**Section 2700.440 Special Section 457 Catch-up** **Limitation**

a) If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age, and the amount determined under this Section exceeds the amount computed under Sections 2700.430 and 2700.435 of this Part, then the Annual Deferral limit in the Plan shall be the lesser of:

1) An annual amount equal to 2 times the Applicable Dollar Amount for the applicable year as provided for in Section 2700.430 of this Part; or

2) The sum of:

A) An amount equal to the aggregate limit, as defined in Section 2700.430 of this Part, for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan after December 31, 2001, plus

B) An amount equal to the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Section 2700.435 and this Section) minus the aggregate contributions to pre-2002 coordination plans for those years.

b) In no event can the deferred amount be more than the Participant's Compensation for the applicable years.

c) If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all other eligible 457(b) plans shall be considered as one plan for purposes of applying foregoing limitations of this Section. For this purpose, the Department shall take into account any other eligible plan for which the Department receives, from the Participant, sufficient information concerning his or her participation in the other plan.

d) In applying this Section, a year shall be taken into account only if the Participant was eligible to participate in the Plan during all or a portion of the year and Compensation deferred, if any, under the Plan during the year was subject to the basic annual limitation described in Section 2700.430 of this Part or any other plan ceiling required by section 457(b) of the Code.

e) For purposes of subsection (a)(2)(B), "contributions to pre-2002 coordination plan" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension deferred arrangement, Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of subsection (a)(2)(B) of this Section to the extent that the total of the contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.

f) If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described in subsection (a), or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described in subsection (a) when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code, for which the Participant provides information that is accepted by the Department, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable to the investment), shall be distributed to the Participant. The Participant shall be responsible for the proper tax reporting for any contributions in excess of the maximum deferral limitations set forth in Sections 2700.430, 2700.435 and 2700.440.

g) An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the State equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the State had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for 5 years following the resumption of employment (or, if sooner, for a period equal to 3 times the period of the interruption or leave).

h) If a Participant is eligible both for the Age 50 Catch-Up in Section 2700.435 and the Special Section 457 Catch-Up Limitation in Section 2700.440 in a calendar year, the rule that allows for the greater catch-up contribution applies.

(Source: Amended at 33 Ill. Reg. 13451, effective September 14, 2009)