





CITY OF GROSSE POINTE WOODS
Office of the City Treasurer/Comptroller

Memorandum

4A
RECEIVED
FEB - 1 2017
CITY OF GROSSE POINTE WOODS

DATE: February 1, 2017
TO: City Council
FROM: Cathrene Behrens, City Treasurer/Comptroller *CB*
SUBJECT: Payroll Tax Withholding

City staff recently discovered that wages for income tax and FICA purposes were over-reported in years 2013 through 2015. The cause of the over-reporting relates to failing to recognize that employee contributions for health care benefits are not subject to income or FICA taxes. The City may apply for refunds of excess FICA taxes paid by employees in the City in addition the City may prepare amended W-2's to report employee wages subject to income and FICA tax. Filing these amended returns will result in refunds of FICA taxes to employees and the City as well as an opportunity for employees to file amended tax returns (federal and state) to recover excess income taxes paid.

Below are additional details regarding the adjustments required for years 2013 through 2015.

The City and employees may file for tax refunds for open tax years. Generally tax years remain open for three years following April 15th the tax year. Consequently; for example, for 2013 refund requests are available if submitted by April 15, 2017.

City of Grosse Pointe Woods Payroll Year 2013

January 1, 2013 through December 31, 2013

- Retiree Health Care Savings Account was a post-tax withholding contribution; should have been a pre-tax withholding deduction.

Correction:

1. *For each employee, obtain employee's consent to request from the IRS a refund of excess FICA taxes paid*
2. *file an Adjusted Employer's Quarterly Federal Tax Return (941X) for 2013 on behalf of the City of Grosse Pointe Woods to request a refund for Social Security and Medicare paid on behalf of each employee*
3. *file corrected W-2's for each employee who contributed to a retiree health care savings account in 2013 to reduce FICA and income taxable wages;*
 - a. *FICA tax refunds will be paid to the City by the Internal Revenue Service.*

- b. The City will be obligated to refund to employees the employee portion of the FICA refund.*

City of Grosse Pointe Woods Payroll Year 2014

January 1, 2014 through December 31, 2014

- Retiree Health Care Savings Account was a post-tax withholding contribution; should have been a pre-tax deduction.

Correction:

- 1. For each employee, obtain employee's consent to request from the IRS a refund of excess FICA taxes paid.*
- 2. File an Adjusted Employer's Quarterly Federal Tax Return (941X) for 2014 on behalf of the City of Grosse Pointe Woods to request a refund for Social Security and Medicare paid on behalf of each employee*
- 3. File corrected W-2's for each employee who contributed to a retiree health care savings account in 2014 to reduce FICA and income taxable wages.*
 - a. FICA tax refunds will be paid to the City by the Internal Revenue Service.*
 - b. The City will be obligated to refund to employees the employee portion of the FICA refund.*

City of Grosse Pointe Woods Payroll Year 2015

January 1, 2015 through December 31, 2015

The City amended and re-stated the City of Grosse Pointe Woods Cafeteria Plan 125 for an effective date of January 1, 2015.

- Retiree Health Care Savings Account was a post-tax withholding contribution; should have been a pre-tax deduction.
- Flexible Spending Account was a pre-tax withholding contribution for Federal and State Tax and a post-tax deduction for Social Security and Medicare.
- Employee Health Care Premium Contribution was a post-tax deduction and should have been moved to pre-tax with the adoption of the Cafeteria 125 Plan.
- AFLAC premiums eligible for pre-tax treatment were a pre-tax withholding contribution for federal and income tax and a post-tax deduction for social security and Medicare.

Correction

- 1. For each employee, obtain employee's consent to request from the IRS a refund of excess FICA taxes paid.*
- 2. File an Adjusted Employer's Quarterly Federal Tax Return (941X) for 2015 on behalf of the City of Grosse Pointe Woods to request a refund for Social Security and Medicare paid on behalf of each employee*

3. *File corrected W-2's for each employee who contributed to a retiree health care savings account in 2015 to reduce FICA and income taxable wages.*
 - a. *FICA tax refunds will be paid to the City by the Internal Revenue Service.*
 - b. *The City will be obligated to refund to employees the employee portion of the FICA refund.*

EMPLOYEE RESPONSIBILITY

1. **Obtain employees written consent (on a form to be provided by the City) that the employee is authorizing the City to request a refund of excess FICA taxes paid on their behalf. The employee has a forty-five (45) day period in which to return these forms to City administration. For employees that do not return the consent form, the employer may request a refund only for the employer portion of FICA taxes paid.**
2. **Prepare an amended tax return for refund of excess income taxes paid.**

Staff has been working with Mark Lachowicz, JD CPA, of Plante Moran, PLLC, and have incurred some minor expenses for his consultation, to-date. Mr. Lachowicz has reviewed this document and has provided direction and advice for these listed corrections. Mr. Lachowicz will be at the Committee-of-the-whole meeting to address any questions that the Council may have.

Staff is requesting council authorization to retain Plante Moran to work in coordination with City staff in an "advisory" capacity while moving through this process. We anticipate this expense to be in the range of \$7,500 to \$10,000. Funds have not been budgeted for this expense and it will require an allocation from the general fund balance to pay this cost. Staff has compiled the numbers for 2013, 2014 and 2015 FICA refunds which both the City and the employee may receive based upon their review of our amended 941 reports. The estimated refund for the City is \$20,180.47.

MINUTES OF THE LOCAL OFFICERS COMPENSATION COMMISSION MEETING OF THE CITY OF GROSSE POINTE WOODS HELD ON WEDNESDAY, JANUARY 18, 2017, IN THE CONFERENCE ROOM OF THE MUNICIPAL BUILDING, 20025 MACK PLAZA, GROSSE POINTE WOODS, MICHIGAN.

PRESENT: Chair Dan Curis
Member John McAlpine
Member George McMullen
Member Dennis Zak

ABSENT: Member Mark Kent

ALSO PRESENT: Council Member Art Bryant
City Clerk Hathaway

The meeting was called to order by the Chair at 7:03 p.m.

Motion by McMullen, seconded by McAlpine, to excuse Member Kent from tonight's meeting.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak

NO: None

ABSENT: Kent

Motion by McMullen, seconded by Zak, that all items on tonight's agenda be received, placed on file, and taken in order of appearance.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak

NO: None

ABSENT: Kent

Motion by McMullen, seconded by McAlpine, to nominate Commission Member Curis to serve as Chair.

Commission Member Curis accepted the nomination.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak

NO: None

ABSENT: Kent

The first item discussed was the compensation of Municipal Court Judge Ted Metry. The Chair turned the meeting over to Commission Member Zak who stated he met with Judge Metry. He distributed and reviewed a 2015 Court Caseload Report including data from all of the Grosse Pointes, and a 2011-15 Clearance Rate Report. The Commission reviewed the data. He explained all the courts are getting more into the criminal end of cases. The only thing municipal court does not handle are civil cases over \$3,000. He stated none of the other Grosse Pointe courts perform half of the work of Grosse Pointe Woods. Commission Member Zak spoke with the other judges regarding their salaries. Judge Carl Jarboe, Grosse Pointe Park, was earning \$23,000 and was recently increased to \$30,000, per charter. Judge Matthew Rumora, Grosse Pointe Shores and Grosse Pointe Farms, receives benefits and earns \$22,000 between the two municipalities. Judge Russell Ethridge, Grosse Pointe City, is paid \$15,000. He stated that Judge Metry had not requested an increase, but Commission Member Zak is proposing \$36,000 because his last increase was in 2005. There are thirty-six (36) scheduled court days per year and the Judge works an extra fifty (50) days for trials, settlements, and arraignments. He also stated there is a 100% clearance rate in Grosse Pointe Woods, meaning cases are cleared within one year.

Motion by Zak, seconded by McMullen, that the Local Officers Compensation Commission increase compensation for the Municipal Judge from his current rate of \$30,000 to \$36,000 per year effective July 1, 2017.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak
NO: None
ABSENT: Kent

Discussion then ensued regarding Mayor and Council's compensation. The Mayor's last increase was 2001 from \$4,000 to \$6,000, and the City Council is paid \$3,750. Council Member Bryant stated that Mayor and City Council has not requested an increase in compensation; noting that 2006 was the last time Council received an increase. Commission Member Zak stated the Mayor and Council are overworked and undercompensated for the work they perform and they do it for the betterment of the City. He believes they are entitled to an increase, and providing for an increase is a showing of gratitude. Member McMullen stated Grosse Pointe Woods Mayor and Council are paid higher than the other Grosse Pointe communities; however they do attend more meetings.

Motion by McMullen, seconded by McAlpine, that the Local Officers Compensation Commission set the Mayor's compensation to remain at \$6,000 per year, his current rate of pay.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen
NO: Zak
ABSENT: Kent

The Chair stated the Council's compensation is currently \$3,750 per year.

Motion by McMullen, seconded by McAlpine, that the Local Officers Compensation Commission set the Council Member's compensation to remain at \$3,750, their current rate of pay.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak
NO: None
ABSENT: Kent

Motion by Zak, seconded by McMullen, that these minutes be given immediate certification.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak
NO: None
ABSENT: Kent

Motion by McMullen, seconded by Zak, that tonight's meeting be adjourned at 7:36 p.m.

Motion carried by the following vote:

YES: Curis, McAlpine, McMullen, Zak
NO: None
ABSENT: Kent

Respectfully submitted,

Lisa Kay Hathaway
City Clerk

THE HOME RULE CITY ACT (EXCERPT)
Act 279 of 1909

117.5c Local officers compensation commission; creation; purpose; appointment, qualifications, and terms of members; vacancies; determination of salaries; expenses; meetings; quorum; concurrence of majority required; election of chairperson; compensation of members; conducting business at public meeting; notice of meeting; availability of certain writings to public; resolution; changing procedure; petition for referendum.

Sec. 5c. In place of a charter provision existing on December 31, 1972 establishing the salaries or the procedure for determining salaries of elected officials, the governing body may establish, by ordinance, the procedure described in this section, in which case the restriction contained in a charter provision with respect to changing salaries during term shall be inapplicable. The ordinance shall provide the following:

(a) A local officers compensation commission is created which shall determine the salaries of each local elected official. The commission shall consist of 5 members in a city of 20,000 population or less and 7 members in a city of over 20,000 population. The members shall be registered electors of the city, appointed by the mayor subject to confirmation by a majority of the members elected and serving in the legislative body. In the case of a 5-member commission, the terms of office shall be 5 years, except that of the members first appointed, 1 each shall be appointed for terms of 1, 2, 3, 4, and 5 years. In the case of a 7-member commission, the terms of office shall be 7 years, except that of the members first appointed, 1 each shall be appointed for terms of 1, 2, 3, 4, 5, 6, and 7 years. The first members shall be appointed within 30 days after the effective date of the ordinance. Members other than the first members shall be appointed before October 1 of the year of appointment. Vacancies shall be filled for the remainder of the unexpired term. A member or employee of the legislative, judicial, or executive branch of government or a member of the immediate family of a member or employee of the legislative, judicial, or executive branch of government shall not be a member of the commission.

(b) The commission shall determine the salary of each local elected official. The determination shall be the salary unless the legislative body, by resolution adopted by 2/3 of the members elected to and serving on the legislative body, rejects it. The determination of the commission shall be effective 30 days following its filing with the city clerk unless rejected by the legislative body. If the determination is rejected, the existing salary shall prevail. The expense allowance or reimbursement paid to elected officials in addition to salary shall be for expenses incurred in the course of city business and accounted for to the city.

(c) The commission shall meet for not more than 15 session days in each odd numbered year and shall make its determination within 45 calendar days after its first meeting. A majority of the members of the commission constitutes a quorum for conducting the business of the commission. The commission shall not take action or make a determination without a concurrence of a majority of the members appointed and serving on the commission. The commission shall elect a chairperson from among its members. As used in this section, "session day" means a calendar day on which the commission meets and a quorum is present. The members of the commission shall not receive compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties.

(d) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting of the commission shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(e) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(f) The governing body shall implement this section by resolution. After 1 year following the date the ordinance goes into effect the procedure for establishing the compensation of elected officials may be changed by charter amendment or revision.

(g) Not more than 60 days after the effective date of the ordinance, a petition for a referendum on the ordinance may be filed pursuant to the procedure provided in the charter or otherwise by filing a petition with the city clerk containing the signatures of at least 5% of the registered electors of the city on the effective date of the ordinance. The election shall be conducted in the same manner as an election on a charter amendment. If a petition for referendum is filed, a determination of the commission shall not be effective until the ordinance has been approved by the electors.

History: Add. 1972, Act 8, Imd. Eff. Feb. 17, 1972;—Am. 1977, Act 204, Imd. Eff. Nov. 17, 1977;—Am. 1978, Act 106, Imd. Eff.

5C

DIVISION 3. - LOCAL OFFICERS COMPENSATION COMMISSION^[4]*Footnotes:*

--- (4) ---

State Law reference— Local officers compensation commission, MCL 117.5c.

Sec. 2-406. - Created.

A local officers compensation commission is hereby created, which commission shall determine the salaries of each local elected official.

(Code 1975, § 1-18-1; Code 1997, § 2-251)

Sec. 2-407. - Appointment of members.

The local officers compensation commission shall consist of five members who shall be registered electors of the city, appointed by the mayor subject to confirmation by a majority of the members of the city council elected and serving in such capacity.

(Code 1975, § 1-18-2; Code 1997, § 2-252)

Sec. 2-408. - Terms of office.

The term of office of each commissioner of the local officers compensation commission shall be five years, excepting those members first appointed, of whom one each shall be appointed for terms of one, two, three, four and five years. The terms of office shall expire on September 30 of the year of appointment, and members, other than those first appointed, shall be appointed before October 1 of the year of appointment. Vacancies shall be filled for the remainder of the unexpired term. The first members of the commission shall be appointed within 30 days after the effective date of the ordinance from which this division is derived.

(Code 1975, § 1-18-3; Code 1997, § 2-253)

Sec. 2-409. - Certain persons disqualified from membership.

A member or employee or a member of the immediate family of a member or employee of the legislative, judicial or executive branch of government, including the city government, shall not be a member of the local officers compensation commission.

(Code 1975, § 1-18-4; Code 1997, § 2-254)

Sec. 2-410. - Duties.

The local officers compensation commission shall determine the salary of each local elected official. The determination of the commission shall be filed with the city clerk and shall become effective 30 days following the date of such filing unless the city council, by resolution adopted by two-thirds vote of the members elected to and serving on the council, shall reject such salary determination of the commission.

(Code 1975, § 1-18-5; Code 1997, § 2-255)

**Sec. 2-411. - Meetings and procedural rules.**

The local officers compensation commission shall meet for not more than 15 session days in each odd-numbered year and shall make its determination within 45 calendar days after its first meeting. A majority of the members of the commission constitutes a quorum for conducting the business of the commission. The commission shall not take action or make a determination without a concurrence of a majority of the members appointed and serving on the commission. The commission shall elect a chairperson from among its members. As used in this section, the term "session day" means a calendar day on which the commission meets and a quorum is present. The members of the commission shall not receive compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties.

(Code 1975, § 1-18-6; Code 1997, § 2-256)

Sec. 2-412. - Compliance with Open Meetings Act.

The business which the local officers compensation commission may perform shall be conducted at a public meeting of the commission held in compliance with Public Act No. 267 of 1976 (MCL 15.261 et seq.). Public notice of the time, date and place of the meetings of the commission shall be given in the manner required by Public Act No. 267 of 1976 (MCL 15.261 et seq.).

(Code 1975, § 1-18-7; Code 1997, § 2-257)

Sec. 2-413. - Compliance with Freedom of Information Act.

A writing prepared, owned, used, in the possession of, or retained by the local officers compensation commission in the performance of an official function shall be made available to the public in compliance with Public Act No. 422 of 1976 (MCL 15.231 et seq.), as amended.

(Code 1975, § 1-18-8; Code 1997, § 2-258)

Secs. 2-414—2-439. - Reserved.