

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PROVIDING)	RESOLUTION NO. 94-2056
FOR THE DEDUCTION OF CONTRIBU-)	
TIONS TO RETIREMENT PLANS)	Introduced by Rena Cusma,
FROM WAGES AND SALARIES)	Executive Officer

WHEREAS, The voters of the state of Oregon on November 8, 1994, amended the Oregon Constitution by the adoption of Ballot Measure 8; and

WHEREAS, Ballot Measure 8 requires that all Metro employees and elected officials who participate in the Public Employes Retirement System or any other retirement plan provided by Metro contribute 6 percent of their salary or gross wage to the retirement plan or system maintained by Metro; and

WHEREAS, The Metro Council desires to clarify that all Metro employees and elected officials are required to make payment to retirement plans from their gross salary or wages; and

WHEREAS, Due to the pay periods utilized by Metro, the mandatory contribution required by Measure 8 will apply to all wages and salaries paid for work on or after December 16, 1994; and

WHEREAS, The Attorney General of the State of Oregon and Metro's General Counsel have advised that employees who are subject to collective bargaining agreements providing for the payment by Metro of the employee contribution to retirement plans continue to have the benefit of those contractual provisions until their expiration date; and

WHEREAS, The Oregon Attorney General and Metro's General Counsel have advised that the mandatory contribution to any retirement plan may be excluded from the taxable income of employees and elected officials; and

WHEREAS, The Council desires to state its intent that for the purpose of federal tax law, at 26 U.S.C. § 141(h)(2), the portion required to be contributed from employees' and elected officials' gross wages or salaries for retirement benefits shall not be considered taxable income and is required to be excluded from the amounts reported as taxable income to the Internal Revenue Service by Metro; now, therefore,

BE IT RESOLVED,

1. That the Metro Council recognizes that Metro is contractually bound by the terms of existing collective bargaining agreements to continue to make payments for retirement benefits as provided in those collective bargaining agreements until such time as those agreements may be amended or expire.


2. That for all purposes of Oregon law including but not limited to the preparation of annual budgets, and the establishment of the Metro Pay Plan, the gross wages or salary of any employee or elected official shall include the amount the employee or elected official is required to contribute for retirement benefits. This provision shall not apply to the extent it conflicts with any existing provision of a collective bargaining agreement described in paragraph 1 of this Resolution.

3. That for the limited purpose of determining what amounts shall be considered as taxable income, pursuant to federal law at 26 U.S.C. § 141(h)(2), the amount removed from wages or salary as a required contribution to any retirement plan or system

shall not be considered taxable income and shall not be included in the amount of taxable income reported to the Internal Revenue Service by Metro for federal income tax purposes. As required by 26 U.S.C. § 141(h)(2), Metro will "pick up" and remove from an employee's or elected official's wage or salary any amount required by Oregon law to be contributed to a retirement plan or system, and Metro will make the required payment directly to the plan or system. The amount required to be contributed by the employee is not available to the employee and may not be paid to the employee directly.

4. That this Resolution shall apply to all salary and wages earned on or after December 16, 1994.

ADOPTED by the Metro Council this 22nd day of December, 1994.



Judy Wyers, Presiding Officer

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FINANCE COMMITTEE REPORT

RESOLUTION NO. 94-2056 TO PROVIDE FOR THE DEDUCTION OF CONTRIBUTIONS TO RETIREMENT PLANS FROM WAGES AND SALARIES

Date: December 15, 1994

Presented By: Councilor Monroe

COMMITTEE RECOMMENDATION: At its December 13, 1994 meeting the Committee voted unanimously to recommend Council adoption of Resolution No. 94-2056. Committee members present and voting were Councilors Buchanan, Devlin, Kvistad, McLain, Monroe and Washington. Councilors Gardner and Van Bergen were absent.

COMMITTEE DISCUSSION/ISSUES: Paula Paris, Personnel Manager, gave the Staff Report. She stated that this resolution will enable Metro to treat the 6% employee contribution to PERS as non-taxable income for employees. Taxes would not be deducted from the employees pay check for the amount of the 6% PERS contribution. Since employees have no choice about making the 6% contribution mandated by Measure 8, Metro will not report the amount of the contribution made by each employee to the IRS as income. The 6% contribution will not be shown as a deduction on the employee's W-2 form. The income received by the employee from PERS at retirement would be taxable.

There were no questions nor discussion by the Committee.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-2056 FOR THE PURPOSE OF PROVIDING FOR THE DEDUCTION OF CONTRIBUTIONS TO RETIREMENT PLANS FROM WAGES AND SALARIES.

Date: December 2, 1994

Presented by: Paula Paris

BACKGROUND:

The voters of the state of Oregon on November 8, 1994 amended the Oregon Constitution by the adoption of Ballot Measure 8. This ballot measure requires that any employee of the State of Oregon or any political subdivision of the State who is a member of a retirement system or plan established by law, charter or ordinance or who will receive a retirement benefit from a system or plan offered by the State must contribute an amount equal to 6 percent of their salary or gross wage.

On November 21, 1994 the Attorney General issued an opinion which answers numerous questions that had been raised regarding the implementation of this measure. The Attorney General has advised that pursuant to the provisions of the Federal Internal Revenue Code that at the election of a public employer the mandatory employee contribution can be excluded from wages and salary for federal income tax purposes.

General Counsel, Dan Cooper, has reviewed this provision and consulted with tax attorneys in the Stoel Rives firm, who have advised him that they believe the Attorney General is correct in his interpretation of the measure and federal tax law.

PROPOSED ACTION:

This resolution would provide that the mandatory employee contribution be treated for federal tax purposes as being excluded from the employee's gross wages and salary.

The resolution does recognize the Metro is legally bound by its existing collective bargaining agreements. This means that Metro and PERS will continue to treat the retirement contributions from union employees the same as it has in the past until the agreements expire or are amended.

The effective date of the Resolution will be on paychecks received after January 1, 1995.

There is no fiscal impact to Metro upon passage of this resolution.



METRO

Daniel B. Cooper
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December 2, 1994

Rena Cusma
Metro Executive Officer
600 N.E. Grand Avenue
Portland, OR 97232-2736

Re: Federal Income Tax Status of Mandatory
Employee Contributions to Retirement Benefit Plans
(Resolution No. 94-2056)

Dear Rena:

Measure 8 adopted by the Oregon voters at the election held on November 8, 1994, requires that any employee of the State of Oregon or any political subdivision of the State who is a member of a retirement system or plan established by law, charter or ordinance or who will receive a retirement benefit from a system or plan offered by the State of political subdivision must contribute to the system an amount equal to 6 percent of their salary or gross wage.

On November 21, 1994, the Oregon Attorney General issued Opinion No. 8232 answering numerous questions that had been raised regarding the implementation of this measure. Among other questions answered by the Attorney General, the Attorney General has advised that pursuant to the provisions of the Federal Internal Revenue Code that at the election of an public employer the mandatory employee contribution can be excluded from wages and salary for federal income tax purposes. I have reviewed this provision and consulted with tax attorneys in the Stoel Rives firm, who have advised me that they believe the Attorney General is correct in his interpretation of the measure and federal tax law. I concur in these opinions. The Attorney General has also advised that existing collective bargaining agreements which provide for the public employer's payment of the employee contribution continue in effect until such time as those contracts are either amended or expired, and are not legally altered by Measure 8. I also concur in this opinion.

You have asked that I prepare a resolution which expresses the intention of the Council that the mandatory employee contribution be treated for federal tax purposes as being excluded

from the employee's gross wages and salary, and that recognizes that Metro is legally bound by its existing collective bargaining agreements. The Resolution (No. 94-2056), as drafted, makes several significant statements which should be understood by the Executive Officer and the Council.

The Resolution applies generally to all employees and elected officials who receive salary or wages, and who are members of or eligible to receive benefits from the Public Employees Retirement System or any other retirement system. The Resolution provides that Metro does recognize the existing contractual collective bargaining agreements. This means that Metro and PERS will continue to treat the retirement contributions from union employees the same way it has in the past until the agreements expire or are amended. When the agreements expire the other provisions of Resolution No. 94-2056 will apply to the union employees.

Second, the Resolution provides that for purposes of Oregon law the mandated 6 percent contribution from employees to retirement systems must be reflected as a portion of wages or salaries in all Metro records or documents. This includes future budgets as well as the Pay Plan and Salary Schedules. In particular this means that the contribution would no longer be budgeted as part of fringe benefits, but instead would be included within the line item for employee salaries or wages included in the budget. Likewise, the amount stated in the salary and pay plans for employee compensation will include the amount contributed by the employee to the retirement systems. Thus, pursuant to Measure 8, the amount the employee contributes to retirement is treated as part of the wage or salary paid to the employee and is not hidden from view. Wages and salaries will not be understated by the amount of the contribution. This is one important consequence of Measure 8.

For the limited purpose of federal income tax, Metro as the employer will remove or "pick up" the employee contribution from the employee's wages and salaries before they are paid to the employee. Thus, the employee does not have the option of receiving the amount to be contributed to retirement directly and then making the payment on their own. The Resolution uses the technical term "pick up" as utilized in the federal tax code, and states that the contribution is removed from wages and salaries, and is not available to the employee.

Finally, the effective date of the Resolution will be on paychecks received after January 1, 1995. This is because Measure 8 prohibits the past practice of treating retirement contributions as an employer paid fringe benefit for all wages or salaries paid on or after January 1, 1995. Metro's pay period for all Metro employees is based on a cycle where for the 16th through 31st of December wages are not be paid until the 10th of January 1995. Pursuant to the Attorney General's opinion, PERS will be treating all wages paid after January 1, 1995, as being subject to the Measure 8 requirements. Therefore, it is important

Rena Cusma
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that the Council action in order to be effective must occur before December 31, and must indicate the Council's intention that it apply to wages earned during the period December 16th and thereafter since those wages will not be paid until after January 1, 1995.

Yours very truly,

A handwritten signature in cursive script, appearing to read "D. B. Cooper", written in black ink.

Daniel B. Cooper,
General Counsel

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