

## CONSTRUCTIVE RECEIPT FREQUENTLY ASKED QUESTIONS (FAQ)



1. **Question:** “Why did I receive a letter regarding Vacation/Annual Leave Buy Down Changes?”

**Answer:** You received a letter because your union voted to adopt revised policies applicable to your collectively bargained agreement’s Annual (Leave) Redemption provisions and you, as an employee eligible to receive cash in lieu of leave hours accrued (e.g. Buy Down, Purchase, Redeem hours for cash), may be impacted by the change.

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2. **Question:** “What is a Buy Down?”

**Answer:** A *Buy Down* is the term used to denote the purchase or exchange of unused accrued annual, vacation or other leave hours for cash. Each Memorandum of Agreement (MOA) contains provisions for redeeming hours of vacation, annual or other accrued leave, so long as the employee meets the criteria established within his/her governing MOA for the redemption. The Management Resolution and Memorandums of Agreement are located at:

<http://www.ventura.org/human-resources/memorandums-of-agreement>

Refer to your specific MOA for provisions and qualifications.

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3. **Question:** “How do I know if I qualify for a Buy Down?”

**Answer:** Refer to your specific MOA for provisions and qualifications. If you are still unsure if you qualify for a buy down, your payroll or human resources point of contact can help you determine your eligibility. Employee eligibility questions may also be directed to: [AC.Payroll@ventura.org](mailto:AC.Payroll@ventura.org).

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4. **Question:** “The letter I received indicates the process to buy down vacation/annual leave hours has changed. What changed, and why?”

**Answer:** The Department of Treasury, Internal Revenue Service (IRS), as a general rule has determined compensation is to be included in an employee’s gross income in the year it is received, whether actually received in the form of a biweekly or supplemental check, or constructively received in the form of hours earned and accrued in your vacation, annual or other leave bank.

- When an employee receives his or her biweekly pay, that income is actually received.
- When compensation is credited to an employee’s account or otherwise made available so that the employee *could have drawn upon it* during the taxable year if notice of intention to withdraw had been given, that income is constructively received. This is true even if the employee never actually withdraws the funds.
- However, income is not constructively received if the employee’s control of its receipt is subject to substantial limitations or restrictions. (Treas. Reg. § 1.451-2(a).)

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Memoranda of Agreement with employee unions and the Management Resolution give some employees the option to redeem and/or cash-out specified amounts of accrued leave subject to certain conditions. If these conditions are determined not to be “substantial limitations and restrictions” on employee control over the cash-out of leave hours as determined by the IRS, employees who have the option to cash out leave would be subject to taxation under the constructive receipt rule even when they had not, in actuality, cashed out leave. Earlier in 2016, the County’s Legal Counsel determined provisions in existing MOAs could be susceptible to IRS Constructive Receipt taxation rules, placing the County and employees at risk. To avoid this risk, the County has established a leave cash-out program modeled on plans approved by the Internal Revenue Service in private letter rulings.

To conform to IRS tax code, the County’s program contains two key limitations on the option to cash-out leave:

- (1) The employee must make an irrevocable election ( e.g. a legal arrangement between the employee and the County, APCD or Superior Courts) to cash-out leave in the calendar year preceding the year in which the leave is cashed out, and
- (2) Only leave accrued during the year in which leave is cashed out may be cashed out.

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5. **Question:** “Can you give me an example of what ‘constructive receipt’ is?”

**Answer:** One example is that of a savings or investment account you have on deposit with your financial institution (e.g. bank). During the year, you earn interest on your savings or investment. At the end of the calendar year, the bank sends you a formal tax document stating they deposited interest to your account. At that time, you have the ability to either leave the funds on deposit, to let amounts compound and earn more interest, or you can withdraw the interest to spend as you please. There are few, if any, restrictions or limitations. The mere fact that you have the ability to withdraw that interest, whether you do or not, makes you constructively in receipt of the funds.

Additionally, the bank sends you IRS Form 1099 that lists the dollar value of the interest you earned and received on that savings/investment account. By law, you are required to include the dollar value of the interest listed on that IRS Form 1099 as income on your annual tax returns, and you are required by law to be held accountable for the taxes associated with those interest earnings. In April, when you file your federal and state income taxes, you must include the dollar value of the interest listed on your 1099 form with your other income. Including the income may result in increased taxes, as well.

Likewise, prior to the MOA revisions, the earned/accrued hours credited to your vacation, annual or other leave account ‘banks’ are otherwise made available to you, so that you may conduct a buy down of those hours by merely requesting to do so at any time during the calendar year, without substantial limitations or restrictions. The IRS tax code states you are *constructively in receipt of income as soon as the right to receive cash in exchange for hours becomes fixed.*

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Up until the revised provisions were implemented, at the end of the calendar year the Auditor-Controller would have been responsible for reporting on your W2 to the IRS the dollar value and taxes related to the number of vacation, annual or leave hours you had ‘banked’ that you were **eligible to purchase** (versus all of the hours in your bank) through your MOA. However, unions that adopted the revised provisions are ‘safe’ from this taxation concept, so long as the new rules and provisions governing buy downs are followed. For employees represented by the Management Resolution or unions that adopted the revised policies, there are NO ADDITIONAL TAX CONSEQUENCES.

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6. **Question:** *“How do I know if my union voted to adopt revised policies?”*

**Answer:** The unions that have adopted revised policies include:

- Management/Confidential Clerical/Unrepresented Others – County of Ventura
  - Management/Confidential Clerical/Unrepresented Others – Air Pollution Control District
  - Management/Confidential Clerical/Unrepresented Others – Superior Courts
  - Service Employees International Union (SEIU Local 721) – County of Ventura
  - Service Employees International Union (SEIU Local 721) – Superior Courts
  - International Union of Operating Engineers (IUOE)
  - California Nurses Association (CNA)
  - Ventura County Professional Firefighters Association (VCPFA)
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7. **Question:** *“What happens to employees represented by unions that have not adopted revised policies?”*

**Answer:** In the absence of an agreement between the County and any union that has not adopted recommended redemption policy changes, the Auditor-Controller is legally obligated to fully comply with federal and state tax laws, including reporting as taxable income all income that employees are eligible to receive for cash in exchange for accrued vacation, annual or leave hours under current, unmodified plans.

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8. **Question:** *“Why do I need to complete a form?”*

**Answer:** The **Payroll Services Election / Deduction Authorization Cash in Lieu of Leave Hours 2017 Form** you received is now a **binding arrangement** between you, the employee, and the County. **Whatever choice you make on the form you cannot “opt out” of later should you change your mind at any time during calendar year 2017.**

- If you want to conduct a buy down (e.g. purchase hours, redeem for cash) in 2017, and you meet all of the eligibility criteria as provided for in your MOA, then check the box labeled: “I **Elect** Cash in Lieu of Leave Hours”, and enter the number of hours you are electing to purchase next calendar year (2017).
- If you have no intentions of conducting a buy down (e.g. purchase hours, redeem for cash) in 2017, then you check the box labeled: “I **Waive** Cash in Lieu of Leave Hours”

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and submit the form. Once you check that box and submit the form, you are no longer allowed to purchase any of your earned hours in 2017.

- If you fail to submit the form, by default you are waiving your right to receive cash in lieu of leave hours in taxable calendar year 2017.

Please choose wisely.

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9. **Question:** *"How do I complete the form?"*

**Answer:** The **ACO Cash in Lieu of Leave Hours Election Form - Instructions** for completing the Election form are available at the following Auditor-Controller websites:

Internet: <http://www.ventura.org/auditor-controller/payroll-information>

Intranet: <http://acweb/index.php/forms/payroll-forms>

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10. **Question:** *"Where do I submit the Election form?"*

**Answer:** The **Payroll Services Election / Deduction Authorization Cash in Lieu of Leave Hours 2017 Form** may be submitted as follows:

- (1) Hand carried to the Auditor-Controller's Office front counter, Hall of Administration, 3<sup>rd</sup> floor.
- (2) Brown mail: L1540
- (3) Email a scanned image (e.g. PDF, JPG) to: [AC.Payroll@ventura.org](mailto:AC.Payroll@ventura.org) and follow up by sending the original form with your 'wet' signature to the Auditor-Controller's Office.
- (4) US Postal Service (USPS) mail: Auditor-Controller's Office, Attn: Payroll Services, 800 South Victoria Avenue, Ventura, CA 93009-1540

Payroll Services will make every attempt to confirm receipt of the form with the employee and/or the employee's department/agency payroll staff.

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11. **Question:** *"When are the election forms due?"*

**Answer:** When using submission methods (1) and (2), from question #10, Election forms are due back to the Auditor's Office no later than 5:00 December 30, 2016. When using submission method (3) from question #10, Election forms must be emailed to the Auditor's office no later than Midnight, December 31, 2016. When using submission method (4) from question #10 (USPS), envelopes must be post marked December 31, 2016. For Superior Courts, please follow instructions provided by your Payroll Team.

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12. **Question:** *"When can I request to buy down hours?"*

**Answer:** Under the revised policies, an employee may make a request twice within the calendar year to buy down hours, but only after the hours have been earned (i.e. accrued) during taxable

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calendar year 2017 (pay period 2017-01 through 2017-26). **Hours rolled over and 'banked' are no longer available for purchase.** Refer to your MOA for any exceptions to this rule.

**Example:**

In the following *sample*, before the end of December 2016 the employee elected to purchase 80 hours during taxable calendar year 2017. During calendar year 2017, the employee may request to purchase hours earned in 2017 twice per year. But first, the employee must earn those hours:

Pay Periods	PP01	PP02	PP03	PP04	PP05	Employee eligible to purchase 40 hours after pay period 05, if all CBA provisions are met
PP Hours Accrued	8	8	8	8	8	
Total Hours Accrued	8	16	24	32	40	

The employee decides to make their first purchase request after earning 40 of the 80 hours elected. Therefore, using the above illustration, the employee may make their first purchase any time after pay period 2017-05, upon earning 40 hours minimum. The employee may make their second, and final, purchase after they've earned the next 40 hours.

13. **Question:** *"If I'm no longer able to purchase hours I've earned in previous calendar years, what happens to those hours?"*

**Answer:** Hours earned (accrued) prior to implementation of the revised provision are still your hours earned and may be used to satisfy any MOA vacation requirement. Hours remaining in your leave bank at the end of calendar year 2016 will roll over and continue into calendar year 2017. Vacation hours taken will be first-in-first-out; that is, vacation taken by the employee will come first from any hours rolled, then from hours earned/accrued in the new calendar year. The only difference is those hours rolled are no longer available for purchase.

14. **Question:** *"Will the hours remaining in my leave bank be taxed at the end of calendar year 2017?"*

**Answer:** No. The hours remaining in your leave bank will remain there until they are used for vacation/leave, or cashed out to you upon your termination from County, Courts, or Special District employment.

15. **Question:** *"How do I request a buy down of the hours I elected?"*

**Answer:** Once you have earned (accrued) hours in taxable calendar year 2017, you may request to buy down the hours by completing and submitting a **Payroll Services Request for Payment of Cash in Lieu of Leave Hours 2017 Form**. There are three options for purchasing hours:

- (1) You may select to have your buy down added to your next biweekly Friday pay check or, in the event we receive your request too late to be included in the next biweekly cycle,

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your request will be processed during the next available Friday pay check cycle. Buy down requests processed on your biweekly Friday paycheck will be taxed at the withholding rate on record for you at the time the buy down is processed.

- (2) You may select to have your buy down occur outside of the normal biweekly pay day cycle, as a supplemental check (e.g. off-cycle, "blue check"), and you must select the date you wish receive your check. Requests received outside of the biweekly pay cycle will be taxed at the mandated Federal/State withholding rates, irrespective of the employee's withholding order of record in VCHRP.
- (3) If you are eligible, you may select to deposit your buy down into a qualified deferred compensation account. If you select this method, the Auditor-Controller will note your decision and notify CEO-Benefits, but the employee is responsible for coordinating the deposit directly with the Deferred Compensation team. Note the process for depositing buy down proceeds into a qualified deferred compensation plan may take 30-60 days.

Requests to buy back hours may be returned to the Auditor's Office using any one of the four (4) methods noted in question #10.

**16. Question:** *"How many forms are there?"*

**Answer:** There are three forms:

- (1) **Payroll Services Election / Deduction Authorization Cash in Lieu of Leave Hours 2017 Form** – this form must be completed by the employee and serves as the formal arrangement between the employee and the county for the employee to conduct a buy down, to waive the right to perform a buy down, or to subsequently elect financial hardship, in taxable calendar year 2017.
- (2) **Payroll Services Request for Payment of Cash in Lieu of Leave Hours 2017** – use this form to initiate/request a buy down, including a buy down for financial hardship. Unless the employee is electing financial hardship, the form need not be submitted with the Election form; it is only required at the time the employee decides to make a purchase.
- (3) **Notice of Intent to Resign/Retire** – this form is required ***if and only if*** an employee, as part of their retirement planning, is seeking to purchase hours earlier in the calendar year, prior to when elected hours are earned/accrued. This form may be submitted along with the election or at the time the employee requests the buy down.

All three forms, and additional information, are available on the Auditor-Controller's websites, located at:

Internet: <http://www.ventura.org/auditor-controller/payroll-information>

Intranet: <http://acweb/index.php/forms/payroll-forms>

**17. Question:** *"What happens if I don't request to buy down hours, or I forget to request to buy down hours?"*

**Answer:** If, at the end of taxable calendar year 2017, you have not submitted a request to purchase hours you elected in December 2016, the Auditor-Controller will automatically

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perform the buy down for you. This will include reconfirming your eligibility, calculating the amount based on the hours elected, withholding of taxes and retirement, and adding the final amount to one of your Friday pay checks in December, 2017. This procedure is no different than if you were to request the buy down yourself, except now the Auditor-Controller's Office will be initiating the request to purchase on your behalf.

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18. **Question:** *"In years past, I was allowed to buy down my hours in the early part of the calendar year (e.g. January). Can I still buy down early?"*

**Answer:** No, per the revised language in the MOA. However, many of the MOAs contain a provision to allow an employee to purchase hours carried over from a prior calendar year ***if and only if*** the employee completes and submits CEO-HR form: **Notice of Intent to Resign/Retire**. The form may be submitted either at the time of the election or at the time of the request to buy down hours. This provision was included to allow employees who are expecting to retire within one (1) to four (4) years the ability to strategically conduct buy downs for inclusion in their final retirement compensation. For additional information and guidance regarding the impact of buy downs on your specific retirement situation, please contact:

Ventura County Employee's Retirement Association (VCERA):  
1190 South Victoria Avenue, Suite 200, Ventura, CA 93003  
Phone: (805) 339-4250  
[VCERA.info@ventura.org](mailto:VCERA.info@ventura.org)

Refer to your MOA for any additional provisions that potentially allow for conducting a buy down earlier in taxable calendar year 2017.

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19. **Question:** *"I submitted a **Notice of Intent to Resign/Retire**, conducted an early calendar year buy down, and now I've changed my mind about retiring. What happens next?"*

**Answer:** The **Notice of Intent to Resign/Retire** is an irrevocable election, as well. It is the Auditor-Controller's understanding the County will hold the employee accountable to their original retirement plan. Should this situation occur, please contact the County Executive Office, Human Resources, to discuss your personal situation further.

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20. **Question:** *"My union requires that I take 80 hours vacation in a calendar year in order to request a buy down. What happens if I don't take the 80 hours vacation?"*

**Answer:**

If in December 2016 you elect to conduct a buy down in taxable calendar year 2017, but fail to meet the vacation requirement before December 2017, there are two possibilities:

- A. If at the time you submit your buy down (e.g. purchase, redemption) request, or at the end of calendar year 2017 when the Auditor is authorized to automatically pay you for the hours you elected, per the MOA we are required to deduct the hours necessary to reach eligibility from your leave bank to make up for the discrepancy. For example, if you took 60 hours vacation, but you are required to take 80 hours before the buy down can occur, we will reduce your leave bank by the remaining 20 hours needed to make

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you eligible, then we will pay you for your eligible hours. The hours we reduce your leave bank by are forfeited – that is, they are just removed from your hour's bank, there is no payment for them nor will taxes be taken.

- B. If under this same scenario you can provide evidence to the Auditor's Office that you requested to take vacation for those remaining 20 hours, but were denied by your supervisor, your leave bank will not be reduced for the difference in hours, you will not forfeit hours, and there is no tax consequences. However, we will still proceed with paying you for the number of hours you elected, so long as there are sufficient hours in your leave bank. If the hours remaining in your leave bank are insufficient to complete your election, we will proceed with paying you for all hours up to the amount elected. Hours remaining in your leave bank after the payout are not taxed until taken as vacation/leave at a later date.

21. **Question:** *"In December 2016, I waived my right to purchase hours in calendar year 2017. Now, I need to conduct a buy down due to a hardship. Am I allowed to purchase hours, even after I've elected not to do so?"*

**Answer:** Most MOAs contain a 'financial hardship' provision that allows an employee who experiences an unforeseeable emergency to make a new (2<sup>nd</sup>) irrevocable election to redeem hours.

- If the employee's original election was 'waived' (i.e. elected not to purchase hours), the employee may submit a new election for *up to the number of hours authorized under the employee's governing MOA*.
- If the employee originally elected to purchase hours, but only a partial amount of what the employee is entitled to receive, the employee may submit a new election for the *difference between hours initially elected and hours allowed by the employee's governing MOA*.
- **No employee is authorized to submit a request for hours greater than what the employee's governing MOA allows.**

At the time the hardship election is submitted, the employee should also complete and submit the **Payroll Services Request for Payment of Cash in Lieu of Leave Hours 2017**.

22. **Question:** *"In December 2016, I elected to purchase hours in calendar year 2017. However, now I need those hours to coordinate my leave for a medical or family emergency. Am I allowed to "opt out" of my original election?"*

**Answer:** Currently, there is no provision in any MOA to allow an employee to "opt out" of their initial election. **This is why it is important you make your choice carefully.**



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23. **Question:** *"Since I'm not allowed to "opt out" for financial hardship, what happens to my election when we get to the end of calendar year 2017?"*

**Answer:** Any hours remaining in the employee's leave bank at the end of calendar year 2017 will be paid out up to the number of hours the employee originally elected. For example, if in December 2016 the employee elected to purchase 80 hours, and in December 2017 only 10 hours remain in their leave bank due to a coordination of benefits, then the 10 hours remaining in the employee's bank will be paid to the employee. The 10 hours will be taxed accordingly, in the same manner a normal buy down would be taxed. There are no additional tax consequences as the employee already paid taxes on hours used during calendar year 2017.

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24. **Question:** *"In December, 2016, when I made my election, I was a member of one union. During calendar year 2017, I promoted (or demoted) to a position governed by a different MOA. What happens to my election?"*

**Answer:** Currently, it is the Auditor-Controller's understanding the employee will be bound to the original election terms specific to the MOA in place at the time of the election. Additional legal counsel is pending.

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25. **Question:** *"My union has not adopted these provisions. Can I submit a form anyway?"*

**Answer:** The Auditor-Controller will accept any forms submitted; however, forms associated with employees of unions that have not adopted the revised redemption provisions will not be honored.

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26. **Question:** *"I disagree with my union's position not to adopt these provisions. Is there anything I can do?"*

**Answer:** Please forward any questions or concerns you have to your union representatives.