



Yolo County Housing

Lisa A. Baker, Executive Director

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DATE: January 15, 2009
TO: YCH Board of Commissioners
FROM: Lisa A. Baker, Executive Director
PREPARED BY: Janis Holt, Resource Administrator
SUBJECT: **Review and Approved Proposed Resolution for Employer-Paid Member Contributions**

RECOMMENDED ACTION:

That the Board of Commissioners Approve the Resolution for Employer Payment of Member Contributions.

BACKGROUND / DISCUSSION

On August 7, 2007, the Board approved the designation of required employee contributions as being "picked up" by the employer and treated as employer contributions for tax purposes (IRS Section 414 [h] [2]). 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. In effect, this allows the contribution to be taken out pre-tax from the bi-monthly paycheck.

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.

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.

Staff provided CalPERS with a copy of Minute Order No. 07-44 from that Board of Commissioners Meeting held August 7, 2007 as documentation for compliance with Revenue Ruling 2006-43.

On August 7, 2007, the YCH Board of Commissioners approved the Collective Bargaining Agreement with the General Unit and the Management Unit which in summary stated:

- 1) General unit members will begin paying 50% of their PERS contributions.
- 2) General unit members having any unused portion of paid cafeteria plan may also use pre-tax savings for PERS share and which may also be used in a deferred compensation plan.

However, CalPERS is requesting additional written documentation from our agency in the form of a Board Approved Resolution (attached) to assure compliance with the described ruling.

FISCAL IMPACT

1. Financial impact to YCH employees if employee paid contributions are not considered "pre-tax".
2. Potential financial impact to YCH for payroll re-calculations.

CONCLUSION

Staff recommends that the Board approve the Resolution for Employer Payment of Member Contributions.

Attachment: Resolution

**YOLO COUNTY HOUSING
RESOLUTION NO. _____**

(Resolution for Employer Payment of Member Contributions)

WHEREAS, the Housing Authority of the County of Yolo (informally known as Yolo County Housing or YCH) has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

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

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

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

NOW, THEREFORE, IT IS HEREBY RESOLVED, DETERMINED, AND ORDERED AS FOLLOWS:

- I. That the Housing Authority of the County of Yolo will implement the provisions of section 414(h)(2) 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.
- II. That the contributions made by the Housing Authority of the County of Yolo to the Public Employees' Retirement System (PERS), although designated as employee contributions, are being paid by YCH in lieu of contributions by the employees who are members of the Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by YCH to the Public Employees' Retirement System.

- IV. That YCH 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.
- V. That the amount of the contributions designated as employee contributions and paid by YCH to the Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the Public Employees' Retirement Law (California Government Code sections 20000, et seq.)
- VI. That the contributions designated as employee contributions made by YCH to the Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

PASSED AND ADOPTED, by the Board of Commissioners of the Housing Authority of the County of Yolo, State of California, this 15th day of January, 2009 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____, Chair
Board of Commissioners of the
Housing Authority of the County of Yolo

Approved as to Form:

Agency Counsel

By _____
Sonia Cortes

Attest:
Ana Morales, Clerk
Board of Commissioners of the
Housing Authority of the County of Yolo

By _____
Deputy