

9-1-1990

REVENUE AND TAXATION Income Taxes: Amend Code Provisions Exempting State Pension Plans

C. Sullivan

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

C. Sullivan, *REVENUE AND TAXATION Income Taxes: Amend Code Provisions Exempting State Pension Plans*, 7 GA. ST. U. L. REV. (1990).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol7/iss1/3>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

REVENUE AND TAXATION

Income Taxes: Amend Code Provisions Exempting State Pension Plans

CODE SECTIONS:	O.C.G.A. § 48-7-27(a)(4)(A)–(B) (amended)
BILL NUMBER:	HB 1EX
ACT NUMBER:	EX2
SUMMARY:	The Act amends Code Section 48-7-27 by revoking the state income taxation exclusion for income received from certain public pension or retirement funds. The Act also provides an exemption for specified amounts of retirement income from state income taxation. The Act amends Code Section 48-7-27 to comply with the United States Supreme Court decision in <i>Davis v. Michigan Dep't of Treasury</i> , 109 S.Ct. 1500 (1989).
EFFECTIVE DATE:	Sept. 20, 1989

History

Before the ratification of HB 1EX, Georgia excluded from state taxable income all monies received from specified state public pension plans.¹ Income received from federal pension plans was not excluded from taxation.²

1. 1989 Ga. Laws 1112 (formerly found at O.C.G.A. § 48-7-27(a)(4)(A) (Supp. 1989)). The Code excluded from taxation the following sources of income:

- (i) Employees' Retirement System of Georgia;
- (ii) Georgia Firemen's Pension Fund and all local firemen's pension funds;
- (iii) Peace Officers' Annuity and Benefit Fund;
- (iv) Trial Judges' and Solicitors' Retirement Fund;
- (v) Superior Court Clerks' Retirement System;
- (vi) Public School Employees Retirement System;
- (vii) Georgia Legislative Retirement System;
- (viii) Teacher Retirement System of Georgia and all other local teachers' retirement systems;
- (ix) Teachers' retirement systems or funds of states having a reciprocal agreement with this state to exempt income from the Teachers' Retirement System of Georgia from taxation;
- (x) Funds, programs, or systems the income from which is exempted by federal law or treaty;
- (xi) Superior Court Judges' Retirement System; and
- (xii) District Attorneys' Retirement System.

Id.

2. See 1989 Ga. Laws 1112 (formerly found at O.C.G.A. § 48-7-27(a)(4)(B) (Supp. 1989)) ([N]o income from a public pension . . . shall be exempt from income taxation in this state unless the exemption is provided for in [O.C.G.A. § 48-7-27(a)(4)(A)].)

On March 28, 1989, the United States Supreme Court decided *Davis v. Michigan Dep't of Treasury*,³ a case challenging Michigan's preferential treatment of state public pension plans. A provision of Michigan's tax code excluded from taxation benefits received from state public retirement systems.⁴ Benefits from federal retirement plans were not excluded from state taxation, except to the extent the retirement income was covered by specified exempt amounts.⁵ The United States Supreme Court held that Michigan's system of taxation violated both the Public Salary Act of 1939⁶ and the constitutional doctrine of intergovernmental tax immunity.⁷ The Court declared that Davis, a federal employee, was entitled to a refund of taxes paid under the unconstitutional provision,⁸ and that Michigan had to either "extend the tax exemption to federal employees . . . or eliminate the exemption for retired state and local government employees."⁹

Georgia Governor Joe Frank Harris responded to *Davis* by calling a special session of the Georgia Assembly to amend the Tax Code of

3. 109 S. Ct. 1500 (1989).

4. MICH. COMP. LAWS ANN. § 206.30(1)(f) (West Supp. 1988). The statute provided:

(1) 'Taxable income' . . . means adjusted gross income as defined in the internal revenue code subject to the following adjustments: . . .

(f) Deduct to the extent excluded in adjusted gross income:

(i) Retirement or pension benefits received from a public retirement system of or created by an act of this state or a political subdivision of this state. . . .

(iv) Retirement or pension benefits from any other retirement or pension system as follows:

(A) For a single return, the sum of not more than \$7,500.00.

(B) For a joint return, the sum of not more than \$10,000.00.

Id.

5. *See Id.*

6. 4 U.S.C. § 111 (1989). The Public Salary Act of 1939 authorizes states to tax "pay or compensation" received of federal employees so long as "the taxation does not discriminate against the officer or employee because of the source of pay or income." The Court held that retirement benefits were "pay or compensation" within the meaning of the Act and therefore state taxation could not "discriminate" against the federal beneficiary. *Davis v. Michigan Dep't of Treasury*, 109 S. Ct. 1500 (1989). Favorable treatment to beneficiaries of state pension plans constitutes "discrimination" and thus constitutes a violation of the Public Salary Act. *Davis*, 109 S. Ct. at 1500.

7. *Davis*, 109 S. Ct. at 1506. The doctrine of intergovernmental tax immunity bars "taxes that 'operat[e] so as to discriminate against the government or those with whom it deals.'" *Id.* (citing *United States v. City of Detroit*, 355 U.S. 466 (1958)). Thus, Michigan's favorable treatment of state pensions over federal pensions constitutes discrimination against the beneficiary of a federal pension plan in violation of the doctrine of intergovernmental tax immunities. *Id.* at 1508.

8. *Id.* at 1508. The Court decided that in this instance the plaintiff was entitled to a refund because the state, in its brief, had conceded that a refund was due. *Id.* at 1508-09.

9. *Id.* at 1509.

Georgia to conform with the Court's decision.¹⁰ The Governor proposed HB 1EX to a representative who introduced the Bill to the House.¹¹ The Bill passed both the House and the Senate without amendment four days after being introduced.¹²

HB 1EX

To comply with *Davis v. Michigan Dep't of Treasury*,¹³ the Act amends O.C.G.A. § 48-7-27, taxing previously untaxable income from state pension plans, thus increasing tax revenues.¹⁴ To equitably distribute the increased revenues,¹⁵ the Act increases the amount of retirement income from any source exempted from taxation. Prior to HB 1EX, the Code exempted from taxation \$4,000.00 of retirement income, regardless of the source of that income.¹⁶ The Code now provides that for taxable years beginning on or after January 1, 1989, and before January 1, 1990, retirement income from any source up to \$8,000.00 per year is exempt from state income taxation.¹⁷ For taxable years beginning on or after January 1, 1990, the exemption is increased to \$10,000.00.¹⁸

The Act also redefines retirement income. Prior law defined retirement income as any income, including earned income, received by a qualified person.¹⁹ Retirement income cannot now consist of more than \$4,000.00 of earned income,²⁰ but includes any other income of a qualified person.²¹ The Act requires the State Revenue Commissioner to promulgate regulations which permit waiver or reduction of penalties and interest imposed on taxpayers as a consequence of the Act.²² "Penalty" refers

10. Interview with Representative Calvin Smyre, House District No. 92 (Feb. 5, 1990) [hereinafter Smyre Interview]. See also *Lawmakers Concentrate on Local Bills, Pay Raises*, Atlanta J. & Const., Sept. 12, 1989, at E1, col. 2 [hereinafter *Lawmakers*].

11. Smyre Interview, *supra* note 10.

12. Final Composite Status Sheet, Sept. 15, 1989.

13. Smyre Interview, *supra* note 10.

14. Compare 1989 Ga. Laws 1112 (formerly found at O.C.G.A. § 48-7-27(a)(4)(A) (Supp. 1989)) with O.C.G.A. § 48-7-27 (Supp. 1990).

15. Smyre Interview, *supra* note 10.

16. 1989 Ga. Laws 1112 (formerly found at O.C.G.A. § 48-7-27(a)(5)(A) (Supp. 1989)).

17. O.C.G.A. § 48-7-27(a)(5)(A)(ii) (Supp. 1990).

18. O.C.G.A. § 48-7-27(a)(4)(A)(ii) (Supp. 1990).

19. 1989 Ga. Laws 1112 (formerly found at O.C.G.A. § 48-7-27(a)(5)(A) (Supp. 1989)). A qualified person was 62 years of age or older, or permanently disabled such that he could not perform any gainful occupation within his competence. *Id.*

20. O.C.G.A. § 48-7-27(a)(4)(E) (Supp. 1990). Earned income includes but is not limited to "net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation. . . ." *Id.*

21. Smyre Interview, *supra* note 10. Persons qualified are over the age of 62, or disabled persons incapable of performing a gainful occupation. O.C.G.A. § 48-7-27(a)(4)(D) (Supp. 1990).

22. O.C.G.A. § 48-7-27(a)(4)(G) (Supp. 1990).

to tax liabilities in excess of what a taxpayer has already paid when such additional tax liabilities are imposed on the taxpayer as a consequence of the Act.²³ Waivers or reductions are only available in the event the taxpayer's tax payments and withholdings are less than seventy percent of the taxpayer's Georgia income tax liability under the Code, as amended by the Act.²⁴

The Act applies to taxable years beginning January 1, 1989, or later.²⁵ The Act has no provision for the refund of taxes paid prior to January 1, 1989, even though such taxes may have been exacted in violation of the Public Salary Act of 1939 and constitutional principles of intergovernmental tax immunity.²⁶

C. Sullivan

23. Smyre Interview, *supra* note 10. See also O.C.G.A. § 48-7-27(a)(4)(G) (Supp. 1990), which refers to penalty as an underpayment or deficiency.

24. O.C.G.A. § 48-7-27(a)(4)(G) (Supp. 1990).

25. 1989 Ga. Laws 1112, p. 5, § 2.

26. Representative Smyre estimated that a retroactive application of the Act would cost the state \$ 90,000,000. Smyre Interview, *supra* note 10.