
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

AB 46 (Ramos) - Personal income taxes: exclusion: Military Services Retirement and Surviving Spouse Benefit Payment Act

Version: July 12, 2023

Policy Vote: GOV. & F. 7 - 0, M.&V.A. 5 - 0

Urgency: No

Mandate: Yes

Hearing Date: August 14, 2023

Consultant: Robert Ingenito

Bill Summary: AB 46 would exclude two forms of military retirement income from state income tax.

Fiscal Impact:

- The Franchise Tax Board (FTB) estimates that this bill would result in General Fund revenue losses of \$50 million in 2023-24, \$85 million in 2024-25, and \$85 million in 2025-26. FTB's implementation costs would likely be minor and absorbable.
- CalVet and the Legislative Analyst's Office (LAO) would likely incur minor and absorbable costs related to the bill's reporting requirement.

Background: Tax expenditure programs (TEPs) are special tax provisions that reduce the amount of revenues the "basic" tax system would otherwise generate in order to provide (1) benefits to certain groups of taxpayers, and/or (2) incentives to encourage certain types of behavior and activities, such as charitable giving. Specifically, current law provides for, among other things, various income and corporation tax credits and deductions, as well as exemptions from the sales and use tax. The Department of Finance is required to publish a list of TEPs (currently totaling several hundred), which currently exceed \$87 billion annually.

Existing federal and state laws provide that gross income includes all income from any source, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded. Existing federal and state laws exclude certain types of income 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, among others.

Military service members generally can retire from active duty at any age with 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. Military retirement pay received by a taxpayer is usually taxable for federal and state purposes. However, federal and state law exclude certain types of military income from tax, including military death benefits paid to qualified survivors, military pay for time serviced in combat zones, and the premium paid into a survivor annuity account for qualified survivors of military personnel.

The Survivor Benefit Plan is a United States Department of Defense (DoD) sponsored and subsidized program that allows a military retiree to ensure, after death, a continuous lifetime annuity for their dependents. Under existing federal law, members of the uniformed services may elect to reduce their retirement pay to provide an annuity to their survivors, and the reduction is excluded from gross income. However, payments received by beneficiaries of the survivor annuity accounts, are included in gross income calculation for those beneficiaries.

Proposed Law: This bill would, for taxable years 2024 through 2033, exclude from income for state tax purposes (1) retirement pay received by a taxpayer from the federal government for services in the uniformed services, and (2) annuity payments received by a qualified taxpayer pursuant to a DoD Survivor Benefit Plan. The bill would additionally require the LAO to prepare a report, as specified, on the effective of the bill's exclusions.

Related Legislation:

- AB 1623 (Ramos, 2022), similar to this bill, would have excluded from gross income retirement pay received for service in the uniformed services and annuity payments received from a Survivor Benefit Plan. The bill was held under submission on the Suspense File of the Assembly Appropriations Committee.
- AB 291 (Seyarto, 2021) and AB 1629 (Seyarto, 2022), would have excluded from gross income survivor benefits and payments received under a Survivor Benefit Plan. Both bills did not pass out of the Assembly by the constitutional deadline.
- AB 2380 (Choi, 2020), would have excluded from gross income survivor benefits and payments received under Survivor Benefit Plans. The bill did not pass out of the Assembly by the constitutional deadline.

Staff Comments: DoD data indicate that, 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 United States Department of Defense (DoD). Also, as of December 31, 2021, 27,060 survivors in California received total monthly Survivor Benefit Plan payments of \$34,593,000 or about \$415 million annually.

California previously offered a military-specific income exclusion until taxable year 1987, when the tax benefit morphed into a tax credit equal to 4 percent of the eligible income received by an individual with adjusted gross income under \$27,000. The tax credit sunset on January 1, 1992.

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