



**Dallas Police Retired Officers Association  
P.O. Box 720446  
Dallas, TX 75372**

May 2, 2019

Mr. Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue N.W.  
Washington, D.C. 20224

RE: Dallas Police & Fire Pension System

Dear Sir:

My name is David Elliston and I am the President of the Dallas Police Retired Officers Association (DPROA). Our Association was formed in December of 2016 as news of the perilous situation of the Dallas Police and Fire Pension System was headlining in the local news. For many of our members these news accounts were the first signs of impending threats to their hard-earned and accrued pension benefits. Retirees quickly realized that the associations who had represented them for years as active members of the Dallas Police Department were no longer their advocate. In quick order the DPROA was born and today represents over 800 police and fire first responders. Our mission and purpose is to be a legitimate and proactive voice to protect and advocate for the retirement benefits and interests of retired Dallas First Responders, their widows, survivors, disabled dependents, and family members. It is this duty which causes me to write to you today.

When the news accounts referenced earlier were breaking, the Mayor of Dallas was heard repeatedly making doomsday predictions to the media about the imminent collapse of the plan, which resulted in a "run on the bank" as frightened members rushed to withdraw their balances from their Deferred Retirement Option Plan (DROP) accounts. This action further destabilized the already struggling pension.

To familiarize you with DROP, upon entering DROP the member was allowed to continue working and defer his/her pension annuity into a tax deferred interest bearing account

maintained by the Dallas Police & Fire Pension System (DP&FPS). The members' service accrual ceased on the day they entered DROP just as if they had left active service. There was no further accrual of service benefit or adjustment for raises or promotions. The DP&FPS formed its DROP program in 1992 and actively initiated it upon receiving an IRS qualification letter in March 1993. The motivation for its implementation was to encourage tenured police and fire personnel to remain on the job rather than retire for more lucrative jobs elsewhere. The City of Dallas was fully in support of the program as it allowed the city to retain qualified and trained first responders for a less than competitive wage when compared to other jurisdictions. I personally participated in DROP for more than nine years beginning in 2000 before I separated from the Department in 2010. As news of the "run on the bank" spread, our Pension Trustees assured us they would strongly resist any effort to take or reduce our DROP accounts as they believed they were protected by law.

On December 5, 2016, Mayor Mike Rawlings filed a Temporary Restraining Order (TRO) in State District Court seeking to bar the DP&FPS from disbursing further DROP withdrawals. In the December 8, 2016, DP&FPS board meeting, the board stated they did not have the cash on hand to honor all DROP withdrawal requests. Instead, they would treat all remaining members' requests equitably by not honoring any further DROP withdrawal requests until certain assets were liquidated. As our members researched the legality of this action, they reviewed section 401 of the IRS Tax Code, several 401k plans, 457 plans and DROP plans from other agencies. It appears that all of these plans contain provisions for members of the plan to make periodic withdrawals, lump sum withdrawals, rollovers to IRA, 401k, or 457 accounts and to allow for the code required minimum distribution at certain ages. None of these plan rules allowed a forced conversion of a member's tax-deferred retirement money to a taxable annuity type payment. The repetitive tenant of these plans is a member's right to individually choose where and how their money is invested and how they can legally withdraw or move it.

The solution to fix this pension system by the 85th Texas State Legislature, in concurrence with the DP&FPS Board, was to "annuitize" the remaining DROP accounts and disburse members' money with interest based on a treasury rate (estimated to be approximately 2.5%) over the members' remaining actuarial life expectancy. Participation in the DROP program was based on the rules and guidelines provided in the member handbook and was deemed a tax qualified pension plan by the IRS and memorialized by a letter from the IRS District Director. This fix in the form of HB 3158 was passed by the 85<sup>th</sup> Texas Legislature and signed by the governor of Texas. It is our belief that this forced annuitized plan may be illegal under the current Code regulations and guidelines in that it involuntarily converts members' DROP accounts to other uses.

The DP&FPS DROP plan is operating in a manner in disregard of applicable sections of the Code section 401 by not allowing member distributions, including rollover to IRA, 457 and 401k accounts. On behalf of our members I ask that the IRS investigate and take appropriate action to require the DP&FPS to follow applicable federal law and disperse held DROP retirement savings to the DROP account holders by either rollover to IRA, 401k/457 accounts, periodic payments on a schedule and amount of the member's choosing, or lump sum withdrawal.

Members have counted on this money to be there for them in their retirement years and for sustaining their widowed spouses and children. We now learn that once the member dies his/her spouse will not even be allowed to request a hardship withdrawal from their DROP annuity. Only the member has the right to request a "hardship" withdrawal. The tax consequences of this involuntary conversion into a forced annuity of member's DROP accounts can also be severe. Many were not planning on withdrawing DROP money until later years and thus deferring the taxes. Now following the filing of their 2018 tax returns they are finding themselves owing huge tax bills for the forced withdrawal of DROP funds.

From day one members participating in the DROP program were told their funds were available in a variety of ways and were never cautioned that they could be seized to recapitalize the pension plan. It is our contention that this action is illegal under Federal law and contrary to IRS rules and regulations.

To facilitate your review I am enclosing the following documents:

- Internal Revenue Service DROP Qualification Letters 03-04-1993 / 10- 20-2014
- Letter from former Board Chairman Sam Friar
- DP&FPS DROP Policy & Procedure 11-25-1998
- DP&FPS Amended DROP Policy & Procedure 11-09-2017
- Letter from Executive Director Kelly Gottschalk ceasing DROP Distributions 12-13-2016
- Declaration of Gary Lawson Civil Action No. 3:17-cv-01596-N
- Texas State House Bill 3158 is published online at <https://legiscan.com/TX/bill/HB3158/2017>

Thank you for your attention to this matter and your dedicated service to our country.

Sincerely,

David Elliston  
President  
Dallas Police Retired Officers Association