



Bill Analysis

Author: Seyarto, et al.

Sponsor:

Bill Number: AB 291

Related Bills: See Legislative
History

Amended: February 24, 2021

SUBJECT

Military Survivor Benefits Excluded From Gross Income

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), exclude from gross income survivor benefits and payments received from Survivor Benefit Plans.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The February 24, 2021, amendments added coauthors, included a due date for the report due to the Legislature, and modified provisions related to disclosure.

These amendments resolved one implementation considerations, but other implementation, technical, and policy considerations remain.

REASON FOR THE BILL

The reason for this bill is to make the payments from Survivor Benefit Plans not subject to California personal income tax.

ANALYSIS

This bill would, under the PITL, for taxable years beginning on and after January 1, 2021, and before January 1, 2026, exclude from gross income all survivor benefits or payments received under a Survivor Benefit Plan.

A Survivor Benefit Plan would mean a plan established pursuant to Subchapter II of Chapter 73 of Part II of Subtitle A of Title 10 of the United States Code.

This bill would require, for the purpose of complying with Revenue and Taxation Code (RTC) section 41, the Franchise Tax Board (FTB) to report annually, on or before December 1, 2025, to the Legislature the income brackets of individuals who claimed the exclusion.

The bill indicates that the disclosure provisions of this bill shall be treated as an exception to Section 19542 under Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2.

The exclusion would remain in effect until December 1, 2026, and be repealed as of that date.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2026.

Federal/State Law

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Existing federal and state laws provide that certain types of income are excluded from gross income, such as amounts received as a gift or inheritance, certain compensation for injuries and sickness, qualified scholarships, educational assistance programs, foster care payments, and interest received on certain state or federal obligations.

Under existing federal law, members of the uniformed services may elect to reduce their retirement pay to provide an annuity to their survivors. Under federal and state tax laws, the reduction is excluded from gross income. Also, under federal and state law, certain annuities paid to survivors are included in the survivors' gross income for tax purposes.

Implementation Considerations

The department has identified the following implementation considerations. Department staff is available to work with the author's office to resolve these and other considerations that may be identified.

The bill requires the FTB to provide information about the income brackets of individuals who claim the exclusion to the Legislature, however it is not clear what information is being requested, (i.e., total number of taxpayers that receive the exclusion in each bracket).

Technical Considerations

For consistency of terminology, on page 2, line 3, the term "on and after" should be replaced with "on or after" because a taxable year cannot begin both "on and after" a particular date.

For clarity regarding the author's intent, subdivision (a) needs to be amended where the phrase "gross income does not include all survivor benefits" appears, as it should be "gross income does not include any survivor benefits."

Policy Considerations

This bill would establish an exclusion for which federal law has no counterpart, thus increasing nonconformity.

LEGISLATIVE HISTORY

AB 2380 (Choi, 2019/2020), similar to this bill, would have excluded from gross income survivor benefits and payments received under Survivor Benefit Plans. AB 2380 did not pass out of the Assembly by the constitutional deadline.

AB 1275 (Gray, et al., 2015/2016), would have excluded military retirement pay and survivor benefits received by a beneficiary of a qualified taxpayer from gross income. AB 1275 did not pass out of the Assembly by the constitutional deadline.

AB 1791 (Lopez, 2015/2016) would have excluded military retirement pay and survivor benefits from gross income. AB 1791 did not pass out of the Assembly by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Discussion

Based on data from the United States Department of Defense, approximately 29,000 California military survivors received approximately \$410 million in survivor benefits during 2019. An analysis of prior year benefits shows an average one percent annual decrease in survivor benefits paid. Applying this decrease results in an exclusion of approximately \$400 million in 2021. It is estimated that the average tax rate for these taxpayers would be 2.2 percent. Applying this tax rate results in an estimated revenue loss of \$8.8 million in the 2021 taxable year.

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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