

Memorandum

MEETING DATE

OCT 13 2010

AGENDA ITEM

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Date: October 6, 2010

To: Board of Retirement, Contra Costa County Employees' Retirement Association

From: Karen Levy, General Counsel

Subject: Update On Application for Internal Revenue Service Letter of Determination

Recommendation:

Receive and file.

Background:

A "Letter of Determination" is a favorable ruling from the Internal Revenue Service stating that the terms of the retirement plan comply with applicable provisions of the Internal Revenue Code and IRS rules. As previously advised, the Internal Revenue Service extended the Letter of Determination filing deadline for governmental pension plans to January 31, 2011 (from the previous deadline of January 31, 2009). CCCERA had previously applied for, and received, a favorable Letter of Determination from the IRS in 1987. Such a determination means that the retirement plan was "tax-qualified" under the Internal Revenue Code and IRS rules, and plan participants will not be taxed when contributions are made to the plan, but rather upon receipt of benefits at retirement. The Retirement Board has instructed staff to continue to work with tax counsel on the preparation of an application for an IRS Letter of Determination.

Current Status:

CCCERA staff has been working with tax counsel on two main tracks:

1. **Plan Documents** – staff has been researching, analyzing the compiling the "plan document" – a compilation of those sections from the County Employees Retirement Law of 1937 "CERL" that are (or have been made) applicable to CCCERA; relevant resolutions adopted by the Board of Supervisors, Board of Retirement, and Special District Boards, certain policies and regulations. This process was completed.
2. **Operation Compliance/Regulations** – staff has continued to work with tax counsel on analyzing operational compliance. Tax counsel Katrina Clingerman of Ice Miller, LLP presented to the Board Ice Miller's recommendation to stop entering into pre-tax payroll deduction contracts for service purchases and tier conversation, and the Retirement Board took action to eliminate this payment option as of October 31, 2010. Since this change required a revision of the Retirement Board's Regulations, it must be approved by the County Board of Supervisors to become effective, under Government Code section 31525. This item was first scheduled to be heard by the Board of Supervisors on September 28, 2010, and currently is scheduled for October 12, 2010.

Additionally, as previously advised, the State Association of County Retirement System ("SACRS") has retained the law firm of Hanson Bridgett to work with the IRS on possible statutory changes to the CERL to bring the CERL in compliance with the IRS rules. It is our understanding that some, if not all, other '37 Act Systems are engaged in this process. We are told that the Orange County Employees Retirement System plans to file an application for a Letter of Determination on the CERL as part of the SACRS tax compliance project.

For the Board's information, below is a timeline of relevant events:

April 2008: IRS held a governmental plans roundtable to raise awareness in the governmental plan sector of the need to comply with Federal tax qualification regulations.

September 2008: House Ways and Means Committee held a roundtable discussion with public pension plans, the IRS, and others to discuss Determination Letters.

November 2008: Andy Zuckerman, IRS Director of Employee plans, attends the SACRS conference and discusses compliance efforts and letter of determination issues.

October 2009: SACRS creates an IRS Task Force to address CERLS tax compliance.

November 2009 through the present: SACRS member systems collectively work with Hanson Bridgett to address CERL tax compliance issues, and CCCERA has been advised that the IRS has rejected the concept of a joint application on behalf of SACRS members. CCCERA has been advised that OCERS will be filing an application, and other CERL systems are working on tax compliance and Letter of Determination issues.

November 2010: Ice Miller is anticipated to present to the Retirement Board any additional recommended changes to regulations or compliance implementation procedures.

January 31, 2011: Cycle E application deadline.