ASSEMBLY THIRD READING
AB 46 (Ramos, et al.)
As Introduced December 5, 2022
Majority vote

SUMMARY

Excludes from gross income, under the Personal Income Tax (PIT) Law, uniformed services retirement pay and annuity payments from a United States Department of Defense Survivor Benefit Plan received by qualified taxpayers, as specified.

Major Provisions

1) Defines the following terms:

   a) "Uniformed services" for the retirement pay exclusion includes service in 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, or the National Oceanic and Atmospheric Administration Commissioned Officer Corps;

   b) "United States Department of Defense Survivor Benefit Plan" or "plan" is a survivor benefit plan established under Sections 1447 to 1455, inclusive, of Title 10 of the United States Code; and,

   c) "Qualified taxpayer" for the annuity payments exclusion is the surviving spouse or other named beneficiary of a plan.

2) Provides the income exclusion for taxable years beginning on or after January 1, 2024, and before January 1, 2034.

3) Takes immediate effect as a tax levy.

4) Repeals the gross income exclusion's statutory provisions on December 1, 2034.

5) Requires the Legislative Analyst's Office (LAO), in collaboration with the Department of Veterans Affairs (CalVet), to submit a report to the Legislature on the exclusion's effectiveness.

COMMENTS

Military benefits: This bill excludes uniformed services retirement pay and Survivor Benefit Plan annuity payments from gross income, thus providing a tax benefit for retired members of the uniformed services and their beneficiaries. As of December 31, 2021, 132,344 military retirees in California received total monthly payments of over $340 million, or about $4.1 billion annually, from the U.S. Department of Defense. Generally, service members can retire from active duty at any age once they have completed at least 20 years of service. In addition, persons who meet retirement requirements partially or entirely through reserve or National Guard service receive retirement pay after age 59. As of December 31, 2021, 27,060 individuals in California received total monthly payments of almost $35 million, or about $415 million annually, from the Survivor Benefit Plan, which allows a military retiree to ensure, after death, a continuous lifetime annuity for their dependents. A military retiree pays premiums from their gross retired pay for the Survivor Benefit Plan coverage, which is not taxed at the federal or state level.

California compared to other states: A significant number of states exclude military retirement pay from being taxed in the state, and California appears to be an outlier. Twenty-seven states do not tax military retirement pay and fourteen states tax military retirement income partially through income exemptions and exclusions. Five states (Arizona, Utah, Indiana, Nebraska, and North Carolina) passed laws to fully exclude military retirement income from taxation starting for the 2021 or 2022 taxable year. Vermont and Virginia enacted legislation in 2022 exempting the first $10,000 in military retirement pay from state income taxation for qualifying taxpayers. A significant number of states are also not taxing annuity payments from the Survivor Benefit Plan. Arizona, North Carolina, and Utah passed legislation to exclude survivor annuity payments in 2021 from gross income for income taxation purposes. California appears to now be the only state that fully taxes military retirement pay. Supporters of this bill contend that preferable tax treatment in other states creates a strong incentive for military retirees and their families to move out of California.

Potential for double tax benefit and nonconformity: Under existing federal law, members of the uniformed services may elect to reduce their retirement pay to provide an annuity to their survivors and families. This amount is generally excluded from gross income (front-end tax benefit). Under this bill, the survivors would also receive tax-free money (back-end tax benefit). Therefore, this bill results in a front-end and back-end tax benefit, a net loss for the state. Additionally, this bill would reestablish a state gross income exclusion for which federal law appears to have no counterpart, thus increasing nonconformity. California typically conforms to federal law for gross income exclusions for ease of administration and taxpayer compliance.

According to the Author
The author has provided the following statement in support of this bill:

> AB 46 recognizes members of the Armed Forces and their contribution to our nation and seeks to exempt their retirement pay once they retire after twenty years of service. This bill sunsets in 2034. The purpose of the bill is twofold; to honor those who dedicated their life to serving their country, and to retain and attract uniformed service retirees to California for the purposes of strengthening the state's skilled workforce, bringing stability to communities, and contributing to the state and local tax base.

Arguments in Support
This bill is supported by several veteran's organizations and sponsored by the California Council of Chapters Affiliated Military Officers Association of America (CALMOAA), who note, in part:

> Between 2010 and 2020 the nation's population of military retirees has increased by 4%. California, during this period, was one of the few states that saw a reduction in the number of military retirees. California had a decline of 12% in the state's military retiree population. During the same period, Nevada showed a gain of 10% and Arizona a gain of 6%. Both Arizona and Nevada fully exempt military retirement from state taxes.
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> Recent studies conducted by the San Diego Military Advisory Council and others agree that retaining Uniformed Service retirees in California provide a valuable workforce and economic development tool for California. These studies also show that military retirees

generate millions of dollars in general tax revenue for the state's economy from their 2nd careers.

Arguments in Opposition
None on file

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

1) General Fund (GF) revenue loss of $50 million in fiscal year (FY) 2023-24, $85 million in FY 2024-25 and $85 million in FY 2025-26.

2) GF costs of an unknown, but likely absorbable, amount to the Franchise Tax Board (FTB) to administer the gross income exclusion and share data with the LAO.

3) Minor and absorbable costs to CalVet to collaborate with the LAO on the report analyzing the effectiveness of the exclusion.

4) Costs of an unknown, but likely absorbable, amount to the LAO to write the report. However, this committee sees a wide array of bills that require the LAO to measure different tax expenditures. Generally, a request to prepare an individual report would not generate significant new workload for the LAO. But, taken together, these proposals strain the ability of the LAO fulfill other existing or future legislative mandates and requests, as the LAO's budget is subject to the Legislature's constitutional spending cap.

VOTES

ASM REVENUE AND TAXATION: 11-0-0
YES: Irwin, Wallis, Bains, Grayson, Pacheco, Jim Patterson, Petrie-Norris, Luz Rivas, Ta, Valencia, Zbur

ASM APPROPRIATIONS: 15-0-1
YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Weber, Ortega
ABS, ABST OR NV: Robert Rivas

UPDATED

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CONSULTANT: Wesley Whitaker / REV. & TAX. / (916) 319-2098 FN: 0000641