Bill Analysis

Bethany Boyd *Legislative Service Commission*

S.B. 22

125th General Assembly
(As Introduced)

Sens. Coughlin, Mumper, Spada, Fedor

BILL SUMMARY

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

CONTENT AND OPERATION

Deduction for public employee retirement benefits

(sec. 5747.01(A)(22))

The bill permits individuals receiving retirement benefits, as retired military personnel, or under a federal employee retirement system or one of the state retirement systems, to deduct up to $10,000 in retirement benefits when computing their Ohio income tax liability. Specifically, they may deduct any pension, annuity, allowance, benefit, or other payments made on account of age and service retirement under any one of the following state retirement systems:

- Public Employees Retirement System
- State Teachers Retirement System
- School Employees Retirement System
- State Highway Patrol Retirement System
- Ohio Police and Fire Pension Fund

In addition, the bill permits taxpayers to deduct payments made to them as retired military personnel pay for service in the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, or reserve components thereof or the National Guard, or pursuant to the Civil Service Retirement System or Federal Employees' Retirement System (see **COMMENT**, below).

The payments are deductible only to the extent they were included in the taxpayer's federal adjusted gross income (which is the base upon which a taxpayer's Ohio taxable income is determined). These payments currently are taxable in their entirety when received; the contributions to the retirement systems are not taxable at the time the contributions are made. Payments made under any of these systems on account of disability, currently deductible for Ohio income tax purposes, would not be affected by the bill.

The deduction would apply to taxable years beginning on or after January 1, 2003.

COMMENT

Federal law 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 a federal officer or employee] . . . by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or 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 and local 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*, 489 U.S. 803 (1989). The Court also has held that a state income tax on military retirement benefits, but not on state and local government retirement benefits, is inconsistent with the 4 U.S.C. 111 prohibition against discriminatory taxes. *Barker v. Kansas*, 503 U.S. 594 (1992).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-03	p. 94

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