HOUSE BILL No. 1727

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-1-3.5; IC 6-3-2

Synopsis: Tax deduction of federal retirement benefits. Provides an adjusted gross income tax deduction for part of a federal government pension (including a military pension) received by an individual or an individual's surviving spouse, in an amount that does not exceed the difference between: (1) the maximum benefits payable under Social Security that could have been excluded from federal gross income for the year; and (2) the Social Security benefits actually received by the taxpayer during the year. Provides that a taxpayer may not claim both this deduction and the existing military service deduction or federal civil service deduction.

Effective: January 1, 2006.

Welch

January 19, 2005, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1727

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3-1-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars ($1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000).

(4) Subtract one thousand dollars ($1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;
(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and
(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:
(A) one thousand five hundred dollars ($1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996; and
(B) five hundred dollars ($500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars ($40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:
(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or
(B) two thousand dollars ($2,000).

(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction from adjusted gross income.

(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint returns if the taxable year began before January 1, 1987.

(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code if the taxable year began before January 1, 1985.

(12) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(15) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(16) For taxable years beginning after December 31, 1999, subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.

(17) Subtract an amount equal to the lesser of:

(A) for a taxable year:

(i) including any part of 2004, the amount determined under subsection (f); and

(ii) beginning after December 31, 2004, two thousand five hundred dollars ($2,500); or

(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(18) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(19) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(20) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(21) Subtract an amount equal to any deduction for which the individual is eligible under IC 6-3-2.

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(c) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article

by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 or Section 810 of the Internal Revenue Code.

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was

placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(4) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(f) This subsection applies only to the extent that an individual paid property taxes in 2004 that were imposed for the March 1, 2002, assessment date or the January 15, 2003, assessment date. The maximum amount of the deduction under subsection (a)(17) is equal to the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the amount of property taxes that the taxpayer paid after December 31, 2003, in the taxable year for property taxes imposed for the March 1, 2002, assessment date and the January 15, 2003, assessment date.

STEP TWO: Determine the amount of property taxes that the taxpayer paid in the taxable year for the March 1, 2003, assessment date and the January 15, 2004, assessment date.

STEP THREE: Determine the result of the STEP ONE amount divided by the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE amount by two thousand five hundred dollars ($2,500).

STEP FIVE: Determine the sum of the STEP THREE amount and two thousand five hundred dollars ($2,500).

SECTION 2. IC 6-3-2-3.7 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 3.7. Each taxable year, an individual is entitled to an adjusted gross income tax deduction equal to the remainder of:

(1) the first two thousand dollars ($2,000) which is received by the individual during the taxable year from a federal civil service annuity and which is included in adjusted gross income under Section 62 of the Internal Revenue Code; minus

(2) the total amount of Social Security benefits and railroad retirement benefits received by the individual during the taxable year.

However, the individual is only entitled to the deduction provided by this section if the individual is at least sixty-two (62) years of age before the end of the taxable year. **A taxpayer may not claim both this deduction and the deduction under section 3.9 of this chapter in a taxable year that begins after December 31, 2005.**

SECTION 3. IC 6-3-2-3.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 3.9. (a) As used in this section, "applicable maximum benefit amount" means the following:**

(1) In the case of an unmarried individual, the maximum individual Social Security benefit.

(2) In the case of a joint return, one hundred fifty percent (150%) of the maximum individual Social Security benefit.

(3) In the case of a married individual filing a separate return, seventy-five percent (75%) of the maximum individual Social Security benefit.

(b) As used in this section, "maximum excludable Social Security benefits" means an amount equal to the part of the applicable maximum benefit amount for the taxpayer for the taxable year that would be excluded from federal gross income under the Internal Revenue Code if the benefit amount were treated as Social Security benefits (within the meaning of Section 86(d) of the Internal Revenue Code) received during the taxable year.

(c) As used in this section, "maximum individual Social Security benefit" means, with respect to a taxable year, the maximum total amount that could be paid for all months in the calendar year ending in the taxable year as old age insurance benefits under Section 202(a) of the federal Social Security Act (42 U.S.C. 402(a)), without regard to any reduction, deduction, or offset under Section 202(k) or 203 of the federal Social Security Act (42 U.S.C. 402(k) or 42 U.S.C. 403), to any individual who attained retirement age (as

defined in Section 216(l) of the federal Social Security Act (42 U.S.C. 416(l)) and has filed an application for the benefits by the first day of the calendar year. However, in the case of an individual who receives a qualified governmental pension for less than a full taxable year, the maximum individual Social Security benefit for the individual for the year shall be reduced as provided in regulations prescribed by the United States Department of the Treasury.

(d) As used in this section, "public retirement system" means any pension, annuity, retirement, or similar fund or system established by the United States, including military retirement systems.

(e) As used in this section, "qualified governmental pension" means any pension or annuity received under a public retirement system to the extent the pension or annuity is not attributable to service that:

(1) constitutes employment for purposes of Chapter 21 of the Internal Revenue Code (relating to the Federal Insurance Contributions Act); or

(2) is covered by an agreement made under Section 218 of the federal Social Security Act (42 U.S.C. 418).

(f) Subject to subsection (g), in each taxable year beginning after December 31, 2005, an individual or the individual's surviving spouse is entitled to an adjusted gross income tax deduction for amounts that are:

(1) received by the individual or surviving spouse as a qualified governmental pension for service performed by the individual; and

(2) included in federal adjusted gross income.

(g) The deduction under subsection (f) for a taxable year beginning after December 31, 2005, may not exceed the remainder of:

(1) the maximum excludable Social Security benefits of the individual or surviving spouse for the taxable year; minus

(2) the Social Security benefits (within the meaning of Section 86(d) of the Internal Revenue Code) that:

(A) are received by the individual or surviving spouse during the taxable year; and

(B) are excluded from federal gross income.

SECTION 4. IC 6-3-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4. Each taxable year, an individual, or the individual's surviving spouse, is entitled to an adjusted gross income tax deduction for the first two thousand dollars ($2,000) of income, including retirement or survivor's benefits, received during the taxable year by the individual, or the individual's surviving spouse, for the individual's service in an active or reserve component of the armed forces of the United States, including the army, navy, air force, coast guard, marine corps, merchant marine, Indiana Army National Guard, or Indiana Air National Guard. However, a person who is less than sixty (60) years of age on the last day of the person's taxable year, is not, for that taxable year, entitled to a deduction under this section for retirement or survivor's benefits. **A taxpayer may not claim both this deduction and the deduction available under section 3.9 of this chapter in a taxable year that begins after December 31, 2005.**

SECTION 5. [EFFECTIVE JANUARY 1, 2006] **(a) IC 6-3-2-3.9, as added by this act, applies only to taxable years beginning after December 31, 2005.**

(b) IC 6-3-1-3.5, IC 6-3-2-3.7, and IC 6-3-2-4, all as amended by this act, apply only to taxable years beginning after December 31, 2005.