

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 6479

(As passed the Senate, December 4, 2002)

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 30 (MCL 206.30), as amended by 2000 PA 400.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30. (1) "Taxable income" means, for a person other
2 than a corporation, estate, or trust, adjusted gross income as
3 defined in the internal revenue code subject to the following
4 adjustments under this section:

5 (a) Add gross interest income and dividends derived from
6 obligations or securities of states other than Michigan, in the
7 same amount that has been excluded from adjusted gross income
8 less related expenses not deducted in computing adjusted gross
9 income because of section 265(a)(1) of the internal revenue
10 code.

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1 (b) Add taxes on or measured by income to the extent the
2 taxes have been deducted in arriving at adjusted gross income.

3 (c) Add losses on the sale or exchange of obligations of the
4 United States government, the income of which this state is pro-
5 hibited from subjecting to a net income tax, to the extent that
6 the loss has been deducted in arriving at adjusted gross income.

7 (d) Deduct, to the extent included in adjusted gross income,
8 income derived from obligations, or the sale or exchange of obli-
9 gations, of the United States government that this state is pro-
10 hibited by law from subjecting to a net income tax, reduced by
11 any interest on indebtedness incurred in carrying the obligations
12 and by any expenses incurred in the production of that income to
13 the extent that the expenses, including amortizable bond premi-
14 ums, were deducted in arriving at adjusted gross income.

15 (e) Deduct, to the extent included in adjusted gross income,
16 compensation, including retirement benefits, received for serv-
17 ices in the armed forces of the United States.

18 (f) Deduct the following to the extent included in adjusted
19 gross income:

20 (i) Retirement or pension benefits received from a federal
21 public retirement system or from a public retirement system of or
22 created by this state or a political subdivision of this state.

23 (ii) Retirement or pension benefits received from a public
24 retirement system of or created by another state or any of its
25 political subdivisions if the income tax laws of the other state
26 permit a similar deduction or exemption or a reciprocal deduction
27 or exemption of a retirement or pension benefit received from a

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1 public retirement system of or created by this state or any of
2 the political subdivisions of this state.

3 (iii) Social security benefits as defined in section 86 of
4 the internal revenue code.

5 (iv) Before October 1, 1994, retirement or pension benefits
6 from any other retirement or pension system as follows:

7 (A) For a single return, the sum of not more than
8 \$7,500.00.

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

11 (v) After September 30, 1994, retirement or pension benefits
12 not deductible under subparagraph (i) or subdivision (e) from any
13 other retirement or pension system or benefits from a retirement
14 annuity policy in which payments are made for life to a senior
15 citizen, to a maximum of \$30,000.00 for a single return and
16 \$60,000.00 for a joint return. The maximum amounts allowed under
17 this subparagraph shall be reduced by the amount of the deduction
18 for retirement or pension benefits claimed under subparagraph (i)
19 or subdivision (e) and for tax years after the 1996 tax year by
20 the amount of a deduction claimed under subdivision (r). For the
21 1995 tax year and each tax year after 1995, the maximum amounts
22 allowed under this subparagraph shall be adjusted by the percen-
23 tage increase in the United States consumer price index for the
24 immediately preceding calendar year. The department shall annu-
25 alize the amounts provided in this subparagraph and subparagraph
26 (iv) as necessary for tax years that end after September 30,

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1 1994. As used in this subparagraph, "senior citizen" means that
2 term as defined in section 514.

3 (vi) The amount determined to be the section 22 amount eli-
4 gible for the elderly and the permanently and totally disabled
5 credit provided in section 22 of the internal revenue code.

6 (g) Adjustments resulting from the application of section
7 271.

8 (h) Adjustments with respect to estate and trust income as
9 provided in section 36.

10 (i) Adjustments resulting from the allocation and apportion-
11 ment provisions of chapter 3.

12 (j) Deduct political contributions as described in section 4
13 of the Michigan campaign finance act, 1976 PA 388, MCL 169.204,
14 or section 301 of title III of the federal election campaign act
15 of 1971, Public Law 92-225, 2 U.S.C. 431, not in excess of \$50.00
16 per annum, or \$100.00 per annum for a joint return.

17 (k) Deduct, to the extent included in adjusted gross income,
18 wages not deductible under section 280C of the internal revenue
19 code.

20 (l) Deduct the following payments made by the taxpayer in
21 the tax year:

22 (i) The amount of payment made under an advance tuition pay-
23 ment contract as provided in the Michigan education trust act,
24 1986 PA 316, MCL 390.1421 to 390.1444.

25 (ii) The amount of payment made under a contract with a pri-
26 vate sector investment manager that meets all of the following
27 criteria:

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1 (A) The contract is certified and approved by the board of
2 directors of the Michigan education trust to provide equivalent
3 benefits and rights to purchasers and beneficiaries as an advance
4 tuition payment contract as described in subparagraph (i).

5 (B) The contract applies only for a state institution of
6 higher education as defined in the Michigan education trust act,
7 1986 PA 316, MCL 390.1421 to 390.1444, or a community or junior
8 college in Michigan.

9 (C) The contract provides for enrollment by the contract's
10 qualified beneficiary in not less than 4 years after the date on
11 which the contract is entered into.

12 (D) The contract is entered into after either of the
13 following:

14 (I) The purchaser has had his or her offer to enter into an
15 advance tuition payment contract rejected by the board of direc-
16 tors of the Michigan education trust, if the board determines
17 that the trust cannot accept an unlimited number of enrollees
18 upon an actuarially sound basis.

19 (II) The board of directors of the Michigan education trust
20 determines that the trust can accept an unlimited number of
21 enrollees upon an actuarially sound basis.

22 (m) If an advance tuition payment contract under the
23 Michigan education trust act, 1986 PA 316, MCL 390.1421 to
24 390.1444, or another contract for which the payment was deducti-
25 ble under subdivision (l) is terminated and the qualified benefi-
26 ciary under that contract does not attend a university, college,
27 junior or community college, or other institution of higher

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1 education, add the amount of a refund received by the taxpayer as
2 a result of that termination or the amount of the deduction taken
3 under subdivision (l) for payment made under that contract,
4 whichever is less.

5 (n) Deduct from the taxable income of a purchaser the amount
6 included as income to the purchaser under the internal revenue
7 code after the advance tuition payment contract entered into
8 under the Michigan education trust act, 1986 PA 316, MCL 390.1421
9 to 390.1444, is terminated because the qualified beneficiary
10 attends an institution of postsecondary education other than
11 either a state institution of higher education or an institution
12 of postsecondary education located outside this state with which
13 a state institution of higher education has reciprocity.

14 (o) Add, to the extent deducted in determining adjusted
15 gross income, the net operating loss deduction under section 172
16 of the internal revenue code.

17 (p) Deduct a net operating loss deduction for the taxable
18 year as determined under section 172 of the internal revenue code
19 subject to the modifications under section 172(b)(2) of the
20 internal revenue code and subject to the allocation and appor-
21 tionment provisions of chapter 3 of this act for the taxable year
22 in which the loss was incurred.

23 (q) For a tax year beginning after 1986, deduct, to the
24 extent included in adjusted gross income, benefits from a dis-
25 criminatory self-insurance medical expense reimbursement plan.

26 (r) After September 30, 1994 and before the 1997 tax year, a
27 taxpayer who is a senior citizen may deduct, to the extent

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1 included in adjusted gross income, interest and dividends
2 received in the tax year not to exceed \$1,000.00 for a single
3 return or \$2,000.00 for a joint return. However, for tax years
4 before the 1997 tax year, the deduction under this subdivision
5 shall not be taken if the taxpayer takes a deduction for retire-
6 ment benefits under subdivision (e) or a deduction under
7 subdivision (f)(i), (ii), (iv), or (v). For tax years after the
8 1996 tax year, a taxpayer who is a senior citizen may deduct to
9 the extent included in adjusted gross income, interest, divi-
10 dends, and capital gains received in the tax year not to exceed
11 \$3,500.00 for a single return and \$7,000.00 for a joint return
12 for the 1997 tax year, and \$7,500.00 for a single return and
13 \$15,000.00 for a joint return for tax years after the 1997 tax
14 year. For tax years after the 1996 tax year, the maximum amounts
15 allowed under this subdivision shall be reduced by the amount of
16 a deduction claimed for retirement benefits under subdivision (e)
17 or a deduction claimed under subdivision (f)(i), (ii), (iv), or
18 (v). For the 1995 tax year, for the 1996 tax year, and for each
19 tax year after the 1998 tax year, the maximum amounts allowed
20 under this subdivision shall be adjusted by the percentage
21 increase in the United States consumer price index for the imme-
22 diately preceding calendar year. The department shall annualize
23 the amounts provided in this subdivision as necessary for tax
24 years that end after September 30, 1994. As used in this subdi-
25 vision, "senior citizen" means that term as defined in section
26 514.

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1 (s) Deduct, to the extent included in adjusted gross income,
2 all of the following:

3 (i) The amount of a refund received in the tax year based on
4 taxes paid under this act.

5 (ii) The amount of a refund received in the tax year based
6 on taxes paid under the city income tax act, 1964 PA 284,
7 MCL 141.501 to 141.787.

8 (iii) The amount of a credit received in the tax year based
9 on a claim filed under sections 520 and 522 to the extent that
10 the taxes used to calculate the credit were not used to reduce
11 adjusted gross income for a prior year.

12 (t) Add the amount paid by the state on behalf of the tax-
13 payer in the tax year to repay the outstanding principal on a
14 loan taken on which the taxpayer defaulted that was to fund an
15 advance tuition payment contract entered into under the Michigan
16 education trust act, 1986 PA 316, MCL 390.1421 to 390.1444, if
17 the cost of the advance tuition payment contract was deducted
18 under subdivision (l) and was financed with a Michigan education
19 trust secured loan.

20 (u) For the 1998 tax year and each tax year after the 1998
21 tax year, deduct the amount calculated under section 30d.

22 (v) For tax years that begin on and after January 1, 1994,
23 deduct, to the extent included in adjusted gross income, any
24 amount, and any interest earned on that amount, received in the
25 tax year by a taxpayer who is a Holocaust victim as a result of a
26 settlement of claims against any entity or individual for any
27 recovered asset pursuant to the German act regulating unresolved

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1 property claims, also known as Gesetz zur Regelung offener
2 Vermögensfragen, as a result of the settlement of the action
3 entitled In re: Holocaust victims assets, CV-96-4849, CV-96-6161,
4 and CV-97-0461 (E.D. NY), or as a result of any similar action if
5 the income and interest are not commingled in any way with and
6 are kept separate from all other funds and assets of the
7 taxpayer. As used in this subdivision:

8 (i) "Holocaust victim" means a person, or the heir or bene-
9 ficiary of that person, who was persecuted by Nazi Germany or any
10 Axis regime during any period from 1933 to 1945.

11 (ii) "Recovered asset" means any asset of any type and any
12 interest earned on that asset including, but not limited to, bank
13 deposits, insurance proceeds, or artwork owned by a Holocaust
14 victim during the period from 1920 to 1945, withheld from that
15 Holocaust victim from and after 1945, and not recovered,
16 returned, or otherwise compensated to the Holocaust victim until
17 after 1993.

18 (w) For tax years that begin after December 31, 1999,
19 deduct, to the extent not deducted in determining adjusted gross
20 income, both of the following:

21 (i) The total of all contributions made on and after October
22 1, 2000 by the taxpayer in the tax year to education savings
23 accounts pursuant to the Michigan education savings program act,
24 2000 PA 161, MCL 390.1471 to 390.1486, not to exceed \$5,000.00
25 for a single return or \$10,000.00 for a joint return per tax
26 year. A deduction under this subparagraph is not allowed for
27 contributions to an education savings account in the tax year in

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1 which the initial withdrawal is made from that account or any
2 subsequent year.

3 (ii) The amount under section 30f.

4 (x) For tax years that begin after December 31, 1999, add to
5 the extent not included in adjusted gross income the amount of
6 money withdrawn by the taxpayer in the tax year from education
7 savings accounts if the withdrawal was not a qualified withdrawal
8 as provided in the Michigan education savings program act, 2000
9 PA 161, MCL 390.1471 to 390.1486.

10 (y) For tax years that begin after December 31, 1999,
11 deduct, to the extent included in adjusted gross income, the
12 amount of a distribution from individual retirement accounts that
13 qualify under section 408 of the internal revenue code if the
14 distribution is used to pay qualified higher education expenses
15 as that term is defined in the Michigan education savings program
16 act, 2000 PA 161, MCL 390.1471 to 390.1486.

17 (z) For tax years that begin after December 31, 2000,
18 deduct, to the extent included in adjusted gross income, an
19 amount equal to the qualified charitable distribution made in the
20 tax year by a taxpayer to a charitable organization. The amount
21 allowed under this subdivision shall be equal to the amount
22 deductible by the taxpayer under section 170(c) of the internal
23 revenue code with respect to the qualified charitable distribu-
24 tion in the tax year in which the taxpayer makes the distribution
25 to the qualified charitable organization, reduced by both the
26 amount of the deduction for retirement or pension benefits
27 claimed by the taxpayer under subdivision (f)(i), (ii), (iv), or

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1 (v) and by 2 times the total amount of credits claimed under
2 sections 260 and 261 for the tax year. As used in this subdivi-
3 sion, "qualified charitable distribution" means a distribution of
4 assets to a qualified charitable organization by a taxpayer not
5 more than 60 days after the date on which the taxpayer received
6 the assets as a distribution from a retirement or pension plan
7 described in subsection (8)(a). A distribution is to a qualified
8 charitable organization if the distribution is made in any of the
9 following circumstances:

10 (i) To an organization described in section 501(c)(3) of the
11 internal revenue code except an organization that is controlled
12 by a political party, an elected official or a candidate for an
13 elective office.

14 (ii) To a charitable remainder annuity trust or a charitable
15 remainder unitrust as defined in section 664(d) of the internal
16 revenue code; to a pooled income fund as defined in section
17 642(c)(5) of the internal revenue code; or for the issuance of a
18 charitable gift annuity as defined in section 501(m)(5) of the
19 internal revenue code. A trust, fund, or annuity described in
20 this subparagraph is a qualified charitable organization only if
21 no person holds any interest in the trust, fund, or annuity other
22 than 1 or more of the following:

23 (A) The taxpayer who received the distribution from the
24 retirement or pension plan.

25 (B) The spouse of an individual described in
26 sub-subparagraph (A).

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1 (C) An organization described in section 501(c)(3) of the
2 internal revenue code.

3 (AA) A TAXPAYER WHO IS A RESIDENT TRIBAL MEMBER MAY DEDUCT,
4 TO THE EXTENT INCLUDED IN ADJUSTED GROSS INCOME, ALL NONBUSINESS
5 INCOME EARNED OR RECEIVED IN THE TAX YEAR AND DURING THE PERIOD
6 IN WHICH AN AGREEMENT ENTERED INTO BETWEEN THE TAXPAYER'S TRIBE
7 AND THIS STATE PURSUANT TO SECTION 30C OF 1941 PA 122,
8 MCL 205.30C, IS IN FULL FORCE AND EFFECT. AS USED IN THIS
9 SUBDIVISION:

10 (i) "BUSINESS INCOME" MEANS BUSINESS INCOME AS DEFINED IN
11 SECTION 4 AND APPORTIONED UNDER CHAPTER 3.

12 (ii) "NONBUSINESS INCOME" MEANS NONBUSINESS INCOME AS
13 DEFINED IN SECTION 14 AND, TO THE EXTENT NOT INCLUDED IN BUSINESS
14 INCOME, ALL OF THE FOLLOWING:

15 (A) ALL INCOME DERIVED FROM WAGES WHETHER THE WAGES ARE
16 EARNED WITHIN THE AGREEMENT AREA OR OUTSIDE OF THE AGREEMENT
17 AREA.

18 (B) ALL INTEREST AND PASSIVE DIVIDENDS.

19 (C) ALL RENTS AND ROYALTIES DERIVED FROM REAL PROPERTY
20 LOCATED WITHIN THE AGREEMENT AREA.

21 (D) ALL RENTS AND ROYALTIES DERIVED FROM TANGIBLE PERSONAL
22 PROPERTY, TO THE EXTENT THE PERSONAL PROPERTY IS UTILIZED WITHIN
23 THE AGREEMENT AREA.

24 (E) CAPITAL GAINS FROM THE SALE OR EXCHANGE OF REAL PROPERTY
25 LOCATED WITHIN THE AGREEMENT AREA.

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1 (F) CAPITAL GAINS FROM THE SALE OR EXCHANGE OF TANGIBLE
2 PERSONAL PROPERTY LOCATED WITHIN THE AGREEMENT AREA AT THE TIME
3 OF SALE.

4 (G) CAPITAL GAINS FROM THE SALE OR EXCHANGE OF INTANGIBLE
5 PERSONAL PROPERTY.

6 (H) ALL PENSION INCOME AND BENEFITS INCLUDING, BUT NOT
7 LIMITED TO, DISTRIBUTIONS FROM A 401(k) PLAN, INDIVIDUAL RETIRE-
8 MENT ACCOUNTS UNDER SECTION 408 OF THE INTERNAL REVENUE CODE, OR
9 A DEFINED CONTRIBUTION PLAN, OR PAYMENTS FROM A DEFINED BENEFIT
10 PLAN.

11 (I) ALL PER CAPITA PAYMENTS BY THE TRIBE TO RESIDENT TRIBAL
12 MEMBERS, WITHOUT REGARD TO THE SOURCE OF PAYMENT.

13 (J) ALL GAMING WINNINGS.

14 (iii) "RESIDENT TRIBAL MEMBER" MEANS AN INDIVIDUAL WHO MEETS
15 ALL OF THE FOLLOWING CRITERIA:

16 (A) IS AN ENROLLED MEMBER OF A FEDERALLY RECOGNIZED TRIBE.

17 (B) THE INDIVIDUAL'S TRIBE HAS AN AGREEMENT WITH THIS STATE
18 PURSUANT TO SECTION 30C OF 1941 PA 122, MCL 205.30C, THAT IS IN
19 FULL FORCE AND EFFECT.

20 (C) THE INDIVIDUAL'S PRINCIPAL PLACE OF RESIDENCE IS LOCATED
21 WITHIN THE AGREEMENT AREA AS DESIGNATED IN THE AGREEMENT UNDER
22 SUB-SUBPARAGRAPH (B).

23 (2) The following personal exemptions multiplied by the
24 number of personal or dependency exemptions allowable on the
25 taxpayer's federal income tax return pursuant to the internal
26 revenue code shall be subtracted in the calculation that
27 determines taxable income:

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1 (a) For a tax year beginning during 1987..... \$ 1,600.00.

2 (b) For a tax year beginning during 1988..... \$ 1,800.00.

3 (c) For a tax year beginning during 1989..... \$ 2,000.00.

4 (d) For a tax year beginning after 1989 and before
5 1995..... \$ 2,100.00.

6 (e) For a tax year beginning during 1995 or 1996... \$ 2,400.00.

7 (f) Except as otherwise provided in subsection (7),
8 for a tax year beginning after 1996..... \$ 2,500.00.

9 (3) A single additional exemption determined as follows
10 shall be subtracted in the calculation that determines taxable
11 income in each of the following circumstances:

12 (a) For tax years beginning after 1989 and before 2000,
13 \$900.00 in each of the following circumstances:

14 (i) The taxpayer is a paraplegic, a quadriplegic, a hemiple-
15 gic, a person who is blind as defined in section 504, or a person
16 who is totally and permanently disabled as defined in section
17 522.

18 (ii) The taxpayer is a deaf person as defined in section 2
19 of the deaf persons' interpreters act, 1982 PA 204, MCL 393.502.

20 (iii) The taxpayer is 65 years of age or older.

21 (iv) The return includes unemployment compensation that
22 amounts to 50% or more of adjusted gross income.

23 (b) For tax years beginning after 1999, \$1,800.00 for each
24 taxpayer and every dependent of the taxpayer who is 65 years of
25 age or older. When a dependent of a taxpayer files an annual
26 return under this act, the taxpayer or dependent of the taxpayer,
27 but not both, may claim the additional exemption allowed under

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1 this subdivision. As used in this subdivision and subdivision
2 (c), "dependent" means that term as defined in section 30e.

3 (c) For tax years beginning after 1999, \$1,800.00 for each
4 taxpayer and every dependent of the taxpayer who is a deaf person
5 as defined in section 2 of the deaf persons' interpreters act,
6 1982 PA 204, MCL 393.502; a paraplegic, a quadriplegic, or a
7 hemiplegic; a person who is blind as defined in section 504; or a
8 person who is totally and permanently disabled as defined in sec-
9 tion 522. When a dependent of a taxpayer files an annual return
10 under this act, the taxpayer or dependent of the taxpayer, but
11 not both, may claim the additional exemption allowed under this
12 subdivision.

13 (d) For tax years beginning after 1999, \$1,800.00 if the
14 taxpayer's return includes unemployment compensation that amounts
15 to 50% or more of adjusted gross income.

16 (4) For a tax year beginning after 1987, an individual with
17 respect to whom a deduction under section 151 of the internal
18 revenue code is allowable to another federal taxpayer during the
19 tax year is not considered to have an allowable federal exemption
20 for purposes of subsection (2), but may subtract \$500.00 in the
21 calculation that determines taxable income for a tax year begin-
22 ning in 1988, \$1,000.00 for a tax year beginning after 1988 and
23 before 2000, and \$1,500.00 for a tax year beginning after 1999.

24 (5) A nonresident or a part-year resident is allowed that
25 proportion of an exemption or deduction allowed under subsection
26 (2), (3), or (4) that the taxpayer's portion of adjusted gross

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1 income from Michigan sources bears to the taxpayer's total
2 adjusted gross income.

3 (6) For a tax year beginning after 1987, in calculating tax-
4 able income, a taxpayer shall not subtract from adjusted gross
5 income the amount of prizes won by the taxpayer under the
6 McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239,
7 MCL 432.1 to 432.47.

8 (7) For each tax year after the 1997 tax year, the personal
9 exemption allowed under subsection (2) shall be adjusted by
10 multiplying the exemption for the tax year beginning in 1997 by a
11 fraction, the numerator of which is the United States consumer
12 price index for the state fiscal year ending in the tax year
13 prior to the tax year for which the adjustment is being made and
14 the denominator of which is the United States consumer price
15 index for the 1995-96 state fiscal year. The resultant product
16 shall be rounded to the nearest \$100.00 increment. The personal
17 exemption for the tax year shall be determined by adding \$200.00
18 to that rounded amount. As used in this section, "United States
19 consumer price index" means the United States consumer price
20 index for all urban consumers as defined and reported by the
21 United States department of labor, bureau of labor statistics.
22 For each year after the 2000 tax year, the exemptions allowed
23 under subsection (3) shall be adjusted by multiplying the exemp-
24 tion amount under subsection (3) for the tax year beginning in
25 2000 by a fraction, the numerator of which is the United States
26 consumer price index for the state fiscal year ending the tax
27 year prior to the tax year for which the adjustment is being made

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1 and the denominator of which is the United States consumer price
2 index for the 1998-1999 state fiscal year. The resultant product
3 shall be rounded to the nearest \$100.00 increment.

4 (8) As used in subsection (1)(f), "retirement or pension
5 benefits" means distributions from all of the following:

6 (a) Except as provided in subdivision (d), qualified pension
7 trusts and annuity plans that qualify under section 401(a) of the
8 internal revenue code, including all of the following:

9 (i) Plans for self-employed persons, commonly known as Keogh
10 or HR 10 plans.

11 (ii) Individual retirement accounts that qualify under sec-
12 tion 408 of the internal revenue code if the distributions are
13 not made until the participant has reached 59-1/2 years of age,
14 except in the case of death, disability, or distributions
15 described by section 72(t)(2)(A)(iv) of the internal revenue
16 code.

17 (iii) Employee annuities or tax-sheltered annuities pur-
18 chased under section 403(b) of the internal revenue code by
19 organizations exempt under section 501(c)(3) of the internal rev-
20 enue code, or by public school systems.

21 (iv) Distributions from a 401(k) plan attributable to
22 employee contributions mandated by the plan or attributable to
23 employer contributions.

24 (b) The following retirement and pension plans not qualified
25 under the internal revenue code:

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1 (i) Plans of the United States, state governments other than
2 this state, and political subdivisions, agencies, or
3 instrumentalities of this state.

4 (ii) Plans maintained by a church or a convention or associ-
5 ation of churches.

6 (iii) All other unqualified pension plans that prescribe
7 eligibility for retirement and predetermine contributions and
8 benefits if the distributions are made from a pension trust.

9 (c) Retirement or pension benefits received by a surviving
10 spouse if those benefits qualified for a deduction prior to the
11 decedent's death. Benefits received by a surviving child are not
12 deductible.

13 (d) Retirement and pension benefits do not include:

14 (i) Amounts received from a plan that allows the employee to
15 set the amount of compensation to be deferred and does not pre-
16 scribe retirement age or years of service. These plans include,
17 but are not limited to, all of the following:

18 (A) Deferred compensation plans under section 457 of the
19 internal revenue code.

20 (B) Distributions from plans under section 401(k) of the
21 internal revenue code other than plans described in
22 subdivision (a)(iv).

23 (C) Distributions from plans under section 403(b) of the
24 internal revenue code other than plans described in
25 subdivision (a)(iii).

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1 (ii) Premature distributions paid on separation, withdrawal,
2 or discontinuance of a plan prior to the earliest date the
3 recipient could have retired under the provisions of the plan.

4 (iii) Payments received as an incentive to retire early
5 unless the distributions are from a pension trust.