Bill Analysis

Peter A. Cooper *Legislative Service Commission*

H.B. 213

125th General Assembly
(As Introduced)

Reps. Willamowski, Oelslager, Miller, Walcher, McGregor, Clancy, Schaffer, Ujvagi, Redfern, Skindell, D. Evans, Faber, Distel, Williams, Grendell, Martin, Hughes, Kearns, Seaver, DePiero

BILL SUMMARY

- Exempts from the Ohio income tax up to $10,000 in Ohio or federal government employee retirement benefits, including military personnel retirement benefits.

CONTENT AND OPERATION

Deduction for public employee retirement benefits

(R.C. 5747.01(A)(22))

The bill permits persons receiving public employee or military retirement benefits to deduct up to $10,000 of those benefits in computing their Ohio income tax liability. To be deductible, benefits must be one of the following:

- Age and service retirement benefits paid under one of Ohio's five public employee retirement systems (Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, Highway Patrol Retirement System, and Police and Firefighters Disability and Pension Fund);

- Age and service retirement benefits paid under the Federal Employees Retirement System or federal Civil Service Retirement System (see **COMMENT**, below); or

- Military retirement pay (for service in the Army, Air Force, Navy, Marine Corps, Coast Guard, Reserves, or National Guard).

These benefits are deductible regardless of whether they are characterized as a pension, annuity, allowance, benefit, or otherwise. The benefits are deductible only to the extent that they are included in the taxpayer's federal adjusted gross income (which is the starting point for computing the taxpayer's Ohio taxable income). In other words, if the benefits were to be excluded or deducted in deriving the taxpayer's federal adjusted gross income, they may not be deducted twice, once for federal and once for state purposes. The benefits are not deductible if they are disability and survivors benefits deducted under existing law (R.C. 5747.01(A)(4)).

Current law grants taxpayers a credit of up to $200 per year if they receive retirement benefits, whether from public or private employment (R.C. 5747.055). The bill does not change this credit, but the deduction may reduce the value of the credit for some taxpayers.

The deduction is available for taxable years beginning in 2003 and thereafter. (Section 3.)

COMMENT

Federal law in effect prohibits the states from discriminating between federal and state employees in taxing their compensation: "The United States consents to the taxation of pay or compensation [of federal employees] by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the [federal employee] because of the source of the pay or compensation." 4 U.S.C. 111. This federal law has been construed by the United States Supreme Court to apply to retirement benefits paid for government service, in effect requiring a state that permits state government employees to claim an income tax deduction for retirement benefits to permit federal government employees to claim the same deduction. See, e.g., *Davis v. Michigan Dept. of the Treasury* (1989), 489 U.S. 803.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-04-03	p. 537

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