



Bill Analysis

Author: Ramos, et al.

Sponsor:

Bill Number: AB 46

Related Bills: See Legislative
History

Amended: July 12, 2023

SUBJECT

Gross Income Exclusions: Uniformed Services Retirement Pay & Survivor Benefit Plan Payments

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), exclude from gross income retirement pay received for service in the uniformed services and annuity payments received from a Survivor Benefit Plan.

This analysis only addresses the provisions that would impact the Franchise Tax Board (FTB).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The July 12, 2023, amendments added coauthors and made several changes related to the Section 41 reporting requirements. As a result, one implementation consideration discussed in the FTB's analysis of the bill, as introduced December 5, 2022, was resolved, and an additional implementation consideration was identified.

REASON FOR THE BILL

The reason for the bill is to provide income exclusions for retired members of the uniformed services and for survivor benefits paid to beneficiaries.

ANALYSIS

This bill would, under the PITL, for taxable years beginning on or after January 1, 2024, and before January 1, 2034, exclude from gross income retirement pay received by a taxpayer during the taxable year from the federal government for service in the uniformed services.

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The bill defines the following terms:

“Armed forces of the United States” means all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard and United States Space Force. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

“Uniformed services” means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the United States Public Health Service, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

This bill would also, under the PITL, for taxable years beginning on or after January 1, 2024, and before January 1, 2034, exclude from gross income annuity payments received by a qualified taxpayer from a United States Department of Defense Survivor Benefit Plan during the taxable year.

The bill defines the following terms:

“Qualified taxpayer” means the surviving spouse or other named beneficiary of a plan.

“United States Department of Defense Survivor Benefit Plan” means a survivor benefit plan established pursuant to Sections 1447 through 1455 of Title 10 of the United States Code.

Both exclusions would remain in effect until December 1, 2034, and would be repealed as of that date.

For both exclusions, this bill would require, for the purpose of complying with Revenue and Taxation Code (RTC) section 41, the Legislative Analyst (LAO), in collaboration with the Department of Veterans Affairs (VA) and FTB, to report on or before December 1, 2034, to the Legislature. To the extent data is available, the report would be required to include, but not be limited to, the following:

- An analysis of the number of retired veterans and survivor benefit plan beneficiaries taking advantage of the exclusions.
- The impact of the exclusions on the economic security of retired veterans and survivor benefit plan beneficiaries in California.
- The number of retired veterans and survivor benefit plan beneficiaries leaving California.
- The earned income generated by retired veterans and survivor benefit plan beneficiaries subject to state income tax under the RTC.

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The report shall not include any personally identifiable information.

The bill would allow the LAO to request information from both the FTB and the VA.

The disclosure provisions of this bill would be treated as an exception to the FTB's disclosure rules under Section 19542.

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, 2024, and before January 1, 2034.

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

FTB has identified the following implementation considerations and is available to work with the author's office to resolve this and other considerations that may be identified.

The bill would require the FTB to provide information to the LAO related to the exclusions, however it is not clear what specific information FTB would be required to provide. FTB would not have information on the economic security of retired veterans and survivor benefit plan beneficiaries or the number of retired veterans and survivor benefit plan beneficiaries leaving California.

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This bill uses the undefined term, "earned income generated." For clarity, it is recommended that the bill be amended to clarify whether earned income generated would be gross income, net income, or another definition. For example, for purposes of the California Earned Income Tax Credit, earned income is defined by reference to the Internal Revenue Code, with modifications, and means wages, salaries, tips, and other employee compensation or net income from self-employment. It does not include other sources of income such as unemployment income or investment income.

Technical Considerations

For clarity, in Section 17132.9, it is recommended that the phrase "retirement pay" be defined to provide clarity on whether the phrase refers to only pension amounts, or additional health benefits received during retirement.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 1623 (Ramos, et al., 2021/2022), similar to this bill, would have under the PITL, excluded from gross income retirement pay received for service in the uniformed services and annuity payments received from a Survivor Benefit Plan. AB 1623 did not pass out of the Assembly by the constitutional deadline.

AB 291 (Seyarto, et al., 2021/2022) and AB 1629 (Seyarto, et al., 2021/2022), would have under the PITL, excluded from gross income survivor benefits and payments received under a Survivor Benefit Plan. AB 291 and AB 1629 did not pass out of the Assembly by the constitutional deadline.

AB 2380 (Choi, et al., 2019/2020), would have under the PITL, 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.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The FTB anticipates minimal costs to implement this bill.

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ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 46 as Amended July 12, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

Fiscal Year	Revenue
2023-2024	-\$50
2024-2025	-\$85
2025-2026	-\$85

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The June 9, 2023, Senate Governance and Finance Committee analysis included the following support and opposition.

Support

Military Officers Association of America, California Council of Chapters (Sponsor); Aerospace and Defense Alliance of California; American Legion, Department of California; Amvets, Department of California; Association of The U.S. Army, Northern & Southern California Chapters; California Association of County Veteran Services Officers; California Association of County Veterans Service Officers; California Association of Highway Patrolmen; California Enlisted Association of The National Guard of The United States; California Manufacturers and Technology Association; California State Commanders Veterans Council; City of Fairfield; County of Monterey; Howard Jarvis Taxpayers Association; Military Officers Association of America -

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Alameda Chapter; Military Officers Association of America - Alta CA Chapter; Military Officers Association of America - California Council of Chapters; Military Officers Association of America - Miramar Chapter; Military Officers Association of America - Redwood Empire Chapter; Military Officers Association of America - Sacramento Chapter; Military Officers Association of America - Solano County; Military Officers Association of America - Ventura County Chapter; Peace Officers Research Association of California; San Diego Military Advisory Council; San Diego Regional Chamber of Commerce; Scottish-American Military Society; Vietnam Veterans of America, California State Council; and 41 Individuals.

Opposition

California Federation of Teachers AFL-CIO.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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