



2009 SENATE BILL 65

February 18, 2009 – Introduced by Senators KEDZIE, DARLING, LAZICH, KANAVAS, LEIBHAM, HOPPER, SCHULTZ and A. LASEE, cosponsored by Representatives LOTHIAN, NASS, KERKMAN, ZIEGELBAUER, TOWNSEND, DAVIS, BROOKS, MEYER, RHOADES, ROTH, LEMAHIEU, GUNDERSON, VOS, GUNDRUM, ZIPPERER, MURTHA, SPANBAUER, BALLWEG, PETERSEN, J. OTT and BIES. Referred to Joint Survey Committee on Tax Exemptions.

1 **AN ACT** *to amend* 71.05 (1) (ae) (intro.), 71.05 (1) (am), 71.05 (1) (an), 71.05 (6)
2 (b) 4. and 71.83 (1) (a) 6.; and *to create* 71.05 (1) (af) of the statutes; **relating**
3 **to:** expanding and increasing the tax exemption for retirement plan income
4 received by an individual.

Analysis by the Legislative Reference Bureau

Under current law, the pension benefits of certain public employees are exempt from state taxation. The pensions that are exempt include payments received from the U.S. Civil Service Retirement System, the U.S. Military Employee Retirement System, the Milwaukee City and County Retirement Systems, the Police Officer's Annuity and Benefit Fund of Milwaukee, the Milwaukee Public School Teachers' Retirement Fund, the Wisconsin State Teachers' Retirement Fund, and the Sheriff's Annuity and Benefit Fund of Milwaukee County. For most of these pension plans, the exemption applies only to persons who were members of or retired from the plans as of December 31, 1963, although this limitation does not apply to retirement payments received from the U.S. Military Employee Retirement System or from payments received from the U.S. government that relate to service with the U.S. Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the U.S. Public Health Service. Also under current law, up to \$5,000 of payments or distributions received by certain individuals from a qualified retirement plan under the Internal Revenue Code, or from certain individual retirement accounts, are exempt from taxation. To be

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eligible, the individual must be at least 65 years old and have federal adjusted gross income (FAGI) under \$15,000, or under \$30,000 if married.

Under this bill, the \$5,000 exemption for certain individuals who are at least 65 years old and have limited FAGI applies only for taxable year 2009. Beginning with taxable year 2010, the \$5,000 exemption for payments or distributions received from a qualified retirement plan may still be claimed, to the extent that such amounts are not already exempt from taxation, but the exemption is not limited to individuals who are at least 65 years old and have FAGI of less than \$15,000, or less than \$30,000 if married. Under the bill, the exemption amount increases each year from \$5,000 to \$10,000 in 2011, \$15,000 in 2012, and \$20,000 in 2013 and thereafter.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (1) (ae) (intro.) of the statutes is amended to read:

2 71.05 (1) (ae) *Pension, individual retirement income.* (intro.) Except for a
3 payment that is exempt under par. (a), (am), or (an), or that is exempt as a railroad
4 retirement benefit, for taxable years beginning after December 31, 2008, and before
5 January 1, 2010, up to \$5,000 of payments or distributions received each year by an
6 individual from a qualified retirement plan under the Internal Revenue Code or from
7 an individual retirement account established under 26 USC 408, if all of the
8 following conditions apply:

9 **SECTION 2.** 71.05 (1) (af) of the statutes is created to read:

10 71.05 (1) (af) *Pension income.* Except for a payment that is exempt under par.
11 (a), (am), or (an), or that is exempt as a railroad retirement benefit, one of the
12 following amounts of payments or distributions received each year by an individual
13 from a qualified retirement plan under the Internal Revenue Code:

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1 1. For taxable years beginning after December 31, 2009, and before January
2 1, 2011, \$5,000.

3 2. For taxable years beginning after December 31, 2010, and before January
4 1, 2012, \$10,000.

5 3. For taxable years beginning after December 31, 2011, and before January
6 1, 2013, \$15,000.

7 4. For taxable years beginning after December 31, 2012, \$20,000.

8 **SECTION 3.** 71.05 (1) (am) of the statutes is amended to read:

9 71.05 (1) (am) *Military retirement systems.* All retirement payments received
10 from the U.S. military employee retirement system, to the extent that such payments
11 are not exempt under par. (a) ~~or~~, (ae), or (af).

12 **SECTION 4.** 71.05 (1) (an) of the statutes is amended to read:

13 71.05 (1) (an) *Uniformed services retirement benefits.* All retirement payments
14 received from the U.S. government that relate to service with the coast guard, the
15 commissioned corps of the national oceanic and atmospheric administration, or the
16 commissioned corps of the public health service, to the extent that such payments are
17 not exempt under par. (a), (ae), (af), or (am).

18 **SECTION 5.** 71.05 (6) (b) 4. of the statutes is amended to read:

19 71.05 (6) (b) 4. Disability payments other than disability payments that are
20 paid from a retirement plan, the payments from which are exempt under sub. (1)
21 (ad), (ae), (am), and (an), if the individual either is single or is married and files a joint
22 return, to the extent those payments are excludable under section 105 (d) of the
23 Internal Revenue Code as it existed immediately prior to its repeal in 1983 by section
24 122 (b) of P.L. 98-21, except that if an individual is divorced during the taxable year
25 that individual may subtract an amount only if that person is disabled and the

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1 amount that may be subtracted then is \$100 for each week that payments are
2 received or the amount of disability pay reported as income, whichever is less. If the
3 exclusion under this subdivision is claimed on a joint return and only one of the
4 spouses is disabled, the maximum exclusion is \$100 for each week that payments are
5 received or the amount of disability pay reported as income, whichever is less.

6 **SECTION 6.** 71.83 (1) (a) 6. of the statutes is amended to read:

7 71.83 (1) (a) 6. ‘Retirement plans.’ Any natural person who is liable for a
8 penalty for federal income tax purposes under section 72 (m) (5), (q), (t), and (v), 4973,
9 4974, 4975, or 4980A of the Internal Revenue Code is liable for 33% of the federal
10 penalty unless the income received is exempt from taxation under s. 71.05 (1) (a) ~~or~~,
11 (ae), or (af). The penalties provided under this subdivision shall be assessed, levied,
12 and collected in the same manner as income or franchise taxes.

13 **SECTION 7. Initial applicability.**

14 (1) This act first applies to taxable years beginning on January 1, 2009.

15 (END)