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**VIA ELECTRONIC MAIL**

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***RE: American Recovery and Reinvestment Act of 2009 – Summary of Provisions  
Affecting Certain Governmental Retirees***

Dear Barbara:

This letter is in response to your email of March 11, 2009, requesting a general overview of the tax credit and benefit payment provisions of the American Recovery and Reinvestment Act of 2009 ("Stimulus Bill") and the new withholding tables issued under IRS Publication 15-T affecting governmental retirees. We have attached our detailed analysis of these issues. However, as you requested, we wanted to provide a brief summary that you could use for your Board report and, potentially, member communications.

The Stimulus Bill has enacted three provisions that may impact the retirees of the 106 retirement systems overseen by the Public Employee Retirement Administration Commission ("PERAC").

First, the "Making Work Pay Credit" provides a tax credit of up to \$400 (\$800 if filing jointly) for working individuals. The tax credit is effective for the 2009 and 2010 tax years. The amount of the credit is generally based on wages ("earned income"). However, pension payments are not considered wages for these purposes. Therefore, governmental retirees who depend on their pensions and other savings as their sole source of income will not be eligible for any tax credit under this provision.

Second, the "Social Security/Railroad Retirement Payment" provides a one-time payment (not a tax credit) of \$250 (\$500 if filing jointly and both spouses are eligible) to eligible individuals. To qualify, the individual must have been receiving monthly benefits from the

federal Social Security, Railroad Retirement, Veterans' benefits, or Supplemental Security Income programs during the past months of November or December 2008, or January 2009.

Third, the "Federal/State Retiree Credit" provides a one-time tax credit for the 2009 tax year of \$250 (\$500 if filing jointly and both spouses are eligible) for individuals receiving any amount as a pension or annuity for governmental service that is excluded from Social Security coverage.

The "Making Work Pay Credit" is reduced to the extent an individual receives either the "Social Security/Railroad Retirement Payment" or the "Federal/State Retiree Credit." An individual who receives a "Social Security/Railroad Retirement Payment" cannot receive the "Federal/State Retiree Credit." Therefore, in terms of priority, the "Social Security/Railroad Retirement Payment" is first, the "Federal/State Retiree Credit" is second, and the "Making Work Pay Credit" is third.

The IRS has issued new withholding tables under Publication 15-T that must be implemented by all employers and payors of pensions by April 1, 2009. The new withholding tables are designed to reduce tax withholding for the remainder of the 2009 tax year to allow taxpayers to immediately receive the benefit of the "Making Work Pay Credit" during the course of 2009.

These new tax withholding tables will apply to retirees of the PERAC-covered retirement systems and boards who receive a periodic payment, to the extent that the retiree has not elected to opt out of wage withholding using Form W-4P.

A final point we wish to emphasize is that the new withholding tables do not provide an accelerated delivery of the either the "Social Security/Railroad Retirement Payment" or the "Federal/State Retiree Credit." To illustrate this point, we will discuss three scenarios below regarding a retiree who is a single filer and who is receiving a pension from which taxes are being withheld.

- If a retiree is eligible for the "Federal/State Retiree Credit" and has no "earned income," then the new tables would generally underwithhold over the course of the 2009 tax year, since the tax benefit from the "Federal/State Retiree Credit" would be \$250 while the tables build in up to \$400 in tax credit.
- If the retiree is eligible for the "Social Security/Railroad Retirement Payment," and has no "earned income," then the new tables would generally underwithhold over the course of the 2009 tax year, because the payment has two counter effects with respect to the new tables: (1) it is not a tax credit that can compensate for the reduced withholding, rather it is a direct payment, and (2) and there is no "Making Work Pay Credit" amount that can be claimed in this scenario.
- If a retiree is entitled to the "Federal/State Retiree Credit" and also has "earned income" that generates a "Making Work Pay Credit" of \$150 after reduction for the "Federal/State Retiree Credit," he or she would (all other things being equal)

end up where anticipated on withholding with the combined Credits of \$400 now matching the \$400 credit built into the withholding tables.

Clearly, the overall tax impact and withholding considerations for any one retiree are highly specific to the retiree's circumstances. We recommend that any notice to retirees describing the legislation contain a recommendation that the retiree seek competent tax advice or consider their personal tax situation before making adjustments to his or her Form W-4P.

We hope this letter and the attachment are helpful in addressing most of your concerns surrounding the new legislation. If you have any questions, please do not hesitate to contact us.

Very truly yours,

ICE MILLER LLP



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Enclosure: Ice Miller ARRA 2009 Summary of Provisions Affecting Certain Governmental Retirees

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