

Date: January 15, 2009 for February 4, 2009 Agenda
To: Commissioners
From: Patrick M. McCormick, Executive Officer
Subject: Income Tax Deferral for Employee Pension Contributions

Summary: CalPERS is asking for additional documentation to comply with the Federal Internal Revenue Code concerning income tax deferral where the employer picks up a portion or all of an employee's share of pension contributions.

Recommendation: That the Commission adopt draft Resolution No. 2009-1, which, pursuant to federal and state law, clarifies that the employer-paid retirement contributions on behalf of the Secretary-Clerk qualify for income tax deferral.

LAFCO contracts with the California Public Employees' Retirement System (CalPERS) for pension coverage of its two employees. In a letter dated October 24, 2008 (attached), CalPERS informed the LAFCO staff that CalPERS requires formal documentation from employers who pay part or all of the employee contributions to the pension plan. This practice is optional and is commonly referred to as a "pick-up" of employee retirement contributions. CalPERS is requesting documentation in order to comply with section 414(h)(2) of the Internal Revenue Code, which sets forth conditions under which employer-paid retirement contributions can qualify for tax-deferred status. CalPERS has provided employers with sample resolutions that contain language to comply with the Internal Revenue Code, and has requested each agency to provide resolutions by December 31, 2008. LAFCO staff has contacted CalPERS, which indicated that a response in early February 2009 would be considered timely and not result in any disqualification or penalty to LAFCO.

Page 2 of LAFCO Resolution No. 2008-2 (attached) specifies that the Commission "picks up" the 7% employee retirement contribution for the Secretary-Clerk (General Employment Group), but not for the Executive Officer (Management Group). The reason the two employees are treated differently is that in recent years LAFCO has generally matched the compensation packages that the County of Santa Cruz provides to its employees. At the County, the general and management employee groups have negotiated different compensation packages with one group choosing for the employer to pick up the employees' retirement contributions, and the other group choosing higher pay.

Staff has drafted LAFCO Resolution No. 2009-1, which would provide CalPERS with the documentation in the proper format. This action has no fiscal impact on LAFCO. The compensation package to each employee would not change. There are consequences of this action:

1. LAFCO would be in compliance with CalPERS business reporting system and would not risk CalPERS delaying the processing of LAFCO's retirement contributions.
2. The Secretary-Clerk would get to defer paying income taxes on the 7% of salary that is represented by the current employer pick up of retirement contributions.

Attachments

- CalPERS letter of October 24, 2008
- LAFCO Resolution No. 2008-2 Adjusting Salaries and Benefits
- Draft Resolution No. 2009-1
- California Government Code Section 20691