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January 27, 2020

Via E-Mail:
anne.kaiser@house.state.md.us

Delegate Anne R. Kaiser, Chair
House Ways and Means Committee
131 House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Via E-Mail:
alonzo.washington@house.state.md.us

Delegate Alonzo T. Washington, Vice-Chair
House Ways and Means Committee
131 House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: H.B. 61

Dear Delegate Kaiser and Delegate Washington:

I am an attorney in private practice in Baltimore County. I have been in private practice for over forty-three (43) years. My practice is focused on various business and tax issues. In addition to my basic law degree (J.D., University of Baltimore Law School, 1976), I have a Masters of Law degree in taxation from Georgetown University Law Center (1979).

I am submitting this letter in opposition to H.B. 61.[1]

Introduction

Currently, Maryland law has a subtraction modification that excludes from Maryland income tax certain pension income for individuals in certain limited categories. Specifically, § 10-209(a) of the Tax-General Article of the Maryland Code only allows exclusion if:

> [O]n the last day of the taxable year, a resident is at least 65 years old or is totally disabled or the resident's spouse is totally disabled, or the

[1]The hearing for H.B. 61 is scheduled for January 28, 2019. Due to a prior commitment, I cannot attend that hearing.

> resident is at least 55 years old and is a retired correctional officer, law enforcement officer, or fire, rescue, or emergency services personnel of the United States, the State, or a political subdivision of the State . . . .

The current statute does not exempt income from Simplified Employee Pensions ("SEPs") or Individual Retirement Accounts ("IRAs"). H.B. 61 would extend the exclusion in § 10-209 to allow an exemption for income from SEPs and IRAs. I have attached a copy of H.B. 61 to this letter as ***Attachment A***.

With one exception, H.B. 61 is substantively identical to H.B. 149 that was considered in the 2019 session of the General Assembly. The only difference between the two bills is that H.B. 149 included in the proposed exemption ineligible deferred compensation plans under § 457(f) of the Internal Revenue Code. That sort of deferred compensation is explicitly excluded by H.B. 61. I have attached a copy of H.B. 149 as ***Attachment B***. H.B. 149 was not reported out of committee either in the House or the Senate where it was cross-filed as S.B. 170.

As of this writing, no Fiscal and Policy Note has been submitted for H.B. 61. However, there was a Fiscal and Policy Note for H.B. 149, a copy of which is attached as ***Attachment C*** (the "H.B. 149 Fiscal Note"). The H.B. 149 Fiscal Note concluded that, over a five (5) year phase-in period, H.B. 149 would create a revenue loss to the State of Maryland of $178.8 Million. In the final year of the phase-in, the revenue loss was projected to be $56.4 Million. The H.B. 149 Fiscal Note also projected that local revenues would decline by $111.388 Million.[2]

The phase-in under H.B. 61 is much more rapid than the phase-in proposed under H.B. 149. Thus, the five-year revenue loss of H.B. 61 would likely be significantly greater than that projected for H.B. 149.

IRAs and SEPs–Tax Subsidies for the Wealthy

At the outset, it should be recognized that, except for contributions to Roth IRAs, all of the contributions to SEPs and IRAs have been made with "before tax" dollars. That is, the

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[2]The H.B. 149 Fiscal Note does not actually cite this figure. However, it did report revenue loss for the first year of the phase-in and the last year of the phase-in. I calculated this amount by multiplying the total projected loss for the state by a fraction, the sum of which were the two amounts for the loss to the localities as the numerator and the denominator of which was sum of the two amounts of revenue loss to the state for the same two years.

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contributions, although earned income that would otherwise be subject to tax, have not been taxed. And, all of the earnings of SEPs and IRAs have accumulated without being subject to income tax at all. The theory behind this favorable tax treatment is that it will encourage individuals to save for retirement. The funds that they have accumulated would be paid to them at at time when, generally speaking, they were retired and thus had no income from their employment. In other words, the amounts accumulated would be paid to them when their over-all income was reduced and they were in lower income brackets.

IRAs and SEPs have been widely viewed as "pensions for Everyman" (or, if you prefer, "Everywoman"). However, upon examination I discovered that most of the benefits of SEPs and IRAs inure to the benefit of the wealthy. In making my analysis, I used statistics from the IRS based upon income tax returns filed for tax year 2016, the most recent year available. I have prepared a chart, a copy of which is attached as ***Attachment D,*** that shows the results of my analysis.[3]

Attachment D shows that in 2016:

- Only 6.45% of all taxpayers made IRA contributions (***Attachment D, Row G***);
- While 77.26% of all taxpayers were eligible to make such contributions, only 8.35% of those eligible actually made contributions (***Attachment D, Rows E and H)***;

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[3]The URL for the portal to the statistics from the IRS is set forth on ***Attachment D***. I used four tables that can be accessed via that portal. I have also uploaded those tables as follows:

Table 1–Taxpayers with Individual Retirement Arrangement Plans by Type of Plan:
http://probono.slnews.us/2020HB61/2020_01_27_table_1.xls

Table 2–Taxpayers with Individual Retirement Arrangement Plans by Size of Adjusted Gross Income:
http://probono.slnews.us/2020HB61/2020_01_27_table_2.xls

Table 3–Taxpayers with Individual Retirement Arrangement Plans by Type of Plan and Size of Adjusted Gross Income:
http://probono.slnews.us/2020HB61/2020_01_27_table_3.xls

Table 4–Taxpayers with Individual Retirement Arrangement Plans by Age of Taxpayer:
http://probono.slnews.us/2020HB61/2020_01_27_table_4.xls

- By the end of 2016, only about 9.7% of taxpayers had any money in SEPs or IRAs (***Attachment D, Row I***);

- The average market value of the assets in those SEPs and IRAs was only a little over $35K. However, if one drills down into the statistics, one can see how skewed toward the wealthy SEPs and IRAs are:

    - Only about 781,470 taxpayers reported income of more than $1M. These wealthy taxpayers represented very small fraction (0.3825%) of all taxpayers. Yet, the market value of their SEPs and IRAs was, on the average, $235,274 and represented 3.0842% of the total market value of all IRAs and SEPs (***Attachment D, Rows O and P***);

    - Taxpayers reporting income of over $200K represented only 6.2603% of all taxpayers. Yet, this small sliver of all taxpayers held 28.8416% of the market value of all SEPs and IRAs (***Attachment D, Row T***);

    - Over half (51.4111%) of IRA/SEP are held by those over age 65 (***Attachment D, Row FF***). Those over age 60 hold 69.4616% of all assets (***Attachment D, Row GG***).

H.B. 61 would by, its terms, apply only to a small subset of all taxpayers. However, H.B. 61 would exempt from Maryland state and local income tax wealth that has, for the most part, already received the benefit of tax exemptions. Moreover, while perhaps not as skewed toward the wealthy as other proposals that would exempt from Maryland tax retirement benefits to a broader set of Maryland taxpayers, we can reasonably assume that the primary beneficiaries of H.B. 61 would be the wealthier members of the class of intended beneficiaries.

Conclusion

H.B. 61 would cause a significant loss of revenue for both the State and the local governments. The lion's share of the revenue loss would inure to beneficiaries who are, in general, much wealthier than the general population. For that reason and for the reasons otherwise set forth above, I would urge the Committee to either not report H.B. 61 out of the committee or to report it out unfavorably.

I have sent a copy of this letter, with all attachments, to all members of the Committee as well as to Delegate Grammer, the sponsor of H.B. 61.

Very truly yours,

Stuart Levine

Attachments (as noted)

cc: Delegate Darryl Barnes (Via E-Mail: Darryl.Barnes@house.state.md.us, w/copies of all attachments)
Delegate Joseph C. Boteler (Via E-Mail: joseph.boteler@house.state.md.us, w/copies of all attachments)
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Delgate Jheanelle K. Wilkins (Via E-Mail: jheanelle.wilkins@house.state.md.us, w/copies of all attachments)
Delegate Robin R. Grammer, Jr. (Via E-Mail: Robin.Grammer@house.state.md.us, w/copies of all attachments)
File

HOUSE BILL 61

Q3 0lr0658

By: **Delegate Grammer**
Introduced and read first time: January 9, 2020
Assigned to: Ways and Means

A BILL ENTITLED

AN ACT concerning

Income Tax – Subtraction Modification – Retirement Income

FOR the purpose of including income from certain retirement plans within a certain subtraction modification allowed under the Maryland income tax for certain individuals who are at least a certain age or who are disabled or whose spouse is disabled; altering the maximum amount of the subtraction modification for certain taxable years; repealing a limitation on the maximum amount of the subtraction modification; providing that income included in certain subtraction modifications may not be taken into account for purposes of the subtraction modification for retirement income; altering a certain definition; providing for the application of this Act; and generally relating to a subtraction modification under the Maryland income tax for retirement income.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–209
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

10–209.

(a) (1) In this section the following words have the meanings indicated.

(2) "Correctional officer" means an individual who:

(i) was employed in:

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Attachment A

1. a State correctional facility, as defined in § 1–101 of the Correctional Services Article;

2. a local correctional facility, as defined in § 1–101 of the Correctional Services Article;

3. a juvenile facility included in § 9–226 of the Human Services Article; or

4. a facility of the United States that is equivalent to a State or local correctional facility or a juvenile facility included in § 9–226 of the Human Services Article; and

(ii) is eligible to receive retirement income attributable to the individual's employment under item (i) of this paragraph.

(3) "Emergency services personnel" means emergency medical technicians or paramedics.

(4) (i) **[**"Employee retirement system"**]** **"QUALIFIED RETIREMENT PLAN"** means **[**a plan**]**:

1. **[**established and maintained by an employer for the benefit of its employees; and

2.**]** **A RETIREMENT PLAN** qualified under § 401(a), § 403, or § 457(b) of the Internal Revenue Code**[**.**];**

[(ii) "Employee retirement system" does not include:

1.**]** **2.** an individual retirement account or annuity under § 408 of the Internal Revenue Code;

[2.**]** **3.** a Roth individual retirement account under § 408A of the Internal Revenue Code;

[3.**]** **4.** a rollover individual retirement account; **OR**

[4.**]** **5.** a simplified employee pension under Internal Revenue Code § 408(k)**[**; or**]**.

[5.**]** **(II) "QUALIFIED RETIREMENT PLAN" DOES NOT INCLUDE** an ineligible deferred compensation plan under § 457(f) of the Internal Revenue Code.

Attachment A

(b) Subject to subsections **(C) AND** (d) **[**and (e)**]** of this section, to determine Maryland adjusted gross income, if, on the last day of the taxable year, a resident is at least 65 years old or is totally disabled or the resident's spouse is totally disabled, or the resident is at least 55 years old and is a retired correctional officer, law enforcement officer, or fire, rescue, or emergency services personnel of the United States, the State, or a political subdivision of the State, an amount is subtracted from federal adjusted gross income equal to **[**the lesser of**]**:

(1) **[**the cumulative or total annuity, pension, or endowment income from an employee retirement system**] 30% OF THE TOTAL INCOME FROM A QUALIFIED RETIREMENT PLAN** included in federal adjusted gross income **FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2019, BUT BEFORE JANUARY 1, 2021**; **[**or**]**

[(2) the maximum annual benefit under the Social Security Act computed under subsection (c) of this section, less any payment received as old age, survivors, or disability benefits under the Social Security Act, the Railroad Retirement Act, or both.**]**

(2) 60% OF THE TOTAL INCOME FROM A QUALIFIED RETIREMENT PLAN INCLUDED IN FEDERAL ADJUSTED GROSS INCOME FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2020, BUT BEFORE JANUARY 1, 2022; AND

(3) 100% OF THE TOTAL INCOME FROM A QUALIFIED RETIREMENT PLAN INCLUDED IN FEDERAL ADJUSTED GROSS INCOME FOR ANY TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2021.

[(c) For purposes of subsection (b)(2) of this section, the Comptroller:

(1) shall determine the maximum annual benefit under the Social Security Act allowed for an individual who retired at age 65 for the prior calendar year; and

(2) may allow the subtraction to the nearest $100.

(d) Military retirement income that is included in the subtraction under § 10–207(q) of this subtitle may not be taken into account for purposes of the subtraction under this section.**]**

(C) ANY INCOME THAT IS INCLUDED IN THE SUBTRACTIONS UNDER § 10–207 OF THIS SUBTITLE MAY NOT BE TAKEN INTO ACCOUNT FOR THE PURPOSES OF THE SUBTRACTION UNDER THIS SECTION.

[(e)**] (D)** In the case of a retired correctional officer, law enforcement officer, or fire, rescue, or emergency services personnel of the United States, the State, or a political subdivision of the State, the amount included under subsection **[**(b)(1)**] (B)** of this section is limited to the first $15,000 of retirement income that is attributable to the resident's employment as a correctional officer, a law enforcement officer, or fire, rescue, or emergency

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services personnel of the United States, the State, or a political subdivision of the State unless:

(1) the resident is at least 65 years old or is totally disabled; or

(2) the resident's spouse is totally disabled.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.

Attachment A

HOUSE BILL 149

Q3 9lr0151
CF SB 170

By: **The Speaker (By Request – Administration) and Delegates Krebs, Adams, Anderton, Arentz, Arikan, Buckel, Chisholm, Ciliberti, Clark, Corderman, Cox, M. Fisher, Hartman, Hornberger, Jacobs, Kipke, Kittleman, Malone, Mangione, Mautz, McComas, McKay, Metzgar, Morgan, Otto, Reilly, Rose, Saab, Shoemaker, and Szeliga**

Introduced and read first time: January 23, 2019
Assigned to: Ways and Means

A BILL ENTITLED

AN ACT concerning

Retirement Tax Fairness Act of 2019

FOR the purpose of including income from certain retirement plans within a certain subtraction modification allowed under the Maryland income tax for certain individuals who are at least certain ages, are disabled or whose spouse is disabled, or are retired correctional officers, law enforcement officers, or fire, rescue, or emergency services personnel; providing that the cumulative or total amount of certain subtractions may not exceed a certain benefit; and generally relating to a subtraction modification under the Maryland income tax for retirement income.

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 10–209
Annotated Code of Maryland
(2016 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

10–209.

(a) (1) In this section the following words have the meanings indicated.

(2) "Correctional officer" means an individual who:

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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(i) was employed in:

1. a State correctional facility, as defined in § 1–101 of the Correctional Services Article;

2. a local correctional facility, as defined in § 1–101 of the Correctional Services Article;

3. a juvenile facility included in § 9–226 of the Human Services Article; or

4. a facility of the United States that is equivalent to a State or local correctional facility or a juvenile facility included in § 9–226 of the Human Services Article; and

(ii) is eligible to receive retirement income attributable to the individual's employment under item (i) of this paragraph.

(3) "Emergency services personnel" means emergency medical technicians or paramedics.

(4) **[**(i)**]** "Employee retirement system" means a plan:

[1.**]** **(I)** established and maintained by an employer for the benefit of its employees; and

[2.**]** **(II)** qualified under § 401(a), § 403, or § 457(b) of the Internal Revenue Code.

[(ii) "Employee retirement system" does not include:**]**

(5) "QUALIFIED RETIREMENT PLAN" MEANS:

[1.**]** **(I)** an individual retirement account or annuity under § 408 of the Internal Revenue Code;

[2.**]** **(II)** a Roth individual retirement account under § 408A of the Internal Revenue Code;

[3. a rollover individual retirement account;**]**

[4.**]** **(III)** a simplified employee pension under Internal Revenue Code § 408(k); or

[5.**]** **(IV)** an ineligible deferred compensation plan under § 457(f) of the Internal Revenue Code.

Attachment B

(b) Subject to subsections [(d) and] (e) **THROUGH (G)** of this section, to determine Maryland adjusted gross income, if, on the last day of the taxable year, a resident is at least 65 years old or is totally disabled or the resident's spouse is totally disabled, or the resident is at least 55 years old and is a retired correctional officer, law enforcement officer, or fire, rescue, or emergency services personnel of the United States, the State, or a political subdivision of the State, an amount is subtracted from federal adjusted gross income equal to the lesser of:

(1) the cumulative or total annuity, pension, or endowment income from an employee retirement system included in federal adjusted gross income; or

(2) the maximum annual benefit under the Social Security Act computed under subsection [(c)] **(D)** of this section, less any payment received as old age, survivors, or disability benefits under the Social Security Act, the Railroad Retirement Act, or both.

(C) SUBJECT TO SUBSECTIONS (E) THROUGH (G) OF THIS SECTION, TO DETERMINE MARYLAND ADJUSTED GROSS INCOME, IF, ON THE LAST DAY OF THE TAXABLE YEAR, A RESIDENT IS AT LEAST 65 YEARS OLD OR IS TOTALLY DISABLED OR THE RESIDENT'S SPOUSE IS TOTALLY DISABLED, OR THE RESIDENT IS AT LEAST 55 YEARS OLD AND IS A RETIRED CORRECTIONAL OFFICER, LAW ENFORCEMENT OFFICER, OR FIRE, RESCUE, OR EMERGENCY SERVICES PERSONNEL OF THE UNITED STATES, THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE, AN AMOUNT IS SUBTRACTED FROM FEDERAL ADJUSTED GROSS INCOME EQUAL TO THE LESSER OF:

(1) THE CUMULATIVE OR TOTAL INCOME FROM ONE OR MORE QUALIFIED RETIREMENT PLANS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME; OR

(2) (I) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2018, BUT BEFORE JANUARY 1, 2020, 20% OF THE MAXIMUM ANNUAL BENEFIT UNDER THE SOCIAL SECURITY ACT COMPUTED UNDER SUBSECTION (D) OF THIS SECTION, LESS ANY PAYMENT RECEIVED AS OLD–AGE, SURVIVORS, OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT, THE RAILROAD RETIREMENT ACT, OR BOTH;

(II) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2019, BUT BEFORE JANUARY 1, 2021, 40% OF THE MAXIMUM ANNUAL BENEFIT UNDER THE SOCIAL SECURITY ACT COMPUTED UNDER SUBSECTION (D) OF THIS SECTION, LESS ANY PAYMENT RECEIVED AS OLD–AGE, SURVIVORS, OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT, THE RAILROAD RETIREMENT ACT, OR BOTH;

(III) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,

2020, BUT BEFORE JANUARY 1, 2022, 60% OF THE MAXIMUM ANNUAL BENEFIT UNDER THE SOCIAL SECURITY ACT COMPUTED UNDER SUBSECTION (D) OF THIS SECTION, LESS ANY PAYMENT RECEIVED AS OLD–AGE, SURVIVORS, OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT, THE RAILROAD RETIREMENT ACT, OR BOTH;

(IV) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2021, BUT BEFORE JANUARY 1, 2023, 80% OF THE MAXIMUM ANNUAL BENEFIT UNDER THE SOCIAL SECURITY ACT COMPUTED UNDER SUBSECTION (D) OF THIS SECTION, LESS ANY PAYMENT RECEIVED AS OLD–AGE, SURVIVORS, OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT, THE RAILROAD RETIREMENT ACT, OR BOTH; AND

(V) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2022, 100% OF THE MAXIMUM ANNUAL BENEFIT UNDER THE SOCIAL SECURITY ACT COMPUTED UNDER SUBSECTION (D) OF THIS SECTION, LESS ANY PAYMENT RECEIVED AS OLD–AGE, SURVIVORS, OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT, THE RAILROAD RETIREMENT ACT, OR BOTH.

[(c)**] (D)** For purposes of **[**subsection**] SUBSECTIONS** (b)(2) **AND (C)(2)** of this section, the Comptroller:

(1) shall determine the maximum annual benefit under the Social Security Act allowed for an individual who retired at age 65 for the prior calendar year; and

(2) may allow the subtraction to the nearest $100.

(E) THE CUMULATIVE OR TOTAL AMOUNT OF THE SUBTRACTIONS UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION MAY NOT EXCEED THE MAXIMUM ANNUAL BENEFIT UNDER THE SOCIAL SECURITY ACT COMPUTED UNDER SUBSECTION (D) OF THIS SECTION, LESS ANY PAYMENT RECEIVED AS OLD–AGE, SURVIVORS, OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT, THE RAILROAD RETIREMENT ACT, OR BOTH.

[(d)**] (F)** Military retirement income that is included in the subtraction under § 10–207(q) of this subtitle may not be taken into account for purposes of the subtraction under this section.

[(e)**] (G)** In the case of a retired correctional officer, law enforcement officer, or fire, rescue, or emergency services personnel of the United States, the State, or a political subdivision of the State, the amount included under **[**subsection**] SUBSECTIONS** (b)(1) **AND (C)(1)** of this section is limited to the first $15,000 of retirement income that is attributable to the resident's employment as a correctional officer, a law enforcement officer, or fire, rescue, or emergency services personnel of the United States, the State, or a political

Attachment B

subdivision of the State unless:

(1) the resident is at least 65 years old or is totally disabled; or

(2) the resident's spouse is totally disabled.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2019.

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 149 (The Speaker, *et al.*) (By Request - Administration)
Ways and Means

Retirement Tax Fairness Act of 2019

This Administration bill expands the existing State income tax 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 expansion is phased in over five tax years, beginning with tax year 2019. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund revenues decrease by $17.6 million in FY 2020 due to additional retirement income being exempted. The Governor's proposed FY 2020 operating budget assumes that general fund revenues will decrease by $11.0 million due to the expansion of the pension exclusion. Future years reflect projected retirement income and the phase-in specified by the bill. Expenditures are not affected.

($ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	($17.6)	($25.9)	($33.9)	($44.8)	($56.4)
Expenditure	0	0	0	0	0
Net Effect	($17.6)	($25.9)	($33.9)	($44.8)	($56.4)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues decrease by $11.0 million in FY 2020 and by $35.1 million in FY 2024. Local expenditures are not affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Attachment C

Analysis

Current Law/Background:

State Pension Exclusion

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 ($30,600 for 2018) 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.

Attachment C

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

Source: Department of Legislative Services

Additional retirement income may be exempted if the individual has qualified U.S. military, law enforcement, correctional officer, 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 Revenues: The bill expands the pension exclusion by allowing additional types of income to be subtracted beginning in tax year 2019. As a result, State income tax revenues will decrease by $17.6 million in fiscal 2020. **Exhibit 2** shows the estimated impact of the bill on State and local revenues.

Exhibit 2
State and Local Revenue Impacts
Fiscal 2020-2024
($ in Millions)

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
State	($17.6)	($25.9)	($33.9)	($44.8)	($56.4)
Local	(11.0)	(16.1)	(21.1)	(27.9)	(35.1)
Total Revenues	**($28.6)**	**($42.0)**	**($55.0)**	**($72.7)**	**($91.5)**

Due to taxpayer confidentiality requirements, 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 estimated fiscal impact shown in Exhibit 2 is based on an analysis of this data and retirement income reported on federal forms 1099-R and SSA-1099.

Local Revenues: Local income tax revenues decrease as a result of additional retirement income exempted against the personal income tax. Local revenues decrease by $11.0 million in fiscal 2020 and by $35.1 million in fiscal 2024, as shown in Exhibit 2.

Additional Information

Prior Introductions: None.

Cross File: SB 170 (The President, *et al.*) (By Request - Administration) - Budget and Taxation.

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

Fiscal Note History: First Reader - February 25, 2019
md/hlb

Analysis by: Robert J. Rehrmann

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Attachment C

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Retirement Tax Fairness Act of 2019**

BILL NUMBER: SB 170/HB 149

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_**X**_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Attachment C

SEP/IRA Analysis
Year End 2016
Stuart Levine
Source: Internal Revenue Service
Access:

https://www.irs.gov/statistics/soi-tax-stats-accumulation-and-distribution-of-individual-retirement-arrangements

OR

http://slnews.us/rbc010420

(Last Viewed: January 27, 2020)

Row	Item	Number	Percentage
A	Total # of Taxpayers	204,315,356	
B	Total # of Taxpayers with Pension Coverage on Forms W-2	74,056,673	
C	% of Taxpayers with Pension Coverage on Forms W-2 **(B/A)**		36.2463%
D	Taxpayers Eligible to Make IRA Contributions	157,857,108	
E	% of Taxpayers Eligible to Make IRA Contributions **(D/A)**		77.2615%
F	Total # of Taxpayers Who Made IRA Contributions	13,176,903	
G	Taxpayers Who Made IRA Contributions as % of Total Number of Taxpayers **(F/A)**		6.4493%
H	Taxpayers Who Made IRA Contributions as % of Eligible Taxpayers **(F/D)**		8.3474%
I	End of Year # Taxpayers w/IRAs/SEPs and % of All Taxpayers	19,878,994	9.7296%
J	End of Year Total MV of IRAs/SEPs	$8,015,374,477,000	
K	End of Year Average MV of IRAs/SEPs	$35,067	
L	# of Taxpayers > $1M w/IRAs/SEPs	155,625	
M	Taxpayers>$1M w/IRAs/SEPs as % of All Taxpayers **(M/A)**		0.0762%
N	Total MV of IRAs Held by Taxpayers>$1M w/IRAs/SEPs	$247,213,144,000	
O	Avg. MV of IRAs/SEPs Held by Taxpayers>$1M w/IRAs/SEPs	$235,274	
P	Total MV of IRA's Held by Taxpayers>$1M w/IRAs/SEPs as a % of Total MV of All of IRAs/SEPs **(N/J)**		3.0842%
Q	# of Taxpayers > $200K w/IRAs/SEPs	8,303,940	
R	Taxpayers > $200K w/IRAs/SEPs as % of All Taxpayers **(Q/A)**		6.4492%
S	MV of IRAs/SEPs Held by Taxpayers>200K	$2,311,761,732,000	
T	Total MV of IRAs/SEPs Held by Taxpayers>200K as % of Total MV of All of IRAs/SEPs **(S/J)**		28.8416%

Attachment D

Row	Item	Number	Percentage
U	Total # Taxpayers > $100K w/IRAs/SEPs	24,705,910	
V	Taxpayers > $100K w/IRAs/SEPs as % of All Taxpayers **(U/A)**		12.0920%
X	MV of IRAs/SEPs Held by Taxpayers>100K	$4,888,167,716,000	
Z	MV of IRAs/SEPs Held by Taxpayers>100K as % of All Taxpayers **(X/J)**		60.9849%
AA	Avg. MV of IRAs/SEPs Held by Taxpayers>$1M w/IRAs/SEPs	$235,274	
BB	Avg. MV of IRAs/SEPs Held by Taxpayers>$500K but Less than $1M w/IRAs/SEPs	$89,075	
CC	Avg. MV of IRAs/SEPs Held by Taxpayers>$200K but Less than $500K w/IRAs/SEPs	$47,518	
DD	Avg. MV of IRAs/SEPs Held by Taxpayers>$100K but Less than $200K w/IRAs/SEPs	$36,095	
EE	Avg. MV of All IRAs/SEPs	$35,067	
FF	Percentage of IRA/SEP Assets Held by Those over 65		51.4111%
GG	Percentage of IRA/SEP Assets Held by Those over 60		69.4616%