

ASSEMBLY BILL

No. 104

Introduced by Assembly Member Charles Calderon

January 8, 2009

An act to amend Sections 17085, 17504, and 17506 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 104, as introduced, Charles Calderon. Income taxes: pensions.

The Personal Income Tax Law, in modified conformity to federal income tax laws, provides for the specified tax treatment with respect to certain annuities and beneficiaries of employees' trusts.

This bill would provide further conformity to federal income tax laws by conforming to provisions of the federal Pension Protection Act of 2006 relating to waiver of the 10% early withdrawal penalty tax on certain distributions of pension plans for public safety employees and distributions from governmental retirement plans for health and long-term care insurance for public safety officers. This bill would also make a legislative finding and declaration regarding the public purpose served by the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17085 of the Revenue and Taxation Code
- 2 is amended to read:

1 17085. Section 72 of the Internal Revenue Code, relating to
2 annuities and certain proceeds of life insurance contracts, is
3 modified as follows:

4 (a) The amendments and transitional rules made by Public Law
5 99-514 shall be applicable to this part for the same transactions
6 and the same years as they are applicable for federal purposes,
7 except that the repeal of Section 72(d) of the Internal Revenue
8 Code, relating to repeal of special rule for employees' annuities,
9 shall apply only to the following:

10 (1) Any individual whose annuity starting date is after December
11 31, 1986.

12 (2) At the election of the taxpayer, any individual whose annuity
13 starting date is after July 1, 1986, and before January 1, 1987.

14 (b) The amount of a distribution from an individual retirement
15 account or annuity or employee trust or employee annuity that is
16 includable in gross income for federal purposes shall be reduced
17 for purposes of this part by the lesser of either of the following:

18 (1) An amount equal to the amount includable in federal gross
19 income for the taxable year.

20 (2) An amount equal to the basis in the account or annuity
21 allowed by Section 17507 (relating to individual retirement
22 accounts and simplified employee pensions), the increased basis
23 allowed by Sections 17504 and 17506 (relating to plans of
24 self-employed individuals), the increased basis allowed by Section
25 17501, or the increased basis allowed by Section 17551 that is
26 remaining after adjustment for reductions in gross income under
27 this provision in prior taxable years.

28 (c) (1) Except as provided in paragraph (2), the amount of the
29 penalty imposed under this part shall be computed in accordance
30 with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code
31 using a rate of 2½ percent, in lieu of the rate provided in those
32 sections.

33 (2) In the case where Section 72(t)(6) of the Internal Revenue
34 Code, relating to special rules for simple retirement accounts,
35 applies, the rate in paragraph (1) shall be 6 percent in lieu of the
36 2½ percent rate specified therein.

37 (d) Section 72(f)(2) of the Internal Revenue Code, relating to
38 special rules for computing employees' contributions, shall be
39 applicable without applying the exceptions which immediately
40 follow that paragraph.

1 (e) *The amendments to Section 72(t) of the Internal Revenue*
2 *Code made by Section 828 of Public Law 109-280 shall apply to*
3 *this part for the same transactions and the same years as they are*
4 *applicable for federal purposes.*

5 SEC. 2. Section 17504 of the Revenue and Taxation Code is
6 amended to read:

7 17504. (a) The provisions of Section 402 of the Internal
8 Revenue Code, relating to taxability of beneficiaries of employees'
9 trusts, shall be modified as follows:

10 (1) The amendments and transitional rules made by Public Law
11 99-514 shall be applicable to this part for the same transactions
12 and the same years as they are applicable for federal purposes,
13 except as otherwise provided.

14 (2) The basis of any person in an employees' trust shall include
15 the amount of any contributions made prior to January 1, 1987,
16 which were not allowed as a deduction under former Sections
17 17503 and 17513 (including predecessor Section 17524 repealed
18 by Chapter 488 of the Statutes of 1983) relating to special
19 limitations for self-employed individuals.

20 (b) (1) There is hereby imposed a tax on lump-sum distributions
21 computed in accordance with the provisions of Section 402(d) of
22 the Internal Revenue Code using the rates and brackets prescribed
23 in subdivision (a) of Section 17041 (without regard to Section
24 17045) in lieu of the rates and brackets in Section 1(c) of the
25 Internal Revenue Code. The recipient of the lump-sum distribution
26 shall be liable for the tax imposed by this paragraph.

27 (2) For purposes of this part, the provisions of Section 1122(h)
28 of Public Law 99-514, as modified by Section 1011A(b) of Public
29 Law 100-647, shall apply, except as modified by each of the
30 following:

31 (A) The provisions of Section 1122(h)(3)(B) of Public Law
32 99-514 shall be modified to refer to Section 17041 rather than
33 Section 1 of the Internal Revenue Code of 1986.

34 (B) The provisions of Section 1122(h)(3)(B)(ii) of Public Law
35 99-514 shall be modified to provide a tax rate of 5.5 percent rather
36 than a tax rate of 20 percent.

37 (C) The provisions of Section 1122(h)(5) of Public Law 99-514
38 shall be modified to refer to Section 17041 rather than Section 1
39 of the Internal Revenue Code of 1954.

(3) For purposes of this section, a taxpayer shall elect the same special lump-sum distribution averaging method for purposes of this part as that elected for federal purposes under Section 402(d)(4)(B) of the Internal Revenue Code.

(4) The provisions of Section 1124(a) of Public Law 99-514, as amended by Section 1011A(d) of Public Law 100-647, shall apply.

(5) The provisions of Section 1124(c) of Public Law 99-514, as added by Section 1011A(d) of Public Law 100-647, shall apply.

(c) The amendments to Section 402 of the Internal Revenue Code made by Section 845 of Public Law 109-280 shall apply to this part for the same transactions and the same years as they are applicable for federal purposes.

SEC. 3. Section 17506 of the Revenue and Taxation Code is amended to read:

17506. (a) The provisions of Section 403 of the Internal Revenue Code, relating to taxation of employee annuities, shall be modified to provide that the basis of any person in an employee annuity shall include the amount of any contributions made prior to January 1, 1987, which were not allowed as a deduction under former Sections 17503 and 17513 of the Revenue and Taxation Code (including predecessor Section 17524 repealed by Chapter 488 of the Statutes of 1983) relating to special limitations for self-employed individuals.

(b) The amendments to Section 72(t) of the Internal Revenue Code made by Section 828 of Public Law 109-280 shall apply to this part for the same transactions and the same years as they are applicable for federal purposes.

SEC. 4. The Legislature finds and declares that this act serves a public purpose by providing equitable treatment for emergency service personnel that will ultimately benefit all of the citizens of this state.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.