Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 585 (Delegate Krebs, *et al.*)
Ways and Means

Income Tax Subtraction Modification - Retirement Income (Fairness in Taxation for Retirees Act)

This bill expands the existing State pension exclusion subtraction modification by allowing income from the following plans or sources to be included within the subtraction modification: (1) individual retirement accounts (IRAs) and annuities under Section 408 of the Internal Revenue Code (IRC); (2) Roth IRAs under Section 408(a) of the IRC; (3) simplified employee pensions under Section 408(k) of the IRC; and (4) ineligible deferred compensation plans under Section 457(f) of the IRC. **The bill takes effect July 1, 2018, and applies to tax year 2018 and beyond.**

Fiscal Summary

State Effect: General fund revenues decrease significantly beginning in FY 2019 due to additional pension income being exempted. Expenditures are not affected.

Local Effect: Local revenues decrease significantly beginning in FY 2019 due to additional pension income being exempted. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law/Background: Maryland law provides a pension exclusion (in the form of a subtraction modification) for individuals who are at least 65 years old or who are totally disabled. Under this subtraction modification, up to a specified maximum amount of taxable pension income ($29,900 for 2017) may be exempt from tax. The maximum exclusion allowed is indexed to the maximum annual benefit payable under the

Social Security Act and is reduced by the amount of any Social Security payments received (Social Security offset).

The "Social Security offset" is the reduction in the maximum pension exclusion allowed under current law for an individual. The Social Security offset was established at the same time as the pension exclusion. Given that Social Security benefits are exempt from Maryland income tax even though benefits are partially taxable for federal purposes, the offset works to equalize the tax treatment of individuals who receive their retirement benefits from different sources by reducing the amount of the allowable exclusion by the amount of any Social Security benefits received.

One significant feature of the current pension exclusion is that it is limited to income received from an "employee retirement system." Chapter 524 of 2000 clarified the definition of an "employee retirement system" by providing for the types of retirement income that may be included for purposes of calculating the pension exclusion. As defined by Chapter 524, eligible employee retirement systems are retirement plans established and maintained by an employer for the benefit of its employees and qualified under § 401(a), § 403, or § 457(b) of the IRC. These include defined benefit and defined contribution pension plans, 401(k) plans, 403(b) plans, and 457(b) plans. However, Chapter 524 also included language clarifying what is not included in an "employee retirement system": (1) an IRA or annuity under § 408 of the IRC; (2) a Roth IRA under § 408A of the IRC; (3) a rollover IRA; (4) a simplified employee pension under § 408(k) of the IRC; or (5) an ineligible deferred compensation plan under § 457(f) of the IRC. Since 2000, there have been no substantive changes to the pension exclusion. **Exhibit 1** shows the eligible and ineligible retirement income under the pension exclusion.

Exhibit 1
Eligible and Ineligible Retirement Plans under the Pension Exclusion

Eligible	**Ineligible**
• 401(k) Cash or Deferred Arrangement Plans	• Traditional IRAs
• 403(b) Plans	• Rollover IRAs
• 457(b) Plans	• Roth IRAs
• Thrift Savings Plans	• Keogh Plans
• Savings Incentive Match Plan for Employees Retirement Plans under § 401(k) of the IRC	• Simplified Employee Pensions
	• Savings Incentive Match Plan for Employees Retirement Plans under § 408 of the IRC

IRA: individual retirement accounts
IRC: Internal Revenue Code

Source: Department of Legislative Services

Additional retirement income may be exempted if the individual has qualified U.S. military, fire, rescue, or emergency services personnel retirement income.

In addition to the special treatment of Social Security and other retirement income, additional income tax relief is provided to senior citizens regardless of the source of their income. Each individual age 65 and older is allowed a $1,000 personal exemption in addition to the regular personal exemption allowed for all individuals. According to the Department of Budget and Management, in fiscal 2018 the State subtraction modification for Social Security benefits reduced State revenues by $212.5 million (this is in addition to the revenue loss resulting from the partial federal exemption of Social Security benefits), the State pension exclusion reduced State revenues by $167.5 million, and the additional personal exemption reduced State revenues by $30.6 million.

State/Local Revenues: The bill expands the pension exclusion by allowing additional types of income to be subtracted beginning in tax year 2018. As a result, annual State and local income tax revenues will decrease significantly beginning in fiscal 2019.

Due to taxpayer confidentiality requirements, the Department of Legislative Services (DLS) does not have access to income tax data and is dependent on data from the Comptroller's Office. As required by Chapter 648 of 2016, the Comptroller's Office altered the personal income tax form to capture additional data on the pension exclusion by adding Form 502R.

The Comptroller's Office could not provide a fiscal estimate in time for inclusion in this analysis. However, based on a preliminary analysis of pension exclusion data, the Comptroller's Office estimated that House Bill 58 of 2018, a similar bill, would reduce both State revenues by about $20 million annually and local income tax revenues by about $13.0 million annually. DLS notes that this estimate is significantly lower than previous estimates and that approximately 108,000 taxpayers who reported $3.3 billion in retirement income (of all sources) did not file Form 502R. Accordingly, revenue losses could be significantly higher than estimated.

In addition, the potential State and local revenue loss from House Bill 585 is expected to be greater than the revenue loss from House Bill 58. This is due to the broader expansion of the subtraction modification under House Bill 585. While House Bill 58 only allows income from individual retirement accounts and annuities under Section 408 of the IRC to be included within the subtraction modification, House Bill 585 allows additional sources of retirement income to qualify.

Additional Information

Prior Introductions: SB 238 of 2017 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. HB 195 of 2017 received a hearing in the House Ways and Means Committee, but no further action was taken. SB 299 of 2016 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, HB 158, received a hearing in the House Ways and Means Committee, but no further action was taken. SB 194 of 2015 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, HB 144, received an unfavorable report from the House Ways and Means Committee. Similar legislation proposing to expand the State pension exclusion has been introduced since the 2005 session.

Cross File: None.

Information Source(s): Comptroller's Office; Department of Legislative Services

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