

# DEPARTMENT OF TAXATION

## 2021 Fiscal Impact Statement

- |  |                                      |
|--|--------------------------------------|
| <b>1. Patron</b> Bill D. Wiley   | <b>2. Bill Number</b> <u>HB 2337</u> |
|  | <b>House of Origin:</b>              |
| <b>3. Committee</b> Senate Finance and Appropriations  | <u>          </u> <b>Introduced</b>  |
|  | <u>          </u> <b>Substitute</b>  |
|  | <u>          </u> <b>Engrossed</b>   |
| <b>4. Title</b> Individual Income Tax; Subtraction for Low-Income Veterans with a Permanent Service-Connected Disability | <b>Second House:</b>                 |
|  | <u>  X  </u> <b>In Committee</b>     |
|  | <u>          </u> <b>Substitute</b>  |
|  | <u>          </u> <b>Enrolled</b>    |

### 5. Summary/Purpose:

This bill would provide an individual income tax subtraction for the amount of the annual retirement compensation received for service as a member of the United States Armed Forces or the Virginia National Guard by a veteran who has a 100 percent service-connected permanent and total disability. This bill would limit the subtraction to only those taxpayers whose federal adjusted gross income does not exceed 150 percent of the federal poverty level for a four-person household.

This bill would be effective for taxable years beginning on or after January 1, 2021.

### 6. Budget amendment necessary: No.

### 7. Fiscal Impact Estimates are: Preliminary (See Line 8.)

#### 7b. Revenue Impact:

| <i><b>Fiscal Year</b></i> | <i><b>Dollars</b></i> | <i><b>Fund</b></i> |
|---------------------------|-----------------------|--------------------|
| 2021-22                   | (\$3.2 Million)       | GF                 |
| 2022-23                   | (\$2.2 Million)       | GF                 |
| 2023-24                   | (\$2.4 Million)       | GF                 |
| 2024-25                   | (\$2.5 Million)       | GF                 |
| 2025-26                   | (\$2.7 Million)       | GF                 |
| 2026-27                   | (\$2.8 Million)       | GF                 |

### 8. Fiscal implications:

#### Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

## Revenue Impact

This bill would have an estimated negative General Fund revenue impact of \$3.2 million in Fiscal Year 2022, \$2.2 million in Fiscal Year 2023, \$2.4 million in Fiscal Year 2024, \$2.5 million in Fiscal Year 2025, \$2.7 million in Fiscal Year 2026, and \$2.8 million in Fiscal Year 2027. This bill would result in a negative revenue impact only to the extent that military retirement income that is currently taxed by Virginia would become exempt from taxation as a result of this bill.

There are several forms of military retirement pay available to disabled veterans. Combat-Related Special Compensation ("CRSC") is not subject to federal or Virginia taxation. Concurrent Retirement and Disability Payments ("CRDP") are generally subject to both federal and Virginia taxation. See Line 11 for an explanation of these two programs. A military veteran may be entitled to additional military retirement income to the extent that his retirement pay exceeds his disability compensation, and such income is generally subject to taxation as well.

During 2020 there were an estimated 1,057 Virginia military retirees with a 100 percent disability rating who have an income of 150 percent or less of the federal poverty level for a four person household. This estimate does not take into account qualifying Virginia National Guard veterans who have a 100 percent service-related disability. These cases are estimated to be rare and the resulting revenue impact from providing this subtraction to such individuals would be minimal.

### **9. Specific agency or political subdivisions affected:**

Department of Taxation

### **10. Technical amendment necessary: No.**

### **11. Other comments:**

#### Federal Law

##### *Military Retirement Pay and Veterans Disability Compensation*

A military retiree (generally, a service member who serves 20 years or more in the military) typically qualifies for military retirement pay and certain other veterans benefits. The amount of military retirement pay a military retiree receives is based on a formula or scale that factors in the person's military rank at retirement and the person's length of military service. Military retirement pay is determined and paid by the U.S. Defense Finance and Accounting Service ("DFAS"). DFAS is an agency of the United States Department of Defense.

A disabled veteran may apply for disability compensation from the Department of Veterans Affairs ("VA"). The VA can approve veterans as eligible for veteran's disability compensation for one or more documented service-connected injuries or illnesses that continue to affect the person's health or abilities following separation from the military. The VA calculates the amount to be paid to a veteran based on a formula that factors in

the person's service-connected disability rating and the person's number of dependents. Service-connected disability ratings are made in 10 percent increments from 0 percent to 100 percent.

"Concurrent receipt" refers to a veteran's eligibility to receive both military retirement pay and VA disability compensation. Until 2004, concurrent receipt was prohibited by federal law, so a person receiving military retirement pay was required to waive some or all of that pay in order to receive VA disability compensation. This waiver of retirement pay for disability compensation would cause a dollar-for-dollar offset. As a result, a military retiree subject to the federal ban on concurrent receipt was limited to the higher of: (1) the person's military retirement pay; or (2) the person's veteran's disability compensation, but not to the sum of the two.

Federal law was changed as of January 1, 2004, so that certain military retirees are eligible for full concurrent receipt of military retirement pay and veterans disability compensation. This is referred to as Concurrent Receipt of Retirement Pay and Disability Compensation ("CRDP"). To be eligible claimants for CRDP, a veteran must show that he or she has a service-connected disability and:

- Is a regular retiree with a VA disability rating of 50 percent or greater;
- Is a reserve retiree with 20 qualifying years of service, who has a VA disability rating of 50 percent or greater and who has reached retirement age. (In most cases the retirement age for reservists is 60, but certain reserve retirees may be eligible before they turn 60. If he or she is a member of the Ready Reserve, his or her retirement age can be reduced below age 60 by three months for each 90 days of active service they have performed during a fiscal year.);
- Is retired under Temporary Early Retirement Act and have a VA disability rating of 50 percent or greater; or
- Is a disability retiree who earned entitlement to retired pay under any provision of law other than solely by disability, and they have a VA disability rating of 50 percent or greater.

CRDP was a "phase in" of benefits that gradually restored a military retiree's VA disability offset from January 2004 to January 2014. This meant that an eligible retiree's retirement pay gradually increased each year until the phase in was complete effective January 2014. Once the phase in was complete, eligible retirees received both halves—their military retirement pay and their disability compensation—automatically without being required to use a complicated phase-in formula.

While CRDP has helped some disabled military retirees, many retirees did not qualify because they had less than a 50 percent disability rating. Such retirees continued to be subject to the ban on concurrent receipt, which required them to reduce their retirement pay dollar-for-dollar by the amount of disability compensation they were receiving. In 2008, Congress enacted a program called Combat-Related Special Compensation ("CRSC"), which allows military retirees to receive monthly compensation to replace some

or all of their VA disability offset, even if they do not have a disability rating of a 50 percent or more. To be eligible claimants for CRSC, a veteran must show that he or she has a combat-related disability and:

- Is entitled to and/or receiving military retired pay with 20 or more years of service;
- Is rated at least 10 percent disabled by the VA, or a disability directly related to a Purple Heart.

Military retirees cannot receive both CRSC and CRDP. If a retiree qualifies for both, DFAS will automatically apply the entitlement that is most advantageous to him or her. Every year, a military retiree has the opportunity to change his or her election.

### *Federal Taxation*

As a general rule, pension income is taxable. Therefore, military retirement pay received from DFAS that is based on age, length of service, or rank is taxable under federal law, regardless of whether a military retiree is disabled. CRDP payments received from DFAS are also taxable pursuant to federal law, because such payments are intended to recover the retirement pay that military retirees waive to receive VA disability compensation.

In contrast, federal law exempts from taxation certain benefit or compensation received under any law administered by the VA. VA disability compensation received from the VA by any veteran—including a military retiree—is exempt from taxation under federal law.

Federal law also exempts from taxation any pension income, annuities, or similar allowances for personal injuries or sickness resulting from active service in the armed forces of any country. Except for taxpayers who were entitled to receive pension income, annuities, or similar allowances for personal injuries or sickness on or before September 24, 1975, or who were members of the armed forces of any country (or a reserve component thereof) or under a binding written commitment to become such a member on September 24, 1975, such exemption is only allowed to the extent that:

- The taxpayer received such income by reason of a combat-related injury;
- The taxpayer would be entitled to receive disability compensation from the Department of Veterans Affairs if they applied; or
- The taxpayer received such income on account of personal physical injuries or physical sickness.

CRSC payments received from DFAS are exempt under federal law, because military retirees receive such payments by reason of their combat-related injuries. Military retirement pay received from DFAS that is based on a disability is not taxable to the extent that such pay meets one of the tests above.

Military retirement pay received from DFAS based on disability is generally taxable unless the taxpayer received such income by reason of a combat-related injury; the taxpayer

would be entitled to receive disability compensation from the Department of Veterans Affairs if he applied; or the taxpayer received such income on account of personal physical injuries or physical sickness.

These rules are illustrated in the chart below.

| <b>Military Income</b>  | <b>Taxable</b> | <b>Tax-Exempt</b> |
|---|----------------|-------------------|
| Military Retirement Pay Received from DFAS Based on Age, Length of Service, and/or Rank | X              |                   |
| Military Retirement Pay Received from DFAS Based on Disability                          | X              |                   |
| Disability Compensation Received from the VA  |                | X                 |
| CRDP Payments Received from DFAS  | X              |                   |
| CRSC Payments Received from DFAS  |                | X                 |

### Other States

The majority of states, including Virginia, offer tax benefits relating generally to retirement income that veterans may utilize to the extent they qualify. However, Virginia does not offer a specific tax exemption for military retirement income. All of the jurisdictions that impose an individual income tax that are in close geographic proximity to Virginia, except Washington D.C., either exempt military retirement income, or provide a specific tax incentive related to such income. Maryland offers a military retirement income exemption of up to \$5,000 for those under age 55 and up to \$15,000 for those ages 55 or older. Kentucky provides a complete exemption for military retirement pay for individuals who retired prior to 1997, and an exemption of \$31,110 for individuals who retired after 1997. North Carolina currently fully exempts several types of retirement income, including military retirement income, but only for retirees that have at least five years of service as of August 12, 1989. Pennsylvania and West Virginia exempt military retirement income completely, and Tennessee does not impose an income tax.

### Virginia Military Tax Preferences

Since the starting point for determining an individual's Virginia income tax is federal adjusted gross income, any income exempt for federal income tax purposes, such as disability compensation from the VA or SRSC payments from DFAS, is generally exempt for Virginia income tax purposes.

In addition, taxpayers may subtract the following military-related items for the purposes of computing Virginia taxable income:

- Wages or salaries received for service in the Virginia National Guard, not exceeding income for thirty-nine days of service or \$3,000, whichever is less. This subtraction only applies to persons in the ranks of O3 and below.

- All military pay and allowances earned while serving in a combat zone or qualified hazardous duty area, to the extent they were included in federal adjusted gross income.
- \$15,000 of military basic pay for military personnel on extended active duty for periods in excess of ninety days. The subtraction amount is reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and will be reduced to zero if such pay is equal to or exceeds \$30,000.
- Any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.
- The amount of military death gratuity payments received after September 11, 2001, by survivors of military personnel who are killed in the line of duty. This subtraction amount must be reduced dollar-for-dollar by the amount that is allowed as an exclusion from federal adjusted gross income to the survivor on his or her federal income tax return.

For taxable years beginning on or after January 1, 2011, Virginia exempts from taxation the real property, including the joint real property of a husband and wife, and the land, not exceeding one acre, upon which the real property is situated of any military veteran who has been rated by the VA to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The surviving spouse of a veteran may also qualify for this exemption, so long as the following conditions are met: the veteran's death occurred on or after January 1, 2011; the surviving spouse does not remarry; and the surviving spouse continues to occupy such real property as his or her principal place of residence.

#### Virginia Study Regarding Exempting Military Retirement Income

During the 2019 Session, the General Assembly enacted House Joint Resolution 674, which required the Department of Veterans Services and the Department to study the feasibility of exempting military retirement income from taxation and publish a report regarding their findings and recommendations. Throughout 2019, the agencies completed this study and published the "Feasibility Study of Exempting Military Retirement Income from Taxation" on November 25, 2019. The report focused on the revenue impact of excluding all military retirement income and several other alternatives for consideration by the General Assembly.

## Virginia's Age and Disability Tax Preferences

Taxpayers age 65 and older may claim an additional \$800 personal exemption. Certain taxpayers may also qualify for an age deduction of up to \$12,000. For taxpayers born on or before January 1, 1939, the amount of the age deduction is \$12,000. For taxpayers born after January 1, 1939, who have attained the age of 65, the amount of the age deduction is means-tested. Accordingly, the \$12,000 age deduction is reduced dollar-for-dollar for single taxpayers whose income exceeds \$50,000 and for married taxpayers whose combined income exceeds \$75,000.

Taxpayers who are totally and permanently disabled may exclude up to \$20,000 of disability income, as defined under federal law, in calculating Virginia taxable income. Taxpayers may claim either an age deduction or a disability deduction, but not both.

## Proposed Legislation

This bill would provide an individual income tax subtraction for the amount of the annual retirement compensation received for service as a member of the United States Armed Forces or the Virginia National Guard by a veteran who has been rated by the VA or its successor agency pursuant to federal law to have a 100 percent service-connected permanent and total disability. This bill would limit the subtraction to only those taxpayers whose federal adjusted gross income does not exceed 150 percent of the federal poverty level for a four-person household. To the extent an eligible individual claims another Virginia subtraction or deduction for annual retirement compensation, they would be ineligible to claim the subtraction that this bill would provide.

This bill would be effective for taxable years beginning on or after January 1, 2021.

cc : Secretary of Finance

Date: 2/15/2021 RWC  
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