

AGENDA ITEM

January 702

DATE: January 4, 2013

TO: Members, Board of Trustees

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Board Resolution Re: IRC 414(h)(2) to Defer Tax on Member Contributions to CalPERS

EXECUTIVE SUMMARY

Under terms mandated by the union negotiated Memoranda of Understanding (MOU) between the State Bar of California and Service Employees International Union (SEIU), the State Bar currently pays the employee contribution to the California Public Employee Retirement System (CalPERS) and has in part beginning in 2004. The extent to which this will continue in light of the Public Employee Pension Reform Act of 2013 will be subject to negotiations with the union during 2013. Until changed through negotiations, these contributions will continue. From the outset, CalPERS has recognized that these are tax deferred payments in accordance with Internal Revenue Code Section 414(h)(2). Following upgrades to CalPERS reporting system, it requires a Board Resolution in the form attached to continue the status quo treatment of these contributions as tax deferred under IRS Code Section 414(h)(2). It is therefore requested that the Board adopt the proposed resolution in the form requested by CalPERS. This maintains the status quo and does not change anything. The proposed resolution is in the form required by CalPERS. Any questions regarding this agenda item should be directed to Robert Hawley, Deputy Executive Director at (415) 538-2277, or via email at robert.hawley@calbar.ca.gov.

BACKGROUND

Under terms mandated by the union negotiated Memoranda of Understanding (MOU) between the State Bar of California and Service Employees International Union (SEIU), the State Bar currently pays the employee contribution to the California Public Employee Retirement System (CalPERS) and has in part beginning in 2004. The extent to which this will continue in light of the Public Employee Pension Reform Act of 2013 will be subject to negotiations with the union during 2013. Until changed through negotiations, these contributions will continue. From the outset, CalPERS has recognized that these are tax deferred payments in accordance with Internal Revenue Code Section 414(h)(2). Following upgrades to CalPERS reporting system, it requires a

Board Resolution in the form attached to continue the status quo treatment of these contributions as tax deferred under IRS Code Section 414(h)(2). It is therefore requested that the Board adopt the proposed resolution in the form requested by CalPERS. This maintains the status quo and does not change anything. The proposed resolution is in the form required by CalPERS.

ISSUE

Should the Board adopt the resolution required by CalPERS to effectuate Internal Revenue Code 414(h)(2) allowing tax deferred treatment of member paid contributions to CalPERS.

CONCLUSION

Yes. The Board should adopt the resolution required by CalPERS to effectuate Internal Revenue Code 414(h)(2) allowing tax deferred treatment of member paid contributions to CalPERS.

DISCUSSION

As noted above, whether the State Bar will continue to pay the employee portion of CalPERS in light of the Public Employee Pension Reform Act of 2013 will be determined by collective bargaining negotiations with Service Employees International Union in 2013. Pursuant to the terms of the binding MOUs, the State Bar has paid employee contributions, at least in part, since this was negotiated with the union in 2004 and has done so on a tax deferred basis consistent with CalPERS policy.

In light of system changes, CalPERS now requires a Board resolution to effectuate Internal Revenue Code Section 414(h)(2). This resolution is proposed for Board adoption in the form attached. This maintains the status quo and does not change any terms regarding employee pensions or terms and conditions of employment. The effect of this resolution is to continue the preexisting standard of allowing the employee contribution to CalPERS to be made on a tax deferred basis.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

Staff recommends that the Board adopt the resolution to tax defer member paid contributions starting in 2004 and thereafter in the form attached.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the staff's recommendation, the following resolution would be in order:

RESOLVED, that the Board of Trustees of the State Bar of California, adopts the resolution attached hereto to implement Internal Revenue Code Section 414(h)(2) with respect to member designated contributions to CalPERS that have been made since 2004 and continue hereafter.

**THE STATE BAR OF CALIFORNIA
BOARD OF TRUSTEES
RESOLUTION
January 702
January 12, 2013**

**Resolution to Tax Defer Member Paid Contributions – IRC 414(h)(2)
Employer Pick-Up**

WHEREAS, the governing body of the THE STATE BAR OF CALIFORNIA has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, THE STATE BAR OF CALIFORNIA 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 THE STATE BAR OF CALIFORNIA implements 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 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. This is applicable back to 2004 when this was first negotiated by the union and shall continue until ended.

II. That the contributions made by the THE STATE BAR OF CALIFORNIA to the California Public Employees' Retirement System, although designated as employee contributions, are being paid by the THE STATE BAR OF CALIFORNIA in lieu of contributions by the employees who are members of the California Public Employees' Retirement System, and have been since negotiated with Service Employees International Union in 2004.

III. That employees do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the THE STATE BAR OF CALIFORNIA to the California Public Employees' Retirement System.

IV. That THE STATE BAR OF CALIFORNIA 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, and have done so since 2004.

V. That the amount of the contributions designated as employee contributions and paid by THE STATE BAR OF CALIFORNIA 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 THE STATE BAR OF CALIFORNIA 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.

PASSED AND ADOPTED by the governing body of THE STATE BAR OF CALIFORNIA
this 12th day of January, 2013, to be effective since January 1, 2004.
BY

Robert Hawley
Deput Executive Director
Employee Relations Officer

RETURN ADDRESS:

The State Bar of California
180 Howard Street
San Francisco, CA 94105

FOR CALPERS USE ONLY

RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS - IRC 414(h)(2)

Approved by: _____

Title: _____