner as interest earned from investments of the retirement system.

In the case of any member who retires without repaying the full amount so borrowed, the Division of Pensions and Benefits shall deduct from the retirement allowance payments the same monthly amount which was deducted from the salary of the member immediately preceding retirement until the balance of the amount borrowed together with the interest is repaid. In the case of a retirant who dies before the outstanding balance of the loan and interest thereon has been recovered, the remaining balance shall be repaid from the proceeds of any other benefits payable on the account of the retirant either in the form of monthly payments due to the retirant's beneficiaries or in the form of lump sum payments payable for pension or group life insurance.

Further, "[t]he rate of interest for a loan requested by a member prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall be 4% per annum on any unpaid balance thereof. N.J.S.A. 53:5A-29. After the enactment of Chapter 92, the State Treasurer sets "a commercially reasonable rate" on January 1 of each calendar year. Ibid. Finally, the member must repay "the amount so borrowed, together with interest on any unpaid balance thereof..." Ibid.

The SPRS is a "qualified governmental defined benefit plan[] pursuant to sections 401(a) and 414(d) of the federal Internal Revenue Code of 1986, as amended, or such other provision of the federal Internal Revenue Code, as applicable, regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service." N.J.S.A. 43:3C-18(a). The Director of the Division is "authorized to modify the provisions of the [SPRS], when a modification is required to maintain the qualified status of the [SPRS] under the Internal Revenue Code of 1986, applicable regulations of the U.S. Treasury Department, and other guidance of the federal Internal Revenue Service (IRS)." N.J.S.A. 43:3C-18(c).

IRC Section 401(a) and federal tax law require that pension loans comply with IRC Section 72(p). Specifically, IRC Section 72(p)(2)(B) requires pension loans to be repaid within 5 years of issuance and IRC Section 72(p)(2)(A) prohibits total outstanding loan amounts from exceeding

\$50,000. Ibid. If a member fails to repay the pension loan within the 5-year period or the amount exceeds the IRS limit, then the loan becomes a “deemed distribution” taxable as income to the member and subject to additional penalties. IRC Section 72(p)(1). The deemed distribution does not cancel the loan obligation, which still must be repaid to the Plan, with applicable interest. See Rev. Proc. 2016-51, Section 6.02(1).

There is no dispute that you took several loans from your SPRS account, and that you took the last loan on February 13, 2007. There is also no dispute that you began repaying your loan through payroll deductions and that prior to your retirement a total of 23 biweekly deductions were taken, in accordance with the certifications. There is also no dispute that the repayment ceased when you retired and deductions were not taken from your pension checks. However, as previously indicated you were issued a Quotation of Retirement Benefits December 18, 2007 in which you were informed you had an existing loan balance. The SPRS Board acknowledges that your loan payments were not carried into retirement and automatically deducted from your pension checks by the Division. However, there is no evidence in the record which reflects that you ever inquired about your outstanding loan balance. When the Division realized your loan was not being repaid, you received a letter, and the Division implemented a modified repayment schedule to repay your loan with accrued interest.

The SPRS Board is also aware that the issue of the repayment of loans in retirement implicates more than just your loan. Because the SPRS is a federally tax-qualified plan, as required by N.J.S.A. 43:3C-18(a), the SPRS’s failure to comply with all the requirements of the IRC could result in the IRS determining that the SPRS would no longer be a tax-qualified plan under IRC Sections 401(a) and 414(d). To that end, the Board is aware that the State Treasurer and Director of the Division, in accordance with his authority and responsibility under N.J.S.A. 43:3C-18(c) to keep the SPRS tax-qualified, signed a Closing Agreement with the IRS. In addition to setting forth methods to repay certain loans, the Closing Agreement reiterates that the plan is

subject to IRC Section 72(p). Even when a loan is not properly repaid under the provisions of IRC Section 72(p), and there is a reported deemed distribution, the deemed distribution would not relieve a member of the obligation to repay the loan, with interest.

You assert that the interest that accrued is not a result of your error. While the SPRS Board acknowledges that the Division did not withhold loan repayments from your pension check, as noted above you were informed of the outstanding loan balance and never contacted the Division. Per N.J.S.A. 53:5A-29, interest accrues on any unpaid loan balance. Because loan payments were not made or taken from your pension checks, the balance of your loan did not decrease, and your loan was not fully repaid as contemplated by the loan repayment schedule. Therefore, per the statutory requirements that govern the loan, N.J.S.A. 53:5A-29, there is additional interest that accrued on your loan that must be repaid.

The SPRS Board also relies on its ability to correct errors pursuant to N.J.S.A. 53:5A-42 which states, in pertinent part:

Should any change or error in the records result in any member or person receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the retirement system shall, as far as practicable, correct such error and adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. The actuarial equivalent of any shortage in required contributions at the time of retirement on account of misstatement of age, leave of absence, or clerical error, shall be deducted from the retirement allowance otherwise payable.

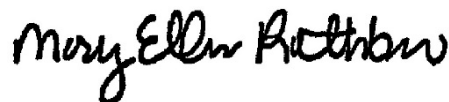
You cited the NJ statute of limitations, arguing that since the debt was not collected within 6 years the debt cannot be considered active and therefore uncollectable. (N.J.S.A. 2A:14-1). Also, you cited the Fair Debt Collection Practices Act which states that "If I oppose the validity of the debt within 30 days of being notified no attempt on collection of the debt can be undertaken (Section 809, Paragraph B)." As previously stated by the Board, the Fair Debt Collection Practices Act does not apply to a state and therefore does not apply to this matter. Further, the

statute of limitations you cited does not apply because it is not the filing of civil litigation. Additionally, the Board has the authority to correct errors under N.J.S.A. 53:5A-42. While the Board noted your original arguments, and those in your appeal letter, the Board has no authority to grant your request to waive or reduce the amount of accrued interest charged on your loan because doing so could harm the overall pension scheme. See Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008). Reducing interest on the outstanding loan balance would violate N.J.S.A. 53:5A-29, IRC Section 72(p), and the State's Closing Agreement with the IRS, which could result in the SPRS no longer being considered a tax-qualified plan, which would affect the entire State, the SPRS, and every member and retiree.

As noted above, the SPRS Board has considered your personal statements and your written submissions and because this matter does not entail any disputed questions of fact, the SPRS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the State Police Retirement System.

You have the right, if you wish to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,



Mary Ellen Rathbun, Secretary
Board of Trustees
State Police Retirement System