



## Withholding of TCRS Benefits and Felony Forfeiture

### Withholding TCRS Benefits

Tenn. Code Ann. § 8-36-113(a) provides that TCRS may withhold payment of a member's accumulated contributions and interest or monthly benefit under certain conditions, including 1) the filing of criminal charges or a civil suit against a member relating to the member's employment with an employer, 2) an audit finding from the Comptroller of the Treasury relating to the member's employment with an employer, or 3) receipt of an affidavit submitted by the employer to the TCRS Director asserting that the employee's actions could constitute a crime.

Upon notification of any of the previously listed conditions, TCRS will determine whether to withhold payments based on the following factors:

- The severity, type or classification of the crime charged;
- Whether it has been alleged that the member owes funds to the employer;
- Whether the member has applied for a refund of accumulated contributions, applied for monthly benefits, or is receiving monthly benefits and has demonstrated by documentation of income and expenses a need for payment to cover living expenses for the member and any dependents; and
- Any other information deemed relevant.

Additionally, Tenn. Code Ann. § 8-36-113(c) provides that employers may be entitled to claim from the member's accumulated contributions such amounts owed to the employer when the member makes an application to withdraw accumulated contributions.

Employers are encouraged to notify TCRS if 1) a member is criminally charged or named in a civil suit relating to the member's employment, 2) there is an audit finding from the Comptroller's Office relating to the member's employment, or 3) if the employer thinks the member's actions could constitute a crime, the employer may submit an affidavit to the TCRS Director asserting that the employee's actions could constitute a crime. Employers may submit information, documentation, or affidavits to the TCRS Director's Office by emailing [TCRS.Member-Services@tn.gov](mailto:TCRS.Member-Services@tn.gov).

## Felony Forfeiture of Benefits

Additionally, Tenn. Code Ann. § 8-35-124 provides that a member convicted of a felony arising out of the employee's or official's employment or official capacity, constituting malfeasance in office (or a felony in the performance of duties) is not entitled to retirement benefits from TCRS or any other public pension system. This statute applies to members hired as of July 1, 1982, if convicted in a state court; members hired as of May 31, 1993, if convicted in a federal court; and all members elected to public office on or after February 15, 2006.

### Reporting a conviction, guilty plea, or nolo contendere plea to TCRS:

**When a member is convicted, pleads guilty, or enters a nolo contendere plea to a crime related to their position and/or the duties of their job, it is an employer's responsibility to immediately notify TCRS. Employers should submit notification to the TCRS Director's Office by emailing [TCRS.Member-Services@tn.gov](mailto:TCRS.Member-Services@tn.gov).**

Upon receipt of the employer notification of a member's conviction, plea of guilty or nolo contendere, TCRS will assess the member's eligibility to receive retirement benefits. If forfeiture of pension benefits applies to the member, TCRS will notify the member of ineligibility for retirement benefits and their right to appeal the decision. This correspondence will also advise the member of their eligibility to request a refund of member contributions, if applicable. If a member must forfeit their TCRS benefit, they may still be able to designate their beneficiary to receive the benefit. Upon forfeiture, the letter sent to the member will provide instructions on how to have a monthly survivorship retirement allowance paid to the designated beneficiary on file at the time of the conviction. The designated beneficiary on file must have been the member's spouse or child at the time of that person's conviction to elect this option.