OAH 84-3700-32719

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE TEACHERS RETIREMENT ASSOCIATION

In the Matter of the Teachers Retirement Association Benefit Amount of Gerald Kleve	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

The above-entitled matter came on for a Status Conference by telephone before Chief Administrative Law Judge Tammy L. Pust on November 16, 2015. During the Status Conference, the parties agreed that the matter would be submitted for recommendation on the record to date. The parties further agreed that the sworn testimony of two Teachers Retirement Association representatives, provided at related fact finding conferences held on October 26, 2015 and October 27, 2015 in OAH Docket No. 84-3700-32717 and OAH Docket No. 84-3700-32718, could be included as part of the record in this matter to the extent that the testimony provided background and explanation of the Teachers Retirement Association's legal position.[1] The matter was submitted for recommendation on the record on November 16, 2015, and the record closed on that date.

John R. Mulé, Assistant Attorney General, appeared on behalf of the Teachers Retirement Association (TRA). Gerald Kleve (Retiree) appeared without counsel and representing himself.

STATEMENT OF ISSUE

Is a reduction in Retiree's annual TRA benefit required under Section 415(b) of the Internal Revenue Code (IRC)?

Although the proceedings necessarily addressed the related issue of whether Retiree should be required to reimburse TRA for overpayments,[2] that legal issue is not before the Chief Administrative Law Judge for consideration and is therefore not addressed below.

SUMMARY OF RECOMMENDATION

The Chief Administrative Law Judge concludes that federal and state law require TRA to reduce Retiree's annual benefits to the appropriate Internal Revenue Code Section 415(b) limits.

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[1] All citations herein to testimony of Jay Stoffel and/or Joel Hohenstein refer to that given in OAH Docket Nos. 84-3700-32717 and/or 84-3700-32718.
[2] *See* Exhibits (Exs.) 100-121.

Based upon all of the proceedings herein, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

Section 415(b) of the Federal Tax Code

1. Internal Revenue Code section 415(b) (Section 415(b)) sets a financial limit, adjusted by periodic cost-of-living increases,[3] on a retiree's annual qualified pension plan benefit. These limits must be met by qualified pension plans in order to maintain favorable tax status.[4]

2. Since 1995, Section 415(b) has been applicable to public pension plans in Minnesota, including those administered by TRA.[5]

3. In 1992, the Section 415(b) limit was $112,221.[6]

4. By 2015, the Section 415(b) limit had increased to $210,000.[7]

5. Federal tax law requires that the annual Section 415(b) limit be reduced for retirees who retire before age 62 and choose a benefit type other than a straight life annuity.[8]

Teachers Retirement Association

6. The Teachers Retirement Association is a statewide public pension fund that provides retirement and other pension benefits to Minnesota public school teachers, administrators, college faculty, retirees, their families and beneficiaries.[9]

7. All persons employed by a Minnesota school district to provide educational services are eligible to be TRA members.[10]

8. Currently, TRA has approximately 60,000 retired members and 80,000 working members.[11]

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[3] I.R.C. § 415(d) (2012).
[4] I.R.C. § 415(b)(a)(A).
[5] 1995 Minn. Laws ch. 262, art. 1, § 15, at 2827.
[6] Ex. 5, at 3; Ex. 6, at 1.
[7] Ex. 6, at 2.
[8] Treas. Reg. § 1.415(b)-1(d)(1)(i), .415(b)(2)(C) (2007). The Treasury Regulations cited in this recommendation have been removed from the Code of Federal Regulations but are generally applicable for limitation years beginning before July 1, 2007.
[9] Testimony (Test.) of Jay Stoffel.
[10] *Id.*; *see* Minn. Stat. § 354.05, subd. 2 (2014).
[11] Test. of J. Stoffel.

9. TRA currently manages approximately $20 billion in assets and expects to pay out approximately $1.6 billion in benefits annually.[12]

10. TRA administers various types of benefit plans for its members within which it collects contributions from members and their employers, invests those contributions over the course of the member's career and, at retirement, pays out benefits calculated according to a statutory formula.[13]

11. During the relevant timeframe, TRA's members could elect to participate in a basic plan or a coordinated plan. Basic plan members do not pay into Social Security for their TRA-covered employment and therefore do not receive any Social Security benefits upon retirement. Coordinated plan members pay into Social Security and receive those benefits upon retirement, in addition to their TRA benefits.[14]

12. Different TRA plans provide retirees with distinct benefits and beneficiary coverage. A single life annuity plan provides a retiree with a lifetime monthly benefit upon retirement, but no beneficiary coverage. A guaranteed refund plan provides a lifetime monthly benefit for the retiree until death, as well as a benefit to the retiree's beneficiaries tied to the retiree's contributions plus specified interest.[15]

13. One of TRA's annuity options is a defined benefit plan, the formula for which is based on the member's age at retirement, years of service, average salary for the five highest paid years, and computational factors set forth in state law.[16]

14. TRA's benefit plan years run from July 1st to June 30th and coincides with the state's fiscal year.[17]

15. TRA is audited annually by the Legislative Auditor, and recently has drawn auditing attention from the Minnesota State Auditor.[18]

IRS Determination Letters

16. TRA seeks to operate its retirement plans, including its defined benefit plan, as tax qualified retirement plans under the IRC and applicable regulations. By maintaining this status, the income TRA earns for its members is not subject to federal tax and the contributions paid by members are tax-deferred.[19]

17. To ensure its status as a tax qualified retirement plan and thereby protect the tax treatment of its contributions and benefit payments, TRA applies for a favorable

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[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*; Test. of Joel Hohenstein.
[17] Test. of J. Stoffel.
[18] *Id.;* Test. of J. Hohenstein.
[19] Test. of J. Stoffel.

determination letter from the Internal Revenue Services (IRS) on a prescribed schedule.[20]

18. TRA retains and relies on financial and legal experts in federal tax law compliance to apply for and obtain an IRS favorable determination letter when necessary.[21]

19. TRA first applied for a favorable determination letter in 1983, the year federal tax law first allowed tax-deferred pension plan contributions. TRA's submissions included plan documents and provisions, but did not include a detailed analysis of benefit payments. TRA received a favorable determination letter from the IRS.[22]

20. In 1995, the IRS implemented a five- to six-year schedule for determination letter submissions. Though pension plans were required to submit determination letter requests on an identified schedule, the IRS often took years to issue the resulting determination letters.[23]

21. TRA next applied for a favorable determination letter in 2001. TRA retained and relied on the expertise of The Segal Group, an actuarial firm, through which TRA had access to the Groom Law Group, experts in federal tax law.[24] TRA's submissions included plan documents and provisions, but did not include a detailed analysis of benefit payments in light of Section 415(b)'s required benefit limitations, which had applied to TRA since 1995. TRA received a favorable determination letter from the IRS.[25]

22. TRA next applied for a favorable determination letter in 2008, this time using the expertise of the Mercer actuarial firm and the firm's in-house counsel. Again, TRA's submissions included plan documents and provisions but did not include an analysis of actual payment data in light of Section 415(b)'s required benefit limitations.[26]

23. As early as 2010, but no later than 2013, TRA was aware that it had not been properly applying Section 415(b) limitations in its benefit calculations for members who retired before age 62.[27]

24. In 2013, TRA received a favorable determination letter from the IRS related to its 2008 submissions.[28]

25. TRA did not inform the IRS that it had not been properly applying Section

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[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*; Ex. 12.
[28] Test. of J. Stoffel.

415(b) limitations in its benefit calculations for members who retired before age 62.[29]

26. In 2014, TRA again applied to the IRS for a favorable determination letter, this time relying on the expertise of the Omaha office of Cavanaugh Macdonald Consulting, an actuarial firm, and the connected law firm of Ice Miller LLP (Ice Miller), located in Indiana.[30]

27. As part of TRA's 2014 submission process, Ice Miller asked for, and TRA provided, detailed actuarial and demographic data on all members in payment status. After analyzing that data, Ice Miller notified TRA that it had potentially paid benefits in excess of the applicable Section 415(b) limits to "hundreds" of retirees.[31]

28. After further review of more detailed data, Ice Miller determined that TRA had failed to properly apply Section 415(b) limits in 10 identified cases.[32]

29. Upon further calculation related to proper compounding of interest, Ice Miller reduced to nine the number of cases which TRA had been paying in violation of Section 415(b) limits.[33]

30. All of the nine identified cases involved: basic plan members who (a) received higher benefits than their combined plan contemporaries due to their lack of Social Security coverage; and (b) retired at an early age, generally in their mid-50s.[34]

31. TRA was advised by its tax counsel, Ice Miller, that in compliance with its fiduciary duty TRA owed to its members it should "make the fund whole" by immediately reducing the ongoing benefit overpayments and pursuing options to recoup overpayments made in the past.[35]

Section 415(b) Reduced, Adjusted and Modified Limit: Proper Calculation

32. Under federal law, the Section 415(b) limit for annuitants who retire at age 62 or after (Unreduced Limit) must be: (a) reduced for retirees who retire before age 62; (b) adjusted for chosen benefit types other than a straight life annuity; and (c) modified to account for an annuitant's after-tax contributions. The resulting Section 415(b) limit (Reduced, Adjusted, and Modified Limit) is intended to equal the actuarial equivalent of a straight life annuity at the member's actual retirement age that has the same present value as a straight life annuity at the age of 62, altered for allowed cost-of-living increases.[36]

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[29] Test. of J. Stoffel in OAH Docket No. 84-3700-32718; Affidavit of J. Stoffel, submitted on November 5, 2015 in OAH Docket No. 84-3700-32717.
[30] Test. of J. Stoffel.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Treas. Reg. § 1.415(b)-1(d)(1)(i), .415(b)(2)(C) (2007).

33. Calculating the appropriately reduced Section 415(b) limit requires the following steps:

a. Determining an early retirement reduced limit;

b. Adjusting the early retirement reduced limit for benefit type if the annuitant has not chosen a straight life annuity option in appropriate cases;

c. Applying a "Starting Factor" to the 415(b) Unreduced Limit to determine the appropriately reduced and adjusted limit for each benefit year; and

d. Adding the annuitized after-tax contributions made by the retiree, increased by an applicable interest rate compounded annually.[37]

Reduced Limit for Early Retirement

34. The Section 415(b) Unreduced Limit must be reduced for early commencement of retirement, measured as retirement at any age prior to age 62.[38]

35. The age-related reduction calculation (Reduced Limit) requires application of "the greater of 5 percent or the rate specified by the plan"[39] and "the applicable mortality table (within the meaning of section 417(e)(3)(B)),"[40] which in 1993 was the 1983 Group Annuity Mortality Table (collectively "5% and 83GAM mortality").[41]

36. In 1992, the Reduced Limit was the amount a retiree would receive from the age of early retirement through an anticipated life expectancy, factoring in interest. The Reduced Limit would equal Section 415(b)'s Unreduced Limit (then $112,221) which that same retiree would have received upon retiring at age 62. Stated more simply, the Reduced Limit results in a retiree getting the same amount of benefits over time, regardless of the fact that retirement was commenced early, by reducing the amount of benefits paid monthly.[42]

37. Determining the Reduced Limit requires calculation of:

- The present value of $1 payable per month for life commencing at the age of actual retirement; and

[37] I.R.C. § 411(c) (2012); Treas. Reg. § 1.415(b)-1(b)(2)(ii), .417(e)-1(d)(2), (e)-1(d)(3)(i), (e)-1(d)(4)(i) (2007). *See* Exs. 5, 6.
[38] Test. of J. Hohenstein; I.R.C. §415(b)(2)(C) (2012).
[39] I.R.C. § 415(b)(2)(E)(i) (2012). As TRA provides for a 3% reduction for early retirement, the IRC's 5% rate would apply in this case.
[40] I.R.C. § 415(b)(2)(E)(v) (2012).
[41] Ex. 6, at 1.
[42] Test. of J. Hohenstein.

- The present value at the age of actual retirement of a deferred benefit commencing at age 62 of $1 payable per month for life.[43]

38. The formula for calculating this portion of the early retirement Reduced Limit is as follows:

Section 415(b) Unreduced Limit	**multiplied by**
Present value at the age of actual retirement of a deferred benefit commencing at age 62 of $1 payable per month for life	**divided by**
Present value of $1 payable per month for life commencing at the age of actual retirement.[44]	

39. Stated in computational terms, the formula for calculating the Reduced Limit is:

A × B ÷ C = D, where

A = Section 415(b) Unreduced Limit;

B = Present value at the age of actual retirement of a deferred benefit commencing at age 62 of $1 payable per month for life;

C = Present value of $1 payable per month for life commencing at the age of actual retirement; and

D = Calculated Section 415(b) Reduced Limit.

<u>Adjustment for Chosen Benefit Type</u>

40. The Section 415(b) Unreduced Limit is set forth in law as a single life annuity for the life of the member, and therefore must be adjusted if the member chooses a form of payment different than a single life annuity.[45]

41. The adjustment for benefit type must be based on the lower of either: (a) the plan assumptions related to optional payment types; or (b) the IRS assumptions of 5% and 83GAM mortality.[46]

42. TRA plan assumptions result in a lower limit and are therefore applicable to the present matter.[47]

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[43] *Id.*; Exs. 5, 6.
[44] Test. of J. Hohenstein; Exs. 5, 6.
[45] Test of J. Hohenstein; I.R.C. § 415(b)(2)(B) (2012).
[46] Ex. 6; Treas. Reg. § 1.415(b)-1(c)(2).
[47] Ex. 5, at 9; Ex. 6.

43. Taking into account the TRA plan assumptions, an "Adjustment Factor" must be calculated by comparing the monthly benefit payment received under a retiree's chosen benefit plan type to the equivalent benefit that would have been payable under a single life annuity.[48]

44. The resulting Adjustment Factor is then applied to the Section 415(b) early retirement Reduced Limit to determine the appropriate benefit type adjustment for the first year of benefit payments (Reduced and Adjusted Limit).[49]

Calculation and Application of Starting Factor

45. Once the Reduced and Adjusted Limit is determined for the first benefit year, a "Starting Factor" is calculated by comparing the Reduced and Adjusted Limit to the original Section 415(b) Unreduced Limit.[50]

46. For all future years in which benefits are paid, the Starting Factor is multiplied by the applicable Section 415(b) Unreduced Limit for that year to determine the Reduced and Adjusted Limit for each benefit year.[51]

47. In computational terms, the complete formula for calculating the Reduced and Adjusted Limit for each benefit year involves the following four steps in the order set forth below:

a. **E / F = G**

b. **D × G = H**

c. **H / A = I**

d. **I × J = K**

The calculations rely on the following factors:

A = Section 415(b) Unreduced Limit;

D = Calculated Section 415(b) Reduced Limit [see Finding No. 39 above];

E = Monthly benefit payment received under the retiree's chosen benefit plan type;

F = Equivalent benefit payable under a single life annuity;

[48] Test. of J. Hohenstein; Exs. 5, 6.
[49] Test. of J. Hohenstein; Ex. 5, at 9.
[50] Test. of J. Hohenstein; Ex. 5, at 10.
[51] Test. of J. Hohenstein; Ex. 5, at 10.

G = Adjustment Factor;

H = First benefit year Reduced and Adjusted Limit;

I = Starting Factor;

J = Section 415(b) Unreduced Limit for each ensuing benefit year; and

K = Each year's Reduced and Adjusted Limit.

Modification for After Tax Contributions

48. The Section 415(b) Unreduced Limit applies to employer-provided pension benefits, not to after-tax employee contributions. As such, after-tax employee contributions made by a member, increased by an applicable interest rate compounded annually,[52] must be added to the Reduced and Adjusted Limit for each benefit year to determine the final "Reduced, Adjusted and Modified Limit."[53]

49. Federal tax law prescribes a specific methodology for converting after-tax contributions to a single life annuity equivalent as an adjustment to the Section 415(b) Unreduced Limit. The methodology involves increasing the after-tax contributions with prescribed interest to the date of retirement and then converting the resulting contributions-plus-interest total to an equivalent single life annuity.[54]

50. In the relevant timeframe, the prescribed interest-crediting rates on after-tax employee contributions were as follows: before December 31, 1987 – 5%; 1988 – 10.61%; 1989 – 11.11%; 1990 – 9.57%; 1991 – 9.78%; and 1992 – 8.1%.[55]

51. Once a retiree's accumulated contributions-plus-interest is calculated, the total is converted to a single life annuity at retirement age using mortality and interest rates prescribed in IRC section 417(e)(3) and the present value of $1 per year for life starting at the age of retirement.[56]

52. Using these factors, the total contributions-plus-interest is annuitized by multiplying it by the present value of $1 per year for life starting at the age of retirement, with the result being added to the previously calculated Reduced and Adjusted Limit.[57]

53. In mathematical terms, the formula is:

[52] I.R.C. § 411(c); Treas. Reg. § 1.415(b)-1(b)(2)(ii), .417(e)-1(d)(2), (e)-1(d)(3)(i), (e)-1(d)(4)(i).
[53] Test. of J. Hohenstein; Exs. 5, at 11-12; 6, at 2.
[54] Test. of J. Hohenstein.
[55] Ex. 5, at 12; Ex. 6, at 2; I.R.C. § 411(c)(2)(C).
[56] Test. of J. Hohenstein; Ex. 5, at 13.
[57] Test. of J. Hohenstein; Ex. 5, at 14.

L / M = N, where

L = Total of after-tax contributions plus prescribed interest;

M = Present value of $1 per year starting at retirement age through life expectancy age; and

N = Annual annuitized after-tax contributions (Modified Limit).

Calculating Section 415(b) Reduced, Adjusted and Modified Limit for Any Benefit Year

54. A retiree's Reduced, Adjusted and Modified Limit for any benefit year bears the same ratio to the Section 415(b) Unreduced Limit as the adjustment made in the retiree's initial year of retirement.[58]

55. To each benefit year's Reduced and Adjusted Limit, calculated as set forth above with respect to application of the Starting Factor, the Modified Limit is added, resulting in the Section 415(b) Reduced, Adjusted and Modified Limit for each benefit year.[59]

56. Mathematically expressed, the final calculation to determine a retiree's required Section 415(b) Reduced, Adjusted and Modified Limit is:

K+ N = X, where

K = Each year's Reduced and Adjusted Limit;

N = Annual annuitized after-tax contributions (Modified Limit); and

X = Each year's Section 415(b) Reduced, Adjusted and Modified Limit.

Gerald Kleve

57. Gerald Kleve was born in 1936 and is currently 79 years old. He lives in Minnesota.[60]

58. For the 35 years from 1958 to 1993, Mr. Kleve was a licensed educator in the State of Minnesota.[61]

59. Throughout his employment, Mr. Kleve was a member of TRA.[62]

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[58] Test. of J. Hohenstein; Ex. 5, at 15; Ex. 6, at 2.
[59] Test. of J. Hohenstein; Ex. 5, at 15; Ex. 6, at 2.
[60] Exs. 1, 5-9. Mr. Kleve's exact birth date and address have been excluded for privacy purposes.
[61] Ex. 101.
[62] *Id.*

60. Mr. Kleve retired on July 1, 1992[63] at the age of 55 years, 8 months.[64]

61. In his application for benefits submitted to TRA, Mr. Kleve selected a Life C-3 15 Years Guaranteed benefit option.[65] A Life C-3 15 Years Guaranteed benefit option is not a straight life annuity; that option is identified by TRA as a Life A-1 No Refund option.[66]

62. TRA received Mr. Kleve's application on May 13, 1992, and timely informed Mr. Kleve that his first annuity payment would be received in October 1992 and monthly thereafter in the amount of $4,934.26 per month.[67]

63. On September 28, 1992,[68] and annually thereafter until as late as December 2014,[69] TRA notified Mr. Kleve regarding the federal taxability of his annuity payments. These notifications made no reference to Section 415(b) of the Internal Revenue Code.[70]

64. Over time, Mr. Kleve's monthly benefit has increased pursuant to cost-of-living adjustments allowed by state law.[71]

65. Mr. Kleve made $43,484.50 in after-tax contributions to his TRA retirement funds from 1958 through 1984,[72] which contributions grew to a value $114,206.93 upon application of interest as required by federal tax regulations related to Section 415(b).[73]

66. Over the 23 years of his retirement and through June 30, 2015, Mr. Kleve has received monthly retirement benefit payments from TRA totaling $2,713,943.[74]

67. On May 12, 2015, TRA notified Mr. Kleve that as of July 15, 2015 his monthly pension benefits would be reduced by $2,229.30 per month, from $13,455.05 to $11,225.75, to comply with the Section 415(b) limit.[75]

68. The May 12, 2015 correspondence was the first written notice Mr. Kleve had received from TRA in his 23-year retirement indicating that there was a problem with his pension benefits related to alleged overpayments.[76]

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[63] Exs. 1, 5-9, 105.
[64] Ex. 5, at 2; Ex. 7.
[65] Ex. 1.
[66] *Id.*
[67] Exs. 1-3.
[68] Ex. 4.
[69] *See* Ex. 101.
[70] Exs. 3, 101.
[71] Test. of J. Stoffel; Test. of J. Hohenstein.
[72] Ex. 5, at 12; Ex. 9.
[73] Ex. 5, at 12; Ex. 6, at 2.
[74] Exs. 7, 12.
[75] Ex. 12.
[76] Exs. 101, 102.

69. Mr. Kleve promptly contacted TRA to request additional information related to the alleged overpayments.[77]

70. On June 18, 2015, TRA informed Mr. Kleve that it had overpaid his pension benefits in the amount of $424,753, which with interest had grown to an overage of $693,489, and informed him that TRA was reviewing the situation to determine what options remained with respect to recovering the overpayments.[78]

71. On or about July 2, 2015, Mr. Kleve timely appealed the TRA's decision to reduce his monthly benefit amount.[79]

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. IRC Section 415(b) requires that all public pension funds limit retirees' annual benefits to a specified cap, subject to necessary reductions for early retirement, adjustments for choice of benefit plan, and modifications to account for members' after-tax contributions.

2. Section 415(b) has applied to TRA since 1995.[80]

3. TRA failed to reduce Mr. Kleve's monthly benefits to account for his retirement at age 55 years, 8 months, as required by Section 415(b).

4. TRA failed to adjust Mr. Kleve's monthly benefits to account for the fact that he chose a benefit plan other than a straight life annuity, as required by Section 415(b).

5. TRA likewise failed to calculate any necessary limitation modifications related to Mr. Kleve's after-tax contributions, as required by Section 415(b).

6. TRA knowingly failed to comply with Section 415(b) for "approximately five years," but at least since 2013, with respect to basic plan members who retired before age 62 and chose a benefit plan other than a straight life annuity.[81]

7. Mr. Kleve had no part in TRA's failure to accurately calculate his 8 monthly pension benefits over the last 23 years of his retirement.

8. Mr. Kleve acted professionally and appropriately when notified of TRA's failure to adequately comply with the benefit limitations required by Section 415(b).

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[77] Ex. 13.
[78] Ex. 12, at 2.
[79] Ex. 15.
[80] 1995 Minn. Laws ch. 262, art. 1, § 15, at 2827.
[81] Test. of J. Stoffel.

9. Application of Section 415(b) to the facts of this case results in the correct Reduced, Adjusted and Modified Limit that TRA should have applied to Mr. Kleve's benefit payments on an annual basis, utilizing the prescribed interest rate of 7.92% and a life expectancy of 80 years,[82] as set forth in the chart and related mathematical calculations below.

	Defined Factor	**Value in Record: Gerald Kleve**
A	Section 415(b) Unreduced Limit for 1993	$112,221[83]
B	Present value at the age of actual retirement of a deferred benefit commencing at age 62 of $1 payable per month for life	102.011 (age 55)[84] 107.578 (age 56)[85]
C	Present value of $1 payable per month for life commencing at the age of actual retirement	172.142 (age 55)[86] 169.184 (age 56)[87]
D	Calculated 415(b) Reduced Limit	$66,501.94 (age 55)[88] $71,357.28 (age 56)[89] Averaged to age 55+8 $69,738.83[90]
E	Monthly benefit payment received under the retiree's chosen benefit plan type	$4,934.26[91]
F	Equivalent benefit payable under a single life annuity	$5,072.71[92]
G	Adjustment Factor	0.972707[93]
H	First benefit year Reduced and Adjusted Limit	$67,835.45[94]

[82] Ex. 5, at 13; Ex. 6, at 2.
[83] Ex. 5, at 3; Ex. 6, at 1.
[84] Ex. 5, at 5; Ex. 6, at 1.
[85] Ex. 5, at 5; Ex. 6, at 1.
[86] Ex. 5, at 5; Ex. 6, at 1.
[87] Ex. 5, at 5; Ex. 6, at 1.
[88] Ex. 5, at 7; Ex. 6, at 1.
[89] Ex. 5, at 7; Ex. 6, at 1.
[90] Ex. 5, at 8; Ex. 6, at 1.
[91] Ex. 5, at 9; Ex. 6, at 1.
[92] Ex. 5, at 9; Ex. 6, at 1.
[93] Ex. 5, at 9; Ex. 6, at 1.
[94] Ex. 5, at 9; Ex. 6, at 2.

	Defined Factor	Value in Record: Gerald Kleve
I	Starting Factor	0.604481[95]
J	Section 415(b) Unreduced Limit for each ensuing benefit year	See chart Ex. 12
K	Each year's Reduced and Adjusted Limit	See chart Ex. 12
L	Total of after-tax contributions plus prescribed interest	$114,206.93[96]
M	Present value of $1 per year starting at retirement age through life expectancy age	$10.795167[97]
N	Annual annuitized after-tax contributions (Modified Limit).	$10,579.45[98]
X	Each year's Section 415(b) Reduced, Adjusted and Modified Limit	See chart Ex. 12

Formulas	Calculations
A × B ÷ C = D	$112,221 × 102.011 / 172.142 = $66,501.94 - Age 55 figures $112,221 ×107.578 / 169.184 = $71,357.28 - Age 56 figures $66,501.94 and $71,357.28 plotted linearly to account for 8 months = $69,738.83[99]
E / F = G	$4,934.26 / $5,072.71 = 0.972707
D × G = H	$69,738.83 × 0.972707 = $67,835.45
H / A = I	$67,835.45 / $112,221 = 0.604481
L / M = N	$114,206.93 / $10.795167 = $10,579.45
I × J = K	See chart Ex. 12
K+ N = X	See chart Ex. 12

[95] Ex. 5, at 10; Ex. 6, at 2.
[96] Ex. 5, at 12; Ex. 6, at 2.
[97] Ex. 5, at 14 Ex. 6, at 2.
[98] Ex. 5, at 14; Ex. 6, at 2.
[99] Ex. 5, at 8.

10. As established by these calculations, starting on July 1, 2015, TRA lawfully reduced Mr. Kleve's monthly benefits to $11,225.75 in compliance with Section 415(b), taking into account his retirement age of 55 years plus 8 months, his choice of a benefit plan other than a straight life annuity, and his after-tax contributions to the plan.[100]

11. Minnesota's "Rule of 90," which Mr. Kleve relied on when he retired,[101] does not require or allow a different result. The Rule of 90 is a state law designed to incentivize early retirement. It applies to members first employed before June 30, 1989, and allows retirement with full benefits when a member's accumulated total years of service plus age totals 90 points. The statute provides:

> Any person whose attained age plus credited allowable service totals 90 years is entitled, upon application, to a retirement annuity in an amount equal to the normal annuity provided in section 351.115, subdivisions 2 and 3, paragraph (a), *without any reduction by reason of early retirement.*[102]

12. The italicized language above does not result in a conflict between Minnesota law and Section 415(b) for two reasons. First, federal law supersedes state law when "a party cannot simultaneously comply with both state and federal law."[103] More directly, Minnesota law specifically acknowledges the supremacy of Section 415(b) with respect to all public employees' retirement benefit calculations, as follows:

> **Maximum benefit limitations.** An annuitant's annual benefit, if necessary, must be reduced to the extent required by section 415(b) of the federal Internal Revenue Code, as adjusted by the United States secretary of the treasury under section 415(d) of the federal Internal Revenue Code for any applicable increases in the cost of living, including applicable increases in the cost of living after the member's termination of employment. If an annuitant participated in more than one pension plan in which the employer participates, the benefits under each plan must be reduced proportionately, if necessary, to satisfy the applicable limitation.[104]

13. Continuing to pay Mr. Kleve monthly plan benefits in excess of Section 415(b)'s limitations would constitute a continuing violation of TRA's fiduciary duties

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[100] Ex. 10.
[101] Ex. 105.
[102] Minn. Stat. § 352.116, subd. 1(c) (2014) (emphasis added).
[103] *Hous. & Redevelopment Auth. of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014).
[104] Minn. Stat. § 356.611, subd. 3 (2014).

owed to its active, deferred, and retired members and the taxpayers of the State of Minnesota.[105]

Based on these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Chief Administrative Law Judge makes the following:

RECOMMENDATION

The Chief Administrative Law Judge recommends that the TRA Board of Trustees reduce the monthly pension benefits paid to Mr Gerald Kleve to comply with Section 415(b) of the Internal Revenue Code and Minn. Stat. § 356.611, subd. 3, as specified herein.

Dated: January 26, 2016

s/Tammy L. Pust

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TAMMY L. PUST
Chief Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared.

NOTICE

This Report is a recommendation, not a final decision. The TRA Board of Trustees will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61 (2014), the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least five days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Laurie Hacking, Executive Director, Teachers Retirement Association, 60 Empire Drive, Suite 400, St. Paul, Minnesota 55103, to ascertain the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

Through no fault of his own, 79-year-old Gerald Kleve now faces a sizeable reduction in his monthly TRA pension benefits. Mr. Kleve quite understandably prefers

[105] Minn. Stat. § 354.06, subd 1a (2014).

that the TRA Board of Trustees not implement the reduction due to the negative financial consequences it will have on him and his family.[106]

Unfortunately the law requires this result. Section 415(b), in place and applicable to TRA since 1995, requires TRA to reduce a retiree's annual paid benefits by various statutory factors upon early retirement. TRA has failed to comply with this law in the past; it has no lawful choice but to do so now.

On the record, TRA did not even attempt to explain its failure to apply this federal requirement for over 20 years; it merely acknowledged its mistake and the inconvenience its lapse caused Mr. Kleve and a handful of other retirees. Clearly, the resulting overpayment is more than mere inconvenience to Mr. Kleve. He justifiably relied on the annual statements TRA provided regarding his benefit levels. He paid taxes on those benefits as required by both state and federal law. The fact that TRA only recently determined its need to comply with federal tax law has left Mr. Kleve, and eight similarly-situated retirees, facing a financial morass of extreme proportions. While it examines its responsibility for and options for resolving this morass, the TRA Board of Trustees should act with all due speed to reduce future benefit payments as required by Section 415(b) in order to prevent the decades-long problem from growing even worse.

T. L. P.

[106] Ex. 110.