

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

Larry Haugh

DEPT: Auditor-Controller

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE December 9, 2008

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval and Authorization for the Chairman of the Board of Supervisors to sign a Resolution Evidencing Compliance with Internal Revenue Code Section 414 (h) (2) for the Pre-Tax Status of Employee Retirement Contributions - Auditor-Controller

STAFF RECOMMENDATIONS:

Approve adoption and authorize the Chairman of the Board of Supervisors to sign a Resolution evidencing compliance with Internal Revenue Service Ruling 2006-43 regarding pre-tax status of employee retirement contributions per Internal Revenue Code Section 414 (h) (2).

FISCAL IMPACT:

In 1985 the Board of Supervisors authorized the Chief Administrative Officer to pursue authorization from the Internal Revenue Service (IRS) that would allow an "employee pickup" of retirement contributions pursuant to IRS Code Section 414 (h) (2). Such authorization and approval through the labor negotiations process allowed for future designated employee retirement contributions to be paid by the County on behalf of an employee on a pre-tax basis and in lieu of contributions by the employee consistent with this code section. In 1999 the Board of Supervisors authorized inclusion of the redeposit of certain employee
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BOARD ACTION AS FOLLOWS:

No. 2008-823

On motion of Supervisor Monteith, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval and Authorization for the Chairman of the Board of Supervisors to sign a Resolution Evidencing Compliance with Internal Revenue Code Section 414 (h) (2) for the Pre-Tax Status of Employee Retirement Contributions - Auditor-Controller

FISCAL IMPACT (continued):

contributions to be paid on a pre-tax basis as well. Once a County employee retires, however, these contributions become taxable as they are drawn out of the retirement system. There is no additional cost to the County with the adoption of these provisions.

DISCUSSION:

On March 25, 1986, an IRS letter ruling was issued to the County of Stanislaus permitting implementation of IRS Code 414 (h) (2). As a political subdivision of the State, Stanislaus County was required to meet specific criteria under section 414 (h) (2) to fully implement the provisions. This included creation of a plan through negotiated provisions in a Memorandum of Understanding (MOU) for those employees covered by the collective bargaining laws and through resolution by the County Board of Supervisors for unrepresented employees. In addition, the Board of Supervisors must include in a resolution that the County formally agrees to make such payments designated as employee contributions to the plan. The resolution must require that the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

On April 22, 1986, a report was received by the Board of Supervisors, which acknowledged receipt of the private IRS Letter Ruling, identified the benefit to the employees, and requested authorization to implement the employee taxability changes of the retirement contributions as soon as possible. While the Board of Supervisors acknowledged receipt of the report, no action was taken to formally adopt the necessary resolution for the County to implement the plan. Subsequently, IRS Revenue Ruling 2006-43, provides transitional relief to employers that have "picked-up" employee contributions prior to August 20, 1996, if the employer adopts a resolution that states: (1) the retirement contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee; and (2) the employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

POLICY ISSUES:

Approval of this item will support the Board's priority of Efficient delivery of public services and is consistent with IRS Code Section 414 (h) (2) and Government Code 31581.2.

STAFFING IMPACT:

There are no staffing impacts associated with the adoption of this agenda item.

**Resolution Evidencing Compliance With Internal Revenue Service
Ruling 2006-43 Regarding Employer Pick-Up Of Contributions
Under Internal Revenue Code Section 414(h)(2)**

WHEREAS, Internal Revenue Service Ruling 2006-43 addresses certain requirements for employee contributions to a retirement system, such as the Stanislaus County Employees Retirement Association ("StanCERA"), that are "picked-up" by an employer within the meaning of Internal Revenue Code ("IRC") Section 414(h)(2). This revenue ruling establishes that the following criteria must be satisfied, (1) the employer must specify that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee, and (2) the employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system; and

WHEREAS, employees of the County of Stanislaus (hereinafter "Employer") participate in the StanCERA as a separate legal entity in accordance with the County Employees' Retirement Law of 1937 (the "37 Act") as set forth in the California Government Code; and

WHEREAS, members of StanCERA make mandatory employee contributions, may elect to redeposit member contributions, and may elect to make additional contributions for the purchase of service credit, the purchase of additional retirement credit, and the purchase of sick leave credit as permitted under the 37 Act; and

WHEREAS, Internal Revenue Service Ruling 2006-43 provides transitional relief to employers that have picked up employee contributions prior to August 20, 1996, if the employer adopts a resolution that states: (1) the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee; and (2) the employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system; and

WHEREAS, the Board of Supervisors previously specified in resolutions governing unrepresented employees that certain contributions to StanCERA, although designated as employee contributions, are being paid by the Employer in lieu of contributions by the employee consistent with IRC Section 414(h)(2), and

WHEREAS, the Board of Supervisors previously specified in its labor agreements between the Employer and recognized employee organizations that certain contributions, although designated as employee contributions, are being

paid by the Employer in lieu of contributions by the employee consistent with IRC Section 414(h)(2), and

WHEREAS, the labor agreements and resolutions, and the Employer's existing and past practice requires, that employees whose contributions are picked up pursuant to IRC Section 414(h)(2) do not have the option to receive the contributions directly instead of having them paid by the Employer to StanCERA.

NOW, THEREFORE, BE IT RESOLVED:

1. This resolution applies to all regular contributions that are required to be made by all employees (both represented and unrepresented employees) of the Employer as members of StanCERA, in accordance with the 37 Act, on a regular, payroll deduction basis and which are reported to StanCERA and credited to individual employee accounts. These member contributions to StanCERA are referred to as normal contributions under the 37 Act and are called "mandatory employee retirement contributions" in this resolution.

2. This resolution also applies to all employee contributions made to StanCERA for the redeposit of contributions and/or the purchase of service credit, additional retirement credit, and sick leave credit pursuant to a binding irrevocable payroll deduction election made by the employee to have such contributions picked up for tax purposes and made on a pre-tax basis, and which are reported to StanCERA and credited to individual employee accounts. These contributions to StanCERA are called "elective employee contributions" in this resolution.

3. Pursuant to IRC Section 414(h)(2) and Revenue Ruling 2006-43, and consistent with prior resolutions and approved labor agreements, the Board of Supervisors reaffirms that, (1) employee mandatory retirement contributions to StanCERA and elective employee contributions to StanCERA made by all employees (represented and unrepresented), although designated as employee contributions, are being paid by the Employer in lieu of contributions by the employees, and (2) the employees are not being given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to StanCERA.

4. Effective with the first pay day after the date of this resolution, all mandatory employee retirement contributions made to StanCERA, although designated as employee contributions under the 37 Act and although deducted from the employee's compensation, shall be picked up by the Employer for tax purposes in accordance with IRC Section 414(h)(2) and shall be treated by the Employer as paid by the Employer to StanCERA in lieu of contributions by employees who are members of StanCERA.

5. Employees shall not have the option of choosing to receive mandatory employee retirement contributions directly instead of having them paid by the Employer to StanCERA.

6. Effective with the first pay day after the date of this resolution, all elective employee contributions made to StanCERA, although designated as employee contributions under the 37 Act and although deducted from the member's compensation, shall be picked up by the Employer for tax purposes in accordance with IRC Section 414(h)(2) and shall be treated by the Employer as paid by the Employer to StanCERA in lieu of contributions by employees who are members of StanCERA. The Employer will only implement this section for employees that execute a binding irrevocable payroll deduction election to have such elective employee contributions picked up by the Employer for tax purposes under IRC Section 414(h)(2).

7. Employees executing a binding, irrevocable payroll deduction election to have elective employee contributions picked up by the Employer shall not have the option of choosing to receive the elective employee retirement contributions directly instead of having them paid by the Employer to StanCERA. Any such election shall only apply to employee contributions deducted from compensation earned after the election is made.

8. The Employer shall pay to StanCERA all mandatory employee retirement contributions and all elective employee contributions from the same source of funds as used in paying salary.

9. Employee contributions that are picked up in accordance with this resolution shall result in the tax deferral of these contributions to the extent provided under the IRC, and Treasury Regulations and other guidance issued thereunder.

10. The Employer shall comply with all reporting, contribution, and other administrative requirements established by StanCERA with respect to all employees whose contributions are picked up in accordance with this resolution.



By:  _____
Vice-Chairman