

**WAC 415-02-700 Are fallen heroes' survivor benefits nontaxable?**

(1) **What is the fallen heroes tax exemption?** The department makes survivor benefit annuity payments to qualified survivor beneficiaries of public safety officers killed in the line of duty. All or part of the annuity benefit paid may be nontaxable under applicable federal law<sup>1</sup>. **Lump sum payments do not qualify** for nontaxable treatment under this provision of law.

(a) **Who is covered?** Deceased public safety officers who were members of LEOFF, PERS, PSERS and WSPRS. If the deceased officer was a member of another plan, please contact the department or your tax advisor to discuss the matter.

(b) **What time period is covered?**

| MEMBER'S DATE OF DEATH         | SURVIVOR BENEFIT PAYMENT DATE |
|--------------------------------|-------------------------------|
| On or after January 1, 1997    | On or after January 1, 1997   |
| On or before December 31, 1996 | On or after January 1, 2002   |

(2) **Can I rely on the department's determination of whether the payments are nontaxable?** No.

(a) The department does not guarantee that payments should or should not be designated as exempt from federal income tax.

(b) The department does not guarantee that it was correct in withholding or not withholding taxes from survivor benefit payments to you.

(c) The department does not:

(i) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(ii) Assume any liability for your compliance with the Internal Revenue Code.

(d) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

(3) **How will the department determine whether to withhold or not withhold from your survivor benefit annuity payment for income tax purposes?**

(a) If you receive survivor benefit annuity payments because of the death of a public safety officer killed in the line of duty, and you are the public safety officer's spouse, ex-spouse, or child, the department will not withhold taxes **on the portion** of your survivor benefit payments attributable to the officer's service as a public safety officer.

(b) The department will compare the service credits associated with the member's employment as a public safety officer to the member's overall service credit to determine the portion of the survivor benefit payment that qualifies.

(c) **Examples:** In the following examples, assume that the plan administrator has determined that the death of the member qualifies under the fallen heroes tax exemption provision. Assume that the monthly survivor benefit payable is \$2000.

**Example 1.** Joe was employed as a law enforcement officer. He spent his entire career in law enforcement from July 1, 1976, until his death on June 10, 2003 (324 months).

Total service credit = 324 months

Service credit as public safety officer =  
324 months  
 $324 / 324 = 1.0$   
 $1.0 \times \$2,000 = \$2,000$   
**\$2,000 is not subject to withholding**

**Example 2.** Brian was employed as a research analyst for a state agency from July 1, 1976, to May 30, 1995 (227 months service credit). He was employed in a public safety officer position for another state agency from June 1, 1995, until his death on June 10, 2003 (97 months service credit).

Total service credit = 324 months  
Service credit as public safety officer =  
97 months  
 $97 / 324 = .299383$   
 $.299383 \times \$2,000 = \$598.77$   
**\$598.77 is not subject to withholding**

**Example 3.** Susan was hired on July 1, 1976, as a research analyst for a state agency. She terminated that employment on May 30, 1995 (227 months service credit). Susan was hired into a public safety officer position on June 1, 2003, for another state agency. She died on June 4, 2003.

Total service credit = 227.25 months  
Service credit as public safety officer  
= .25 months  
 $.25 / 227.25 = .001100$   
 $.001100 \times \$2,000 = \$2.20$   
**\$2.20 is not subject to withholding**

(d) **What are the exceptions?** Subsection (3)(a) of this section shall not apply with respect to the death of any public safety officer if:

(i) The death was caused by the intentional misconduct of the officer or by the officer's intention to bring about his or her own death;

(ii) The officer was voluntarily intoxicated at the time of death;

(iii) The officer was performing his or her duties in a grossly negligent manner at the time of death; or

(iv) The payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(4) **Who will decide whether to withhold money for income tax from your survivor benefit payments?**

(a) The plan administrator will make the decision.

(b) If you disagree with the plan administrator's decision, you may petition for review under chapter 415-04 WAC.

(5) **What types of evidence will the department use in making the decision regarding whether to withhold taxes from the survivor payments?**

(a) Cause of death stated on the certified death certificate;

(b) Facts surrounding the public safety officer's death;

(c) The deceased public safety officer's job description;

(d) The deceased's membership records;

(e) Materials that the survivor submits for consideration; and

(f) Any other relevant evidence.

(6) **Examples:**

(a) **Police officer:** Charles is a police officer who works for a police department in a large Washington city. He receives a call to report to duty because a riot has started downtown. Charles drives to the riot scene and is killed getting out of his car from a bullet

fired by a rioter. The department will not withhold taxes on survivor benefit payments.

(b) **Firefighter:** Elaine is a firefighter who attends a barbecue party on the Fourth of July. During the party, the barbecue falls over and the garage catches on fire. Elaine grabs a hose and puts out the fire, but dies from smoke inhalation in the process. The department would review the evidence and circumstances to determine whether Elaine would be considered to be "on duty" at the time of her death. If Elaine was not on duty, the department will withhold taxes on survivor benefit payments.

(c) **Park ranger:** Bobbi is a park ranger employed by the state parks and recreation commission. Her job duties include administration, development, maintenance, and visitor services, in addition to law enforcement, within a state park or park area. She is required to have knowledge of fire prevention and suppression methods and equipment. Although Bobbi is commissioned to enforce laws, her principal job functions do not include criminal law enforcement or crime control. The department would withhold taxes on payments to her survivors unless Bobbi was actually engaged in crime control, enforcement of criminal law, or fire suppression at the time of her death.

(7) **Definitions used;<sup>2</sup> these definitions apply to this WAC section ONLY.**

(a) **Chaplain** - Any individual serving as an officially recognized or designated member of a legally organized fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency.

(b) **Child** - Any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(i) Eighteen years of age or under;

(ii) Over eighteen years of age and a student as defined in Section 8101 of Title 5, United States Code; or

(iii) Over eighteen years of age and incapable of self-support because of physical or mental disability;

(c) **Firefighter** - An individual serving as an officially recognized or designated member of a legally organized fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew.

(d) **Intoxication** - A disturbance of mental or physical faculties:

(i) Resulting from the introduction of alcohol into the body as evidenced by:

(A) A postmortem blood alcohol level of .20 per centum or greater; or

(B) A postmortem blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death; or

(ii) Resulting from drugs or other substances in the body.

(e) **Law enforcement officer** - An individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including, but not limited to, police, corrections, probation, parole, and judicial officers.

(f) **Line of duty** means:

(i) Any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression

of fires is obligated or authorized by rule, regulations, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which the officer is assigned, or for which the officer is compensated, by the public agency he or she serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires; and

(ii) Any action which an officially recognized or designated public employee member of a rescue squad or ambulance crew is obligated or authorized by rule, regulation, condition of employment or service, or law to perform.

(g) **Public agency** - Any unit of government that meets the definition of "employer" in any retirement plan that the department administers.

(h) **Public safety officer:**

(i) Regardless of full-time or part-time status, an individual serving a public agency in an official capacity as a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew; or

(ii) An individual who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties:

(A) Are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

(B) Are determined by the head of the agency to be hazardous duties.

(i) **Rescue** - The provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

Footnotes to section:

- 1 The "Omnibus Crime Control and Safe Streets Act of 1968," Act June 19, 1969, P.L. 90-351, which appears generally as 42 USCS §§ 3701 et seq., including Title 26 U.S.C. Sec. 101(h) as amended by the Fallen Hero Survivor Benefit Fairness Act of 2001.
- 2 These definitions duplicate, as closely as possible, those in 42 USCS § 3796b (2003), the applicable federal definition section. Provisions not applicable to any plans administered by the department have been deleted.

[Statutory Authority: RCW 41.50.050(5), 41.04.393. WSR 06-18-009, § 415-02-700, filed 8/24/06, effective 9/24/06; WSR 03-18-031, § 415-02-700, filed 8/26/03, effective 10/1/03.]