

James Wilbanks, Ph.D.
Retirement Administrator



Telephone: (707) 463-4328
(707) 467-6473
Fax: (707) 467-6472

MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
625-B KINGS COURT
UKIAH, CALIFORNIA 95482-5027

Date: December 14, 2016
To: Board of Retirement
From: James Wilbanks, Retirement Administrator
Subject: Resolution 2016 – 06, Pertaining To Regulations for IRC Code Section 415 – Annual Limits

Attached you will find a proposed Resolution 2016 – 06, Pertaining To Regulations for IRC Code Section 415 – Annual Limits for your consideration. This resolution comes to you from our Tax Counsel, Hanson Bridgett, LLP. The favorable determination letter issued to MCERA by the Internal Revenue Service (IRS) on August 11, 2016 was conditioned upon an amendment to the plan documents.

The amendment is contained in the proposed Board of Retirement Resolution to MCERA's Regulations for IRC Section 415, regarding treatment of any differential wage payments paid by MCERA participating employers as "compensation." Under Revenue Procedure 2009-36, and Treasury Regulation section 1.401(b)-1, the Resolution must be adopted by March 1, 2021.

I recommend the Board adopt the Resolution as presented.

**MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
RESOLUTION 2016-06**

PERTAINING TO REGULATIONS FOR IRC CODE SECTION 415 – ANNUAL LIMITS

WHEREAS, the Board of Retirement for the Mendocino County Employees' Retirement Association ("MCERA") administers MCERA for the benefit of its members and their beneficiaries; and

WHEREAS, MCERA is intended to comply with the requirements of the Internal Revenue Code of 1986 (the "Code"), as amended or replaced from time to time and the regulations issued thereunder as applicable; and

WHEREAS, on October 1, 2015, the Board of Retirement submitted to the Internal Revenue Service ("IRS") a request for a favorable determination that MCERA meets the applicable requirements of the Code; and

WHEREAS, the plan documents, including Regulations of MCERA Board of Retirement, were submitted for review with MCERA's determination letter application; and

WHEREAS, items of pay that are included in a member's "Total Compensation" for purposes of Code section 415 is defined in Section III.I.1 of Regulations for IRC Section 415(c), subsections 1.a through 1.f; and

WHEREAS, Section III.I.3 of Regulations for IRC Section 415(c) provides that payments the description of which meet the definition of "differential wage payments" provided in Internal Revenue Code section 3401(h)(2) are included in a member's Total Compensation, even if paid more than 2½ months after severance from employment or after the end of the Limitation Year, if later; and

WHEREAS, the IRS has requested that Regulations for IRC Section 415(c) be clarified to provide that the definition of compensation for purposes of Code section 415 includes "differential wage payments" as defined in Code section 3401(h)(2), pursuant to Section 105(b) of the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"); Therefore be it

RESOLVED that the Board of Retirement hereby amends Section III.I.1 of Regulations for IRC Section 415(c), to add new subsection "g." thereto, to read in its entirety as follows:

"Differential wage payments as defined in Internal Revenue Code section 3401(h)(2)."

The foregoing resolution introduced by Board Member _____, seconded by Board Member _____, and carried this 14th day of December, 2016 by the following vote:

Ayes:
Noes:
Absent:

WHEREUPON, the Chair declared said Resolution adopted, and SO ORDERED.

Board of Retirement Chair

Attest: _____
James R. Wilbanks, Ph.D.
Retirement Administrator