

**PERALTA COMMUNITY COLLEGE DISTRICT  
Board of Trustees Agenda Report  
For the Trustee Meeting Date of December 9, 2008**

**ITEM TITLE: RESOLUTION AUTHORIZING PERALTA COMMUNITY COLLEGE DISTRICT'S PARTICIPATION IN CALPERS RETIREMENT CONTRIBUTIONS TO BE TREATED AND PICKED-UP AS TAX DEFERRED BY THE INTERNAL REVENUE SERVICE**

**Consider Approval of Board Resolution No. 08/09-34** authorizing implementation of Section 414(h) (2) of the Internal Revenue Code regarding the tax deferral benefit offered to Peralta's employees who are members of the Public Employees' Retirement System.

**SPECIFIC BOARD ACTION REQUESTED:** Enacting this resolution will address the requirement for community college governing districts to ensure that certain retirement contributions are treated by the IRS as tax-deferred.

**ITEM SUMMARY** 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 Board action is to adopt the resolution prior to the deadline set by Revenue Ruling 2006-43.

**BACKGROUND/ANALYSIS OF 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 pickup or to receive the contributed amounts directly instead of having them paid by the employer to the plan.

**ALTERNATIVES/OPTIONS:** Not applicable

**SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):**

Revenue Ruling 2006-43 allows employers who do not have written evidence of a pickup, 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. The impact is that *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.*

**OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):**

Not Applicable

**WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?**

Thomas Smith, Vice Chancellor Finance & Administration

**DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM?** No

**RESOLUTION AUTHORIZING PERALTA COMMUNITY COLLEGE DISTRICT'S  
PARTICIPATION IN CALPERS RETIREMENT CONTRIBUTIONS TO BE TREATED  
AND PICKED-UP AS TAX DEFERRED BY THE INTERNAL REVENUE SERVICE  
No. 08/09-34**

WHEREAS, the Peralta Community College District 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 Peralta Community College District 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:

- I. That the Peralta Community College District 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 Peralta Community College District to the Public Employees' Retirement System, although designated as employee contributions, are being paid by the (Name of Agency) 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 the Peralta Community College District to the Public Employees' Retirement System.
- IV. That the Peralta Community College District 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 the Peralta Community College District 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 the Peralta Community College District 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.

**NOW, BE IT RESOLVED**, that this resolution is hereby adopted and approved by the Peralta Community College District Board of Trustees on or before December 31, 2008:

**PASSED AND ADOPTED** by the called vote this 9<sup>th</sup> day of December, 2008

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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**Secretary of the Board of Trustees  
Peralta Community College District  
Alameda County  
State of California**