MEETING DATE: 12/22/08

AGENDA ITEM: Adopt a Resolution for Employer Pick Up to Allow the City to Continue Implementing the Provisions of Section 414(h)(2) Internal Revenue Code(IRC) Pursuant to California Government Code Section 20691

ATTACHMENTS

RESOLUTION NO. 2008-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, TO TAX DEFER EMPLOYER-PAID MEMBER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the City of Culver City has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code; and,

WHEREAS, the Board of Administration of the Public Employees' Retirement System adopted its resolution regarding section 414(h)(2) of the Internal Revenue Code on September 18, 1985; and,

WHEREAS, the Internal Revenue Service stated, in December 1985, that the implementation of the provisions of section 414(h)(2) of the Internal Revenue Code pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of section 414(h)(2) of the Internal Revenue Code; and,

WHEREAS, the City of Culver City has determined that even though the implementation of the provisions of section 414(h)(2) of the Internal Revenue Code is not required by law, the tax benefit offered by section 414(h)(2) of the Internal Revenue Code should be provided to its employees who are members of the Public Employees' Retirement System.

NOW, THEREFORE, the City Council of the City of Culver City, California, DOES HEREBY RESOLVE as follows:

1. That the City of Culver City will implement the provisions of section 414(h)(2) of the Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees' Retirement System.

"Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.

2. That the contributions made by the City of Culver City to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of Culver City in lieu of contributions by the employees who are members of the Public Employees' Retirement System.

3. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Culver City to the Public Employees' Retirement System.

4. That the City of Culver City shall pay to the Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.

5. That the amount of the contributions designated as employee contributions and paid by the City of Culver City to the Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the PublicEmployees' Retirement Law (California Government Code sections 20000, et seq.).

6. That the contributions designated as employee contributions made by the City of Culver City to the Public Employees' Retirement System shall be treated for all

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purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

APPROVED and ADOPTED this _____ day of __________ 2008.

____
D. SCOTT MALSIN, MAYOR
City of Culver City, California

ATTEST:

____
MARTIN COLE, City Clerk
A08-00554

APPROVED AS TO FORM:

____
CAROL A. SCHWAB, City Attorney

CalPERS
P.O. Box 942709
Sacramento, CA 94229-2709
888 CalPERS (or **888**-225-7377)
Telecommunications Device for the Deaf
No Voice (916) 795-3240
www.calpers.ca.gov

Date: October 3, 2008
Reference No.:
Circular Letter No.: 200-049-08
Distribution: VI, XII, XVI
Special:

Circular Letter

TO: **PUBLIC AGENCIES, COUNTY SUPERINTENDENT OF SCHOOLS, SCHOOL DISTRICTS**

SUBJECT: **EMPLOYER "PICK-UP" - REVENUE RULING 2006-43**
DECEMBER 31, 2008 DEADLINE FOR ACTION

ATTENTION: **FINANCE DIRECTORS, HUMAN RESOURCE DIRECTORS**

This Circular Letter is being sent to advise employers of Revenue Ruling 2006-43 concerning the pick-up of employee contributions to California Public Employees Retirement System (CalPERS), and of actions that an employer may be required to take before December 31, 2008 to ensure compliance with pick-up requirements.

BACKGROUND AND PURPOSE

Internal Revenue Code (IRC) Section 414(h)(2) allows public agencies and school employers to designate required employee contributions as being "picked-up" by the employer and treated as employer contributions for tax purposes. The effect of a pick-up is to defer tax on employee contribution amounts until the member retires and receives retirement benefits, or separates from employment and takes a refund of contributions. Absent the 414(h)(2) provision applicable to governmental plans, employee contributions to a defined benefit pension plan qualified under Section 401(a) would automatically be after-tax contributions (e.g. taxable income to the employee at the time the contribution was made).

Since the early 1980s, CalPERS has taken steps to ensure that contracting agency and school employers have adopted and submitted to CalPERS appropriate written evidence of pick-ups prior to reporting tax-deferred member contributions to CalPERS. This Circular Letter is being sent as a reminder of the federal tax reporting requirements, to encourage each contracting agency and school employer who reports tax-deferred member contributions to review their documents and, if necessary, adopt conforming documentation prior to the deadline set by Revenue Ruling 2006-43. To view the ruling, visit CalPERS online.

REVENUE RULING 2006-43

Revenue Ruling 2006-43 provides, in general, that an employee contribution will not be treated as "picked-up" under IRC 414(h)(2) unless:

> (1) The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer (this action must be memorialized in writing), and
>
> (2) The employer does not permit participating employees to opt out of the pick-up or to receive the contributed amounts directly instead of having them paid by the employer to the plan.

Revenue Ruling 2006-43 allows employers who do not have written evidence of a pick-up, but their actions show that they intended to establish and carry out a pick-up, to be treated as meeting the requirements of 414(h)(2) for past pre-tax contributions if the employer takes formal action in writing prior to December 31, 2008 with respect to future picked-up contributions. If formal action is not taken prior to December 31, 2008, only contributions taken after the written documentation is in place may be treated as picked-up.

WRITTEN DOCUMENTATION

Many of you offer a pick-up of employee contributions under a resolution approved by the IRS in a private letter ruling issued to CalPERS on December 6, 1985, (PLR 8609084). If your agency has adopted the approved resolution to implement 414(h)(2) pick-ups, you may continue to rely on that ruling and need not adopt a new resolution. This approved form, which is Sample E—Resolution for Employer Pick-up can be viewed at CalPERS online. If you have not previously sent a copy of the resolution to us, or if you did not complete Sample E, but have other written documentation, please send a copy of your document or resolution to us immediately.

After 1985, CalPERS provided additional pick-up resolutions for adoption by contracting agencies that distinguishes whether the pick-up was to be actually paid by the employer or by the employee. When an employer pays the employee contributions, it is referred to as Employer Paid Member Contributions (EPMC). The employer may also report the value of EPMC as special compensation. Contracting agencies that adopted any of these resolutions were requested to submit the resolutions to CalPERS. Samples of Resolutions A through D can be viewed at CalPERS online. You may continue to rely on these resolutions but you should review them and validate that the resolution covers all of the employees whose contributions are reported as tax-deferred. If you have not previously sent a copy of the resolution to us, please do so immediately.

CALPERS NEW BUSINESS ENVIRONMENT

CalPERS is in the process of building and installing a new business reporting system. One of the design features will enhance CalPERS ability to maintain accurate and up to date information about contracting agency and school employer pick-ups. As a way of ensuring that our system will accurately record your agency's pick-up provision, CalPERS requires all affected agencies to provide a copy of their existing or future pick-up resolutions or other written documentation. This will ensure ongoing compliance with federal tax reporting requirements. The new system will validate that you have documentation on file with CalPERS before accepting tax-deferred member contributions. If documentation is not on file, your records will be rejected and will be held until the appropriate documentation is received.

CONCLUSION

If you are submitting tax-deferred contributions on behalf of your members, we request that you review your files for documentary evidence authorizing such employer pick-up of employee contributions. If you do not have evidence, please take steps to have your governing board adopt an appropriate resolution prior to December 31, 2008.

Please send a copy of your pick-up documentation to:

CalPERS
Employer Services Division
Compensation Review Unit
P.O. Box 942709
Sacramento CA 94229-2709

If you have any questions, please call the Employer Contact Center at **888 CalPERS** or (**888** 225-7377).

Lori McGartland, Chief
Employer Services Division

Visit the CalPERS website at www.calpers.ca.gov (2008 Circular Letters) for more information on the following:

1 - Revenue Ruling 2006-43
2 - Sample Resolution E
3 - Sample Resolutions A - D