

7605

2011-2012 Regular Sessions

I N A S S E M B L Y

May 11, 2011

Introduced by M. of A. ABBATE -- read once and referred to the Committee
on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to
the treatment of member contributions in accordance with the
provisions of the Internal Revenue Code

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The retirement and social security law is amended by adding
2 a new section 1204-a to read as follows:
3 S 1204-A. PICK UP OF MEMBER CONTRIBUTIONS BY EMPLOYER. A. NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW, EACH PARTICIPATING EMPLOYER SHALL
5 PICK UP THE MEMBER CONTRIBUTIONS REQUIRED TO BE MADE UNDER SECTION
6 TWELVE HUNDRED FOUR OF THIS ARTICLE BY ITS EMPLOYEES AND SHALL DO SO BY
7 REDUCING THE SALARY OF EACH OF ITS EMPLOYEES TO WHICH THIS SECTION IS
8 APPLICABLE BY THAT AMOUNT WHICH EACH SUCH EMPLOYEE IS REQUIRED TO
9 CONTRIBUTE UNDER SECTION TWELVE HUNDRED FOUR OF THIS ARTICLE. THE
10 CONTRIBUTIONS SO PICKED UP SHALL BE PAID BY EACH PARTICIPATING EMPLOYER
11 IN LIEU OF THE MEMBER CONTRIBUTIONS TO BE PAID BY ITS EMPLOYEES UNDER
12 THIS SECTION AND SHALL BE TREATED AS EMPLOYER CONTRIBUTIONS IN DETERMIN-
13 ING INCOME TAX TREATMENT UNDER SECTION 414(H) OF THE INTERNAL REVENUE
14 CODE AND THE TAX LAW OF THIS STATE. WITH THE EXCEPTION OF INCOME TAX
15 TREATMENT, THE MEMBER CONTRIBUTIONS PICKED UP PURSUANT TO THIS SUBDIVI-
16 SION SHALL FOR ALL OTHER PURPOSES, INCLUDING COMPUTATION OF RETIREMENT
17 BENEFITS AND CONTRIBUTIONS BY EMPLOYERS AND EMPLOYEES, BE DEEMED EMPLOY-
18 EE SALARY.
19 B. ANY EMPLOYEE (SUBJECT TO THIS ARTICLE) OF A PARTICIPATING EMPLOYER
20 WHO, IN LIEU OF JOINING A PUBLIC RETIREMENT SYSTEM OF THE STATE, ELECTED
21 AN OPTIONAL RETIREMENT PROGRAM TO WHICH THEIR EMPLOYERS ARE THEREBY
22 REQUIRED TO CONTRIBUTE SHALL, IN ORDER FOR THE PROVISIONS OF THIS SUBDI-
23 VISION TO APPLY, BE REQUIRED TO EXECUTE A SALARY REDUCTION AGREEMENT (IN
24 ACCORDANCE WITH THE REGULATIONS PROMULGATED UNDER SECTION 403(B) OF THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 INTERNAL REVENUE CODE) IN AN AMOUNT EQUAL TO THE EMPLOYEE CONTRIBUTIONS
2 WHICH WOULD OTHERWISE BE MANDATORY UNDER THE PROVISIONS OF STATE LAW.
3 WITH THE EXCEPTION OF FEDERAL INCOME TAX TREATMENT, THE EMPLOYEE
4 CONTRIBUTIONS PICKED UP OR PAID PURSUANT TO THIS SUBDIVISION SHALL FOR
5 ALL OTHER PURPOSES, INCLUDING COMPUTATION OF RETIREMENT BENEFITS AND
6 CONTRIBUTIONS BY EMPLOYERS AND EMPLOYEES, BE DEEMED EMPLOYEE SALARY.
7 NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED AS SUPERSEDING
8 ANY PROVISION OF LAW WHICH LIMITS THE SALARY BASE FOR COMPUTING RETIRE-
9 MENT BENEFITS PAYABLE BY A PUBLIC RETIREMENT SYSTEM.
10 S 2. This act shall take effect immediately.

FISCAL NOTE.--Pursuant to Legislative Law, Section 50:

This bill would require participating employers to pick up, within the meaning of section 414(h) of the Internal Revenue Code, the 3% contributions required of Tier 5 members of the New York State and Local Police and Fire Retirement System. The pick up of contributions shall be made by a reduction in each affected member's salary by an amount equal to the member's required contributions. The picked up contributions would not be includable in the gross income for income tax purposes but shall be deemed employee salary for all other purposes.

If this bill is enacted, we anticipate that there will be small administrative costs.

This estimate, dated April 6, 2011, and intended for use only during the 2011 Legislative Session, is Fiscal Note Number 2011-164 prepared by the Actuary for the New York State and Local Police and Fire Retirement System.