

Agenda Date: June 19, 2008
Agenda Placement: Admin
Estimated Time: N/A
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Terry Dressler, Air Pollution Control Officer

CONTACT: Donald Kendig, CPA, Business Manager (805) 961-8854

SUBJECT: Allowing Member Retirement Contributions to be Made on a Pre-Tax Basis in Accordance with Internal Revenue Code Section 414(h)(2)

RECOMMENDATION:

Adopt resolution Allowing Member Retirement Contributions to be Made on a Pre-Tax Basis in Accordance with Internal Revenue Code Section 414(h)(2).

DISCUSSION:

On June 21, 1995 the Board adopted Resolution No. 95-09 establishing APCD Employee retirement plans with the Santa Barbara County Employees' Retirement System (SBCERS) effective July 3, 1995. On July 20, 1995 the Board adopted Resolution No. 95-10 making the APCD a stand-alone agency. On September 21, 1995 the Board authorized the Control Officer to negotiate with the employee groups regarding consideration of a pre-tax retirement contribution plan. At various Board meetings in 1996, the Board approved pre-tax member retirement contributions as part of labor Memoranda of Understanding (MOUs); however, no resolution for pre-tax contributions was prepared for those actions.

Earlier this year, SBCERS staff visited the APCD to review our formal retirement records and identify any actions that may need to be taken in order to document, or substantiate, our current retirement benefit practices. During that visit, System staff found that we were missing the resolution establishing the pre-tax basis of member (employee) retirement contributions.

A resolution is attached that resolves this finding and makes our records complete.

We appreciate the time and effort taken by System staff to meet with us and review our records.

**RESOLUTION OF THE
AIR POLLUTION CONTROL DISTRICT BOARD
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

In the Matter of:)	Resolution No. 08- ____
Allowing Member Retirement)	
Contributions to be Made on a Pre-Tax)	
Basis in Accordance with Internal Revenue)	
Code Section 414(h)(2))	

RECITALS

WHEREAS, employees of the Santa Barbara County Air Pollution Control District (APCD) participate in the Santa Barbara County Employees' Retirement System (SBCERS) in accordance with the County Employees Retirement Law (CERL) as set forth in the California Government Code, and

WHEREAS, members of SBCERS must make contributions to this retirement system in order to earn benefits thereunder, and

WHEREAS, the members of SBCERS may elect to redeposit member contributions plus interest previously withdrawn and elect to purchase additional service credit as provided in the CERL through additional contributions to SBCERS, and

WHEREAS, these mandatory and elective member contributions were made on an after-tax basis prior to pay period seven 1996 (March 11, 1996), and

WHEREAS, under the Internal Revenue Code (Code) these member contributions to SBCERS may be made on a pre-tax basis as pick-ups in accordance with section 414(h)(2) of the Code, and

WHEREAS, if member of SBCERS elects to make contributions for redeposits or for the purchase of additional service credit on a tax pick-up basis, this election must be made in accordance with a binding, irrevocable payroll deduction authorization, and

WHEREAS, it would be in the best interests of the APCD and its employees to provide a pre-tax pick-up of mandatory member contributions to SBCERS under Section 414(h)(2) of the Code and to allow a pre-tax pick-up under Section 414(h)(2) of the Code of elective member contributions that are made for the purpose of purchasing service credit and redepositing amounts previously withdrawn from SBCERS, and

WHEREAS, in order to put these pick-ups into effect, the APCD Board must adopt a resolution to pick up member mandatory contributions to SBCERS and to pick up member elective contributions to SBCERS when the member makes a binding irrevocable payroll deduction authorization for such pick-ups, and

WHEREAS, member contributions picked up by the APCD under section 414(h)(2) of the Code must be payable from the same source as is used to pay compensation to the employee, and

WHEREAS, these mandatory and elective member contributions were made on a pre-tax basis starting the beginning of pay period seven 1996 under the assumption that the resolution had been adopted prior to pay period seven 1996,

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. This resolution applies to all contributions that are required to be made by any employees of the APCD to SBCERS on a regular, payroll deduction basis in order to participate in SBCERS and are made in accordance with the CERL. These member contributions to SBCERS include normal contributions and COLA contributions and are called "mandatory employee contributions" in this resolution.

2. This resolution also applies to all employee contributions made to SBCERS for the purpose of purchasing service and/or redepositing amounts previously withdrawn plus interest pursuant to a binding irrevocable payroll deduction authorization made by the employee to have such contributions picked up for tax purposes and made on a pre-tax basis. These contributions to SBCERS are called "elective employee contributions" in this resolution.

3. All mandatory employee contributions made to SBCERS, on and after pay period seven 1996, even though designated as employee contributions and even though deducted from the employees' compensation, shall be picked up by the APCD for tax purposes in accordance with section 414(h)(2) of the Internal Revenue Code and therefore shall be treated as paid by the APCD to SBCERS in lieu of the contributions made by the employee to SBCERS.

4. All elective employee contributions made to SBCERS, on and after pay period seven 1996, even though designated as employee contributions and even though deducted from the employees' compensation, shall be picked up by the APCD for tax purposes in accordance with section 414(h)(2) of the Internal Revenue Code and therefore shall be treated as paid by the APCD to SBCERS in lieu of the contributions made by the employee to SBCERS. This section shall only apply if the employee executes a binding, irrevocable payroll deduction authorization to have these contributions picked up by the APCD in accordance with section 414(h)(2) of the Code. Such authorization shall be made at the time, in the manner and on a form provided by the APCD.

5. All mandatory employee contributions and all elective employee contributions shall be paid from the same source as all other compensation is paid to employees of the APCD with respect to whom pick-up contributions are made under section 414(h)(2) of the Code.

6. No employee of the APCD shall have the option of choosing to receive mandatory employee contributions directly instead of having them paid by the APCD to SBCERS as provided in this resolution.

7. If the employee chooses to have elective employee contributions picked up by the APCD and executes an irrevocable, binding payroll deduction with respect to these contributions, the employee shall not have the option of choosing to receive these contributions directly instead of having them paid by the APCD to SBCERS.

8. The effective date of the pick-up of mandatory employee contributions by the APCD is the beginning of pay period seven 1996.

This resolution does not apply to any mandatory employee contributions made to SBCERS before the effective date specified in this resolution.

9. The effective date of the pick-up of elective employee contributions by the APCD is the beginning of pay period seven 1996.

This resolution does not apply to any elective employee contributions made to SBCERS before the effective date specified in this resolution.

PASSED AND ADOPTED by the Santa Barbara County Air Pollution Control District Board, County of Santa Barbara, State of California, this _____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:
Clerk of the Board

Chair, Air Pollution Control District
Board of the County of Santa Barbara

By _____
Deputy

APPROVED AS TO FORM:

Retirement Administrator

By _____

APPROVED AS TO FORM:
Daniel J. Wallace
County Counsel

APPROVED AS TO FORM:
Robert W. Geis C.P.A.
Auditor-Controller

By _____
Deputy

By _____