

5837

2011-2012 Regular Sessions

I N S E N A T E

June 21, 2011

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the retirement and social security law and the tax 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 ASSEMBLY, 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. WITH THE EXCEPTION OF FEDERAL INCOME TAX TREATMENT, THE MEMBER
15 CONTRIBUTIONS PICKED UP PURSUANT TO THIS SUBDIVISION SHALL FOR ALL OTHER
16 PURPOSES, INCLUDING COMPUTATION OF RETIREMENT BENEFITS AND CONTRIBUTIONS
17 BY EMPLOYERS AND EMPLOYEES, BE DEEMED EMPLOYEE SALARY.
18 B. ANY EMPLOYEE (SUBJECT TO THIS ARTICLE) OF A PARTICIPATING EMPLOYER
19 WHO, IN LIEU OF JOINING A PUBLIC RETIREMENT SYSTEM OF THE STATE, ELECTED
20 AN OPTIONAL RETIREMENT PROGRAM TO WHICH THEIR EMPLOYERS ARE THEREBY
21 REQUIRED TO CONTRIBUTE SHALL, IN ORDER FOR THE PROVISIONS OF THIS SUBDI-
22 VISION TO APPLY, BE REQUIRED TO EXECUTE A SALARY REDUCTION AGREEMENT (IN
23 ACCORDANCE WITH THE REGULATIONS PROMULGATED UNDER SECTION 403(B) OF THE
24 INTERNAL REVENUE CODE) IN AN AMOUNT EQUAL TO THE EMPLOYEE CONTRIBUTIONS

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

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

9 S 2. Paragraph 4 of subdivision f of section 517 of the retirement and
10 social security law, as amended by chapter 783 of the laws of 1988, is
11 amended to read as follows:

12 4. The provisions of this subdivision [f] shall not apply to a
13 police/fire member WHO IS A MEMBER OF EITHER THE NEW YORK CITY POLICE
14 PENSION FUND OR THE NEW YORK CITY FIRE DEPARTMENT PENSION FUND or a
15 member of the New York city employees' retirement system who is a member
16 of the uniformed correction force or of the uniformed force of the
17 department of sanitation, as defined in subdivisions thirty-nine and
18 sixty-two of section 13-101 of the administrative code of the city of
19 New York.

20 S 3. Paragraph 26 of subsection (b) of section 612 of the tax law, as
21 amended by chapter 681 of the laws of 1992, is amended to read as
22 follows:

23 (26) The amount of member or employee contributions to a retirement
24 system or pension fund picked up or paid by the employer pursuant to
25 subdivision f of section five hundred seventeen [or], subdivision d of
26 section six hundred thirteen OR SECTION TWELVE HUNDRED FOUR-A of the
27 retirement and social security law or section 13-225.1, 13-327.1,
28 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of
29 New York or subdivision nineteen of section twenty-five hundred seven-
30 ty-five of the education law.

31 S 4. Subparagraph (B) of paragraph 2 of subsection (b) of section 671
32 of the tax law, as amended by chapter 312 of the laws of 1997, is
33 amended to read as follows:

34 (B) Any member or employee contributions to a retirement system or
35 pension fund picked up by the employer pursuant to subdivision f of
36 section five hundred seventeen [or], subdivision d of section six
37 hundred thirteen OR SECTION TWELVE HUNDRED FOUR-A of the retirement and
38 social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or
39 13-521.1 of the administrative code of the city of New York or subdivi-
40 sion nineteen of section twenty-five hundred seventy-five of the educa-
41 tion law and any member or employee contributions to a retirement system
42 or pension fund picked up or paid by the employer for members of the
43 Manhattan and Bronx surface transportation authority pension plan and
44 treated as employer contributions in determining income tax treatment
45 under section 414(h) of the Internal Revenue Code.

46 S 5. Subsection (c) of section 1 of subsection (c) of section 1340 of
47 the tax law, as amended by chapter 312 of the laws of 1997, is amended
48 to read as follows:

49 (c) Wages. Wages shall mean wages as defined in subsection (a) of
50 section thirty-four hundred one of the internal revenue code, except
51 that (1) wages shall not include payments for active service as a member
52 of the armed forces of the United States and shall not include, in the
53 case of a nonresident individual or partner of a partnership doing an
54 insurance business as a member of the New York insurance exchange
55 described in section six thousand two hundred one of the insurance law,
56 any item of income, gain, loss or deduction of such business which is

1 such individual's distributive or pro rata share for federal income tax
2 purposes or which such individual is required to take into account sepa-
3 rately for federal income tax purposes and (2) wages shall include (i)
4 the amount of member or employee contributions to a retirement system or
5 pension fund picked up by the employer pursuant to subdivision f of
6 section five hundred seventeen [or], subdivision d of section six
7 hundred thirteen OR SECTION TWELVE HUNDRED FOUR-A of the retirement and
8 social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or
9 13-521.1 of the administrative code of the city of New York or subdivi-
10 sion nineteen of section twenty-five hundred seventy-five of the educa-
11 tion law, (ii) the amount deducted or deferred from an employee's salary
12 under a flexible benefits program established pursuant to section twen-
13 ty-three of the general municipal law or section one thousand two
14 hundred ten-a of the public authorities law, (iii) the amount by which
15 an employee's salary is reduced pursuant to the provisions of subdivi-
16 sion b of section 12-126.1 and subdivision b of section 12-126.2 of the
17 administrative code of the city of New York, and (iv) the amount of
18 member or employee contributions to a retirement system or pension fund
19 picked up or paid by the employer for members of the Manhattan and Bronx
20 surface transportation authority pension plan and treated as employer
21 contributions in determining income tax treatment under section 414(h)
22 of the Internal Revenue Code.

23 S 6. Nothing contained in this act shall be construed to create any
24 contractual right with respect to members and employees to which it
25 applies. The provisions of this act are intended to afford members and
26 employees the advantages of certain benefits contained in the Internal
27 Revenue Code, and the effectiveness and existence of this act and the
28 benefits it confers are completely contingent thereon.

29 S 7. This act shall take effect at the beginning of the first payroll
30 period following sixty days after the retirement system covered by this
31 act shall receive an Internal Revenue Service ruling stating that the
32 employee contributions covered by this act are not includible in the
33 gross income of the employee until distributed or made available to the
34 employee and shall remain in full force and effect only as long as such
35 treatment of such employee contributions is authorized pursuant to the
36 provisions of the Internal Revenue Code; provided that the state comp-
37 troller shall notify the legislative bill drafting commission upon the
38 occurrence of such ruling and upon any change in the provisions of the
39 Internal Revenue Code affecting the provisions of this act in order that
40 the commission may maintain an accurate and timely effective data base
41 of the official text of the laws of the state of New York in furtherance
42 of effecting the provisions of section 44 of the legislative law and
43 section 70-b of the public officers law; provided further, however, that
44 the amendments to subdivision f of section 517 of the retirement and
45 social security law, paragraph 26 of subsection (b) of section 612,
46 subparagraph (B) of paragraph 2 of subsection (b) of section 671 and
47 subsection (c) of section 1 of subsection (c) of section 1340 of the tax
48 law made by sections two, three, four and five of this act shall not
49 affect the expiration of such provisions and shall be deemed to expire
50 therewith.

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.