**Section 1600.205 Earnings Subject to Withholding and Crediting**

a) Purpose. This Section provides guidance on which payments for compensation constitute "earnings" under Sections 15-111 and 15-111.5 of the Code. Section 15-157 of the Code requires every participating employee to make contributions of 8% of his or her pay to fund the benefits payable under SURS. This contribution is deducted from the participating employee's pay on a pre-tax basis and remitted to SURS via payroll deduction. The contributions are made as a percentage of the participating employee's "earnings".

b) Definition. "Earnings", defined under Section 15-111 of the Code, *is an amount paid for personal services equal to the sum of the basic compensation plus extra compensation for summer teaching, overtime and other extra service*, subject to the following:

1) *For periods for which an employee receives service credit under* Section 15-113.1(c) or 15-113.2 of the Code, *earnings are equal to the basic compensation on which contributions are paid by the employee during such periods.*

2) Earnings shall include the basic compensation on which employee contributions required under Section 15-157 of the Code are paid by the employee for periods of furlough as provided under Section 15-113.11 of the Code.

3) Earnings shall include the amount of a voluntary pay reduction taken in lieu of furlough on which employee contributions required under Section 15-157 of the Code are paid by the employee as provided under Section 15-113.12 of the Code.

4) *Compensation for employment which is irregular, intermittent and temporary shall not be considered earnings, unless the participant is also receiving earnings from the employer as an employee under Section 15-107* of the Code*.*  [40 ILCS 5/15-111(a)]

c) Tier 2 Member Earnings Limitation

1) *For a Tier 2 member, the annual earnings shall not exceed $106,800; however, that amount shall annually thereafter be increased by the lesser of:*

A) *3% of that amount, including all previous adjustments; or*

B) *one-half the annual unadjusted percentage increase (but not less than zero) in the Consumer Price Index-U* (CPI-U) *for the 12 months ending with the September preceding each November 1, including all previous adjustments.*

2) *For the purposes of this Section,* CPI-U *means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the boards of the retirement systems and pension funds by November 1 of each year.* [40 ILCS 5/15-111(b)]

d) Determination of the Purpose of the Payment

1) If the payment is for services rendered, then the payment is earnings.

2) If the payment is for a reason other than services rendered, it is not earnings.

3) Other Payments

The following list does not limit SURS' authority to determine whether any payment of compensation constitutes earnings on a case-by-case basis.

A) Bonuses; Awards

i) Bonuses received by an employee that are related to services rendered for a specific period of time, not to exceed one academic year, shall be included in earnings subject to SURS withholding.

ii) Awards, such as longevity of service awards or outstanding employee awards, that are not associated with a particular time period are not subject to SURS withholding.

iii) Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include bonuses.

B) Severance Payments, Salary/Contract Continuation Payments, Retirement Payments or Incentives. Payments made to facilitate termination of employment or to induce someone to retire, or not to retire, are not for services rendered, but are made in conjunction with an employee's termination of employment or retirement and are not earnings. These payments are also not includable in the final rate of earnings under Section 15-112.

C) Group Fringe Benefits. Group fringe benefits provided by the employer are not earnings. However, employer paid premiums on employer-provided group term life insurance in excess of $50,000 are earnings.

D) Housing Allowance. A housing allowance, whether in the form of a direct salary payment or as a residence in which the employee resides, is earnings. Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include housing allowances.

E) Automobile Allowance. An automobile allowance in the form of a direct salary payment is earnings. However, neither business use nor personal use of an employer-provided automobile is earnings. Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include vehicle allowances.

F) Non-Qualified Moving Expenses. Non-qualified moving expenses (see 26 USC 217) are not earnings as they are not furnished in lieu of salary.

G) Unused Sick Leave Paid at Termination of Employment. These payments are not earnings, except for collectively bargained payments made in accordance with Section 15-112 of the Code.

H) Overtime. Overtime is earnings.

I) Miscellaneous Other Benefits. Fringe benefits that are provided in lieu of salary are earnings. Items that are not provided in lieu of salary (such as reimbursement for out-of-pocket travel expenses, relocation expenses, etc.) are not earnings. Items such as country club dues, tuition waivers, tickets to athletic and performing arts events for family members of employees, and other items that are reported as taxable income on the employee's Form W-2 are not earnings, unless those items are a negotiated fringe benefit in lieu of salary. Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include social club dues or athletic club dues.

J) Military Differential Wage Payments and Salary Continuation Benefits. For payments made on or after January 1, 2009, differential wage payments, as defined under section 414(u)(12) of the IRC (26 USC 414(u)(12)), and payments to an individual who does not currently perform services for an employer by reason of qualified military service, as defined under section 414(u)(1) of the IRC (26 USC 414(u)(1)), to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service, shall be earnings and shall be compensation paid or made available during the limitation year for purposes of applying the limitations under section 415 of the IRC.

K) Retroactive Pay Settlements, Court Settlements or Judgments, or Grievance Arbitration Settlements or Awards. The cash amount for back pay or retroactive pay under a settlement agreement, award or order issued by a court or arbitral body for a disputed termination of employment, suspension or demotion shall be earnings if the agreement, award or order:

i) Excludes from back pay any non-wage or non-salary items, such as health insurance reimbursements, payments for medical costs, interest awards, attorneys' fees, or damage awards;

ii) Specifies the months to which the back pay is allocated and the amount is based on the basic compensation (or a portion thereof) the employee would have otherwise received during those months; and

iii) The back pay amounts are paid to the employee within one year after the issuance of the agreement, award or order.

L) Payment for Unused Vacation Days. Pursuant to Section 15-112(h)(4)(iii) of the Code, payments for unused vacation of up to 56 work days paid upon termination of employment are earnings. Payments for unused vacation days that are paid during employment are not earnings.

M) Payments made under the Public Employee Disability Act [5 ILCS 345] are not earnings.

e) Earning History. Certain earnings may be excludable from the "final rate of earnings" determined under Section 15-112 of the Code. Earnings are always attributable to the period when earned, not when paid. SURS reserves the right to reallocate reported earnings to the period when earned, when this is necessary to accurately reflect the employee's earning history.

(Source: Amended at 44 Ill. Reg. 17714, effective October 22, 2020)