

DEPARTMENT: Administration

BY: Rick Benson  
PHONE: 966-3222

10-304

**RECOMMENDED ACTION AND JUSTIFICATION:**

Approve budget action transferring funding from the Tobacco Settlement Fund to the Interfund Transfers budget for payment to the Internal Revenue Service (IRS) for unpaid Social Security and Medicare (FICA) taxes from calendar years 2007 through 2009, and January 2010 to March 2010 (\$385,000). The County contributes specific dollar amounts towards a 457(b) plan (deferred compensation) for its employees. This was developed in the mid 1990s, through the negotiation process with the employee unions. Employees are given the option of using all or a portion of this contribution to offset the cost of their health insurance. Although employer paid health benefits are not subject to FICA taxes, deferred compensation contributions are subject to FICA taxes. The County has not been paying FICA taxes on these employer paid contributions. This error was recently discovered by the Auditor and verified by tax attorneys. The County has since corrected this mistake beginning with the April 2010 payroll.

The statute of limitations for tax assessments on 2006 and earlier has expired, but the County must correct this error for the calendar years 2007 through 2009, and for the months of January through March 2010. The Auditor has calculated this amount to be \$385,000. This amount must be paid in the quarter in which the error was discovered, which means the payment must be processed by June 30, 2010, to avoid interest and penalties.

There is insufficient funding in the General Contingency (current balance of \$156,168) to process this payment and staff is recommending that the funding be taken from the Tobacco Settlement fund (a funding source that the Board may use at its discretion) for this payment. There is currently a balance of \$855,000 available in the Tobacco Settlement Fund. The repayment to the Tobacco Settlement Fund will be included in the Fiscal Year 2010-11 Recommended Budget.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Do not approve the budget action; direct staff to identify another funding source. If the payment is not processed by June 30, 2010, then the County could be liable for interest and penalties.

Financial Impact? ( X ) Yes ( ) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? ( ) Yes ( X ) No ( ) Partially Funded		
Amount in Budget: \$-0-		List Attachments, number pages consecutively
Additional Funding Needed: \$385,000		Budget Action
Source:		
Internal Transfer		
Unanticipated Revenue	_____ 4/5's vote	
Transfer Between Funds	X _____ 4/5's vote	
Contingency	_____ 4/5's vote	
( ) General ( ) Other		

**CLERK'S USE ONLY:**

Res. No.: 10-304 Ord. No. \_\_\_\_\_

Vote - Ayes: 5 Noes: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved

Minute Order Attached  No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_

Attest: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California

By: \_\_\_\_\_  
Deputy

**COUNTY ADMINISTRATIVE OFFICER:**

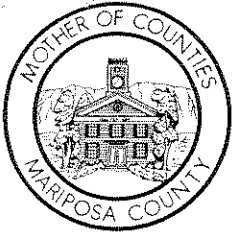
Recommended Action Recommended

No Opinion

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CAO: [Signature]



# COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

KEVIN CANN, CHAIR  
JIM ALLEN, VICE-CHAIR  
BRAD ABORN  
LYLE TURPIN  
JANET BIBBY


DISTRICT IV  
DISTRICT V  
DISTRICT I  
DISTRICT II  
DISTRICT III



## MARIPOSA COUNTY BOARD OF SUPERVISORS

### MINUTE ORDER

TO: RICHARD J. BENSON, CAO

FROM: MARGIE WILLIAMS, Clerk of the Board 

SUBJECT: Approve Budget Action Transferring Funding from the Tobacco Settlement Fund to the Interfund Transfers Budget for Payment to the Internal Revenue Service (IRS) for Unpaid Social Security and Medicare (FICA) Taxes from Calendar Years 2007 through 2009, and January 2010 through March 2010 (\$385,000) (4/5ths Vote Required)

RES 10-304

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on June 15, 2010

#### ACTION AND VOTE:

11

#### **Administration**

Approve Budget Action Transferring Funding from the Tobacco Settlement Fund to the Interfund Transfers Budget for Payment to the Internal Revenue Service (IRS) for Unpaid Social Security and Medicare (FICA) Taxes from Calendar Years 2007 through 2009, and January 2010 through March 2010 (\$385,000) (4/5ths Vote Required)

**BOARD ACTION:** Rick Benson initiated discussion relative to this matter and advised of review by an outside tax attorney. Chris Ebie, Auditor, responded to questions and provided input; and he recommended that the deferred compensation be separated from the health benefits in future employee benefit negotiations.

Input from the public was provided by the following:

Ruth Catalan expressed concern that many more people are not present for discussion concerning this matter; and she asked several questions: whether the employees will be charged their portion of this benefit; whether the IRS was consulted; statute of limitations; whether the payment will be considered as income for the employees; relative to impacts on Social Security benefits; she would like to see more checks and balances; questioned the impact payment will have on the budget; and she referred to her letter on the Sierra Sun Times website.

Dick Hutchinson referred to a personal situation he encountered with his military pay and employees being responsible.

Chair Cann and Chris Ebie responded to the questions that were raised; and he asked that the Auditor, County Administrative Officer, and County Counsel review and advise the Board on being able to recoup the employees' share of the taxes.

Ruth Catalan asked how much was spent on outside attorney fees and staff time, and status of a contract for the attorney's services. Rick Benson responded that he has authority to enter into contracts that are less than \$10,000.

(M)Aborn, (S)Bibby, Res. 10-304 was adopted approving the recommendations, including payment from the Tobacco Settlement Fund. Discussion was held relative to the recommendation that repayment to the Tobacco Settlement Fund will be included in the FY 2010-11 recommended budget. Ayes: Unanimous.

Cc: Chris Ebie, Auditor  
Steve Dahlem, County Counsel  
File

