SB 401

Department of Legislative Services

Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

Senate Bill 401 (Senator Teitelbaum, *et al.*)
Budget and Taxation

Income Tax - Subtraction for Retirement Income

This bill defines an "employee retirement system" to clarify the types of retirement income that can be included for purposes of calculating the pension exclusion subtraction allowed on the Maryland tax form.

The bill takes effect July 1, 2000, and applies to all taxable years beginning after December 31, 1999.

Fiscal Summary

State Effect: None. The bill clarifies current law.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: An employee retirement system is defined as a plan:

- established and maintained by an employer for the benefit of its employees; and
- qualified under § 401(a), § 403, or § 457(b) of the Internal Revenue Code.

An employee retirement system does not include:

- an individual retirement account (IRA) or annuity under §408 of the Internal Revenue Code;
- A Roth IRA under § 408(a) of the Internal Revenue Code;
- A rollover IRA;
- A simplified employee pension under Internal Revenue Code § 408(k); or
- An ineligible deferred compensation plan under §457(f) of the Internal Revenue Code.

Current Law: Employee retirement system is not defined in statute for the purpose of calculating the pension exclusion.

Background: Maryland law provides a pension exclusion subtraction for individuals who are at least 65 years old or who are totally disabled. As originally enacted in 1968, the pension exclusion was intended to equalize the income tax treatment of individuals covered by Social Security and those not covered by Social Security, such as federal civil service employees.

Under the subtraction modification, some taxable pension income ($16,100 for 1999) may be exempt from tax. The maximum exclusion is the maximum annual benefit under the Social Security Act and is reduced by the amount of any Social Security payments received.

One important feature of the current pension exclusion is that it is limited to income received from an "employee retirement system." Thus, the exclusion does not apply to income from IRAs and Keogh plans. However, there has been some confusion regarding the scope of the pension exclusion. A recent Attorney General's letter of advice states that 401(k) and 457 distributions are "employee retirement systems." However, this interpretation is inconsistent with the income tax return instruction's statement that "deferred compensation plans" are not employee retirement systems.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller of the Treasury (Bureau of Revenue Estimates), Department of Legislative Services

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