DEPARTMENT: Administration

RECOMMENDED ACTION AND JUSTIFICATION:
Adopt a Resolution regarding the pick-up of employee contributions to the California Public Employees' Retirement System (CalPERS) to comply with Revenue Ruling 2006-43.

Please see attached memorandum for additional information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

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CLERK'S USE ONLY:
Res. No.: Ord. No. _____
Vote – Ayes: Noes: _____
Absent: _____
Approved
( ) Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date: __________
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: __________________________
Deputy

COUNTY ADMINISTRATIVE OFFICER:
( ) Requested Action Recommended
( ) No Opinion
Comments:

CAO: __________________________

Revised Dec. 2002
MARIPOSA COUNTY RESOLUTION NO. 08-504

A RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS FOR EMPLOYER PICK-UP

WHEREAS, the County of Mariposa 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, the County of Mariposa 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 BE IT RESOLVED that the County of Mariposa 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.

BE IT FURTHER RESOLVED that the contributions made by the County of Mariposa to the Public Employees’ Retirement System, although designated as employee contributions, are being paid by the County of Mariposa in lieu of contributions by employees who are members of the Public Employees’ Retirement System.

BE IT FURTHER RESOLVED that employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the County of Mariposa to the Public Employees’ Retirement System.

BE IT FURTHER RESOLVED that the County of Mariposa 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.

BE IT FURTHER RESOLVED that the amount of contributions designated as employee contributions and paid by the County of Mariposa to the Public Employees’ Retirement System on behalf of the employee shall be the entire contribution required of the employee by the Public Employees’ Retirement Law (California Government Code sections 20000, et seq.).
BE IT FURTHER RESOLVED that the contributions designated as employee contributions made by the County of Mariposa 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 Supervisors of Mariposa County a political subdivision of the State of California, this 28th day of October 2008, by unanimous vote.

LELE TURPIN, Chairman

ATTEST:                  APPROVED AS TO FORM:

MARGIE WILLIAMS, Clerk of the Board

THOMAS P. GUARINO, County Counsel
October 28, 2008

To: Rick Benson, County Administrative Officer

From: Mary Hodson, Deputy County Administrative Officer

Subject: Employer Pick-Up

Internal Revenue Code (IRC Section 414(h)(2) allows public agencies 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 (taxable income to the employee at the time the contribution was made).

Revenue Ruling 2006-43 provides that an employee contribution will not be treated as “picked-up” under IRC 414(h)(2) unless (1) the employer specifies that the contribution, although designated as employee contributions, are being paid by the employer; and (2) the employer does not permit participating employees to opt out of the pick-up or to receive the contributed amount directly instead of having them paid by the employer of the plan. The Ruling also allows employers who do not have written evidence of a pick-up, but their actions show that the 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 pick-up contributions. If formal action is not taken prior to this date, then only contributions taken after the written evidence is in place may be treated as “picked-up.”

Mariposa County through agreements with employee unions pays the employee portion of the required retirement contribution and it is necessary for the Board to adopt the attached Resolution in order to be in compliance with federal tax reporting requirements. This resolution will be forwarded to CalPERS as requested. Attached is a copy of Revenue Ruling 2006-43 and the draft resolution.

Attachment
Revenue Ruling 2006-43

Table of Contents

- ISSUES
- FACTS
- LAW AND ANALYSIS
- HOLDING
- TRANSITION RELIEF FOR PRE-EXISTING "PICK-UPS"
- EFFECT ON OTHER GUIDANCE
- DRAFTING INFORMATION

Government pick-up plans; employer contributions; income tax; prospective application.
This ruling describes the actions required for a state or its political subdivisions, etc., to "pick-up" or treat certain contributions as employer contributions to a plan qualified under section 401(a) of the Code. If certain criteria are met, this ruling will be applied prospectively. Rev. Ruls. 81-35, 81-36, and 87-10 amplified and modified.

ISSUES

What actions are required in order for a State or political subdivision thereof, or an agency or instrumentality of any of the foregoing, to "pick up" employee contributions to a plan qualified under § 401(a) of the Internal Revenue Code so that the contributions are treated as employer contributions pursuant to § 414(h)(2)?

FACTS

Employer M is a political subdivision of State N. Employer M participates in Plan A, a defined benefit pension plan qualified under § 401(a) and established by State N to provide retirement benefits to eligible employees of State N and any political subdivision of State N. Plan A requires each participating employee to make employee contributions to Plan A equal to a specified percentage of the participant's salary. These amounts, designated as employee contributions under § 414(h)(1), are deducted from the participant's salary. State N statutes governing Plan A permit any political subdivision to provide that the employee contributions will be paid by the employer in order to be picked up and treated as employer contributions under § 414(h)(2). On March 1, 2006, Employer M amends its governing laws to provide that the amounts designated as employee contributions under Plan A will be paid by Employer M for all of Employer M's employees in order to be treated as employer contributions under § 414(h)(2), as permitted under the statutes governing Plan A. The amendment is in writing, was adopted by persons authorized to amend Employer M's governing laws, and is effective for periods on or after April 1, 2006. Employer M, thereafter, treats the amounts as employer contributions, instead of as being employee contributions, for federal income tax purposes and does not include these amounts in the participating employees' gross income.
LAW AND ANALYSIS

Section 414(h)(1) provides that any amount contributed to a qualified plan is not treated as having been made by the employer if it is designated as an employee contribution.

Section 414(h)(2) provides a special rule for qualified plans established by a State government or political subdivision thereof, or by any agency or instrumentality of the foregoing. Under this rule, contributions, although designated as employee contributions, are nevertheless treated as employer contributions if the contributions are picked up by the employing unit.

Section 401(k) provides the rules relating to cash or deferred elections. Section 1.401(k)-1(a)(1) of the Income Tax Regulations provides that a plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension or rural cooperative plan, does not satisfy the requirements of § 401(a) if the plan includes a cash or deferred arrangement. Thus, a qualified defined benefit plan is not permitted to include a cash or deferred arrangement.

Section 1.401(k)-1(a)(3) generally defines a cash or deferred election as any direct or indirect election (or modification of an earlier election) by an employee to have the employer (i) provide an amount that is not currently available to the employee in the form of cash or some other taxable benefit, or (ii) contribute an amount to a trust or provide an accrual for a plan deferring the receipt of compensation.

Rev. Rul. 77-462, 1977-2 C.B. 358, addresses the income tax treatment of contributions picked up by the employer within the meaning of § 414(h)(2). In Rev. Rul. 77-462, the employer school district agreed to “pick up” and pay the required contributions of the eligible employees under the plan. The revenue ruling holds that the contributions picked up by the school district are excluded from the gross income of the employees until such time as they are distributed to the employees.

Rev. Rul. 81-35, 1981-1 C.B. 255, and Rev. Rul. 81-36, 1981-1 C.B. 255, address certain requirements for contributions to be picked up by an employer within the meaning of § 414(h)(2). These revenue rulings establish that the following criteria must be satisfied: (i) 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 (ii) 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 plan. Rev. Rul. 81-35 and Rev. Rul. 81-36 apply even if the employer picks up the contributions through either a reduction in salary or an offset against future salary increases.

Rev. Rul. 87-10, 1987-1 C.B. 136, addresses when contributions designated as employee contributions (designated employee contributions) under § 414(h)(1) to a qualified plan established by a State government (including a political subdivision thereof, or any agency or instrumentality of the foregoing) are excludable from the gross income of the employee. The ruling concludes that, to satisfy the criteria set forth in Rev. Rul. 81-35 and Rev. Rul. 81-36, the governmental action necessary to effectuate the “pick-up” must be completed before the period to which such contributions relate. Thus, designated employee contributions to a qualified plan established by a State government are excluded from gross income as “pick-up” contributions that are treated as employer contributions only to the extent the contributions relate to compensation for services rendered after the date of the last governmental action necessary to effectuate the “pick-up.”
Based on the foregoing, a contribution to a qualified plan established by a State government will not be treated as picked up by the employing unit under § 414(h)(2) unless the employing unit:

(1) Specifies that the contributions, although designated as employee contributions, are being paid by the employer. For this purpose, the employing unit must take formal action to provide that the contributions on behalf of a specific class of employees of the employing unit, although designated as employee contributions, will be paid by the employing unit in lieu of employee contributions. A person duly authorized to take such action with respect to the employing unit must take such action. The action must apply only prospectively and be evidenced by a contemporaneous written document (e.g., minutes of a meeting, a resolution, or an ordinance).

(2) Does not permit a participating employee from and after the date of the “pick-up” to have a cash or deferred election right (within the meaning of § 1.401(k)-1(a)(3)) with respect to designated employee contributions. Thus, for example, participating employees must not be permitted to opt out of the “pick-up”, or to receive the contributed amounts directly instead of having them paid by the employing unit to the plan.

Employer M has taken formal action which was memorialized in a contemporaneous writing that provides that it will “pick up” all prospective contributions for the Employer M employees who are required to contribute to Plan A. Further, employees are required to participate in Plan A, do not have the option of choosing to receive the contributed amounts directly, and may not make a cash or deferred election with respect to such amounts. Employer M has met the requirements to have the designated employee contributions under Plan A picked up and treated as employer contributions pursuant to § 414(h)(2). Thus, contributions made to Plan A are not includible in a participant’s gross income until distributed under § 402.

This revenue ruling applies only for federal income tax purposes. See §§ 3121(a)(5)(A) and 3121(v)(1)(B) of the Federal Insurance Contributions Act (FICA) for the treatment of amounts treated as an employer contributions under § 414(h)(2).

HOLDING

Because an authorized person has taken formal action in writing prospectively to have the employing unit pay previously designated employee contributions to a § 401(a) qualified plan, appropriate actions have been taken for the contributions to be picked up by the employing unit and treated as employer contributions pursuant to § 414(h)(2).

TRANSITION RELIEF FOR PRE-EXISTING “PICK-UPS”

Under the authority of § 7805(b)(8), the Service will not treat any plan that on or before August 28, 2006, includes designated employee contributions that were intended to be picked up as employer contributions pursuant to § 414(h)(2) as failing to meet the requirements of such section prior to January 1, 2009, solely on account of the failure to satisfy the requirement that the “pick-up” be pursuant to a formal action, by a person duly authorized to take such action with respect to the employing unit, that is evidenced by contemporaneous writing, but only if the following conditions are satisfied: (1) the employing unit has taken contemporaneous action evidencing an intent to establish a “pick-up” (e.g., provided information to employees relating to the establishment of the “pick-up”) and has operated the plan accordingly; and (2) the employing unit takes formal action in writing prior to January 1, 2009, with respect to future contributions to meet the requirements set forth above in paragraph (1) of Law and Analysis in this revenue ruling.
The relief provided above for “pick-ups” implemented prior to August 28, 2006, applies only if the actions taken otherwise complied with Rev. Rul. 81-35, Rev. Rul. 81-36, and Rev. Rul. 87-10, and only if the employing unit has not reported the contributions as wages subject to federal income tax withholding from and after the date of implementation of the intended “pick-up”.

In addition, under the authority of § 7805(b)(3), this revenue ruling does not modify or revoke any private letter ruling issued to any taxpayer prior to August 28, 2006. See § 601.201(l)(4).

EFFECT ON OTHER GUIDANCE

Rev. Rul. 81-35, Rev. Rul. 81-36, and Rev. Rul. 87-10 are amplified and modified.

DRAFTING INFORMATION

The principal drafter of this revenue ruling is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Ms. Herrmann may be reached at (202) 283-8888 (not a toll-free number).
DEPARTMENT: Child Support Services

RECOMMENDED ACTION AND JUSTIFICATION:

Approve Agreement with Stanislaus County Dept. of Child Support Services to provide attorney services for 10 hours a week to Mariposa County DCSS in an amount not to exceed $14,181.00 and authorize the Chair to sign the agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
We are currently without an attorney which is a necessity to represent the Dept. in weekly court matters. Until we are able to fill the part-time position, Stanislaus County DCSS has agreed to provide attorney services. The cost will be covered by salary savings from the unfilled attorney position.
The Board has approved contracts for similar services in the past.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve and give alternative direction

Financial Impact? Yes (X) No

Current FY Cost: not greater than $14,181

Annual Recurring Cost:

Budgeted In Current FY? (X) Yes ☐ No ( ) Partially Funded

Amount in Budget:

$12,000

Additional Funding Needed:

$14,181

Source:

Internal Transfer ☐

Unanticipated Revenue ☐ 4/5's vote

Transfer Between Funds ☐ 4/5's vote

Contingency ☐ 4/5's vote

( ) General ( ) Other

CLERK'S USE ONLY:

Res. No.: 03-563 Ord. No. ______

Vote – Ayes: 5 Noes: ______

Absent: ______

☑ Approved

( ) Minute Order Attached ( ) No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

☑ Requested Action Recommended

☐ No Opinion

Comments:

The foregoing instrument is a correct copy of the original on file in this office.

Date:

Attest: MARGIE WILLIAMS, Clerk of the Board

County of Mariposa, State of California

By:

Deputy

CAO: 

Revised Dec. 2002
## BUDGET ACTION FORM

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**TOTAL** $14,181 $14,181

### TRANSFER BETWEEN FUNDS

**TOTALS** $0 $0

**ACTION REQUESTED:** (Check all that apply)

- Budget appropriation by Board of Supervisors (4/5ths Vote Required): Amending the total amount available in the county budget, or in any one fund of the budget, or appropriating Reserve for Contingencies;

- Transfer by Board of Supervisors (3/5ths Vote Required): Moving existing appropriations from one budget to another, or between categories within a budget unit;

**JUSTIFICATION:** Using salary savings to pay for attorney services from Stanislaus County.

**DEPT HEAD SIGNATURE**

**APPROVED BY RES NO.** 08-503  CLERK

**AUDITOR'S USE ONLY**  
BA #  

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Budget Revision Form Revised 11/95