

**TOWN OF FAIRFAX  
STAFF REPORT**

**To: Mayor, Members of the Town Council**

**From: Michael Rock, Town Manager  
Michael Vivrette, Finance Department**

**Date: October 5, 2011**

**Subject: Adoption of Resolution 11- 54 to Tax Defer Member and Employer Paid PERS  
Contributions per IRC 414(h)(2)**

**RECOMMENDATION**

Adopt Resolution 11-55 tax deferring member and employer paid contributions to CalPERS (California Public Employee Retirement System).

**DISCUSSION**

One of the elements of cost reduction in this year's budget begun last year was to have employees pay a portion of the employee contribution of the CalPERS retirement. In the absence of a resolution establishing tax deferral of these contributions, the payments do not legally reduce taxable income.

A benefit that employers can provide to their employees at no cost to the employer or employee is Internal Revenue Code (IRC) Section 414(h)(2), Employer Pick-Up.

Under this provision, employees pay their own member contributions from reportable compensation and defer state and federal income taxes on the member contributions. The Employer Pick-Up allows employees' contributions to be treated as employer contributions for federal and state tax purposes, thus lowering the employees' taxable gross income. The amount reported to the Internal Revenue Service is reportable compensation less the member contributions. Federal and state taxes on the amount of contributions are postponed until distribution either through a retirement allowance or a lump sum payment (refund).

All supplemental pay that is based upon employees' salary, such as overtime, will be computed on the employees' original gross salary (base pay including the member contributions). There is no increase in the member's pay rate reported to CalPERS when reporting tax-deferred member contributions under Internal Revenue Code (IRC) Section 414(h)(2). To implement this provision, the employer's duly authorized board of trustees must adopt the appropriate resolution for the affected group or class of employees (attached). Once the resolution is adopted, contributions for all employees in the affected group or class must be reported to CalPERS on a tax-deferred basis. Employees may not elect Employer Pick-Up on an individual basis.

Staff recommends that this resolution be adopted.

**FISCAL IMPACT**

The election has no cost to the Town (employer) or to the employee. Tax deferred contributions become taxable when PERS is received upon retirement or cash out of PERS contributions where service is less than five years.

**ATTACHMENTS**

1. Resolution 11-54 to Tax Defer Member Paid Contributions per IRS 414(h)(2)
2. Description of Internal Revenue Code Section 414(h)(2)

## RESOLUTION 11- 54

### A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX TO TAX DEFER MEMBER PAID CONTRIBUTIONS – IRC 414(h)(2)

**WHEREAS,** the governing body of the **Town of Fairfax** has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

**WHEREAS,** the **Town of Fairfax** has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2)IRC should be provided to **ALL EMPLOYEES** who are members of the California Public Employees' Retirement System:

#### **NOW, THEREFORE, BE IT RESOLVED:**

- I. That the **Town of Fairfax** will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the California Public Employees' Retirement System on behalf of all its employees or all its employees in a recognized group or class of employment who are members of the California Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by the **Town of Fairfax** to the California Public Employees' Retirement System, although designated as employee contributions, are being paid by the **Town of Fairfax** in lieu of contributions by the employees who are members of the California Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the **Town of Fairfax** to the California Public Employees' Retirement System.
- IV. That the **Town of Fairfax** shall pay to the California Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
- V. That the amount of the contributions designated as employee contributions and paid by the **Town of Fairfax** to the California Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the California Public Employees' Retirement Law (California Government Code Sections 20000, et seq.).
- VI. That the contributions designated as employee contributions made by **Town of Fairfax** to the California Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

The foregoing Resolution No. 11-54 was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 5<sup>th</sup> day of October, 2011, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
LARRY BRAGMAN, MAYOR

Attest:

\_\_\_\_\_  
Town Clerk

**TAX-DEFERRING THE MEMBER-PAID CONTRIBUTIONS  
INTERNAL REVENUE CODE SECTION 414(h)(2) EMPLOYER PICK-UP**

A benefit that employers can provide to their employees at no cost to the employer or employee is Internal Revenue Code (IRC) Section 414(h)(2), Employer Pick-Up. Under this provision, employees pay their own member contributions from reportable compensation and defer state and federal income taxes on the member contributions. The Employer Pick-Up allows employees' contributions to be treated as employer contributions for federal and state tax purposes, thus lowering the employees' taxable gross income. The amount reported to the Internal Revenue Service is reportable compensation less the member contributions. Federal and state taxes on the amount of contributions are postponed until distribution either through a retirement allowance or a lump sum payment (refund). All supplemental pay that is based upon employees' salary, such as overtime, will be computed on the employees' original gross salary (base pay including the member contributions). There is no increase in the member's pay rate reported to CalPERS when reporting tax-deferred member contributions under Internal Revenue Code (IRC) Section 414(h)(2). To implement this provision, the employer's duly authorized board of trustees must adopt the appropriate resolution for the affected group or class of employees (Sample E Resolution). Once the resolution is adopted, contributions for all employees in the affected group or class must be reported to CalPERS on a tax-deferred basis. Employees may not elect Employer Pick-Up on an individual basis. Copies of all resolutions for member contributions should be sent to:

**CalPERS**

Customer Account Services Division  
Compensation and Employer Review Unit  
P.O. Box 942709  
Sacramento, CA 94229-2709

For more information, contact the CalPERS  
Customer Contact Center at **888 CalPERS** (or **888-225-7377**).