

HOUSE BILL No. 4043

January 27, 2005, Introduced by Reps. Lemmons, Jr. and Lemmons, III and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 30 (MCL 206.30), as amended by 2004 PA 394.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30. (1) "Taxable income" means, for a person other than a
2 corporation, estate, or trust, adjusted gross income as defined in
3 the internal revenue code subject to the following adjustments
4 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 less
8 related expenses not deducted in computing adjusted gross income
9 because of section 265(a)(1) of the internal revenue code.

1 (b) Add taxes on or measured by income to the extent the taxes
2 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
5 prohibited 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
9 obligations, of the United States government that this state is
10 prohibited 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 premiums,
14 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 services
17 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

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

3 (iii) Social security benefits as defined in section 86 of the
4 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 \$7,500.00.

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

9 (v) After September 30, 1994, retirement or pension benefits
10 not deductible under subparagraph (i) or subdivision (e) from any
11 other retirement or pension system or benefits from a retirement
12 annuity policy in which payments are made for life to a senior
13 citizen, to a maximum of \$30,000.00 for a single return and
14 \$60,000.00 for a joint return. The maximum amounts allowed under
15 this subparagraph shall be reduced by the amount of the deduction
16 for retirement or pension benefits claimed under subparagraph (i) or
17 subdivision (e) and for tax years after the 1996 tax year by the
18 amount of a deduction claimed under subdivision (r). For the 1995
19 tax year and each tax year after 1995, the maximum amounts allowed
20 under this subparagraph shall be adjusted by the percentage
21 increase in the United States consumer price index for the
22 immediately preceding calendar year. The department shall annualize
23 the amounts provided in this subparagraph and subparagraph (iv) as
24 necessary for tax years that end after September 30, 1994. As used
25 in this subparagraph, "senior citizen" means that term as defined
26 in section 514.

27 (vi) The amount determined to be the section 22 amount eligible

1 for the elderly and the permanently and totally disabled credit
2 provided in section 22 of the internal revenue code.

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

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

6 (i) Adjustments resulting from the allocation and
7 apportionment provisions of chapter 3.

8 (j) Deduct political contributions as described in section 4
9 of the Michigan campaign finance act, 1976 PA 388, MCL 169.204, or
10 section 301 of title III of the federal election campaign act of
11 1971, Public Law 92-225, 2 USC 431, not in excess of \$50.00 per
12 annum, or \$100.00 per annum for a joint return.

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

16 (l) Deduct the following payments made by the taxpayer in the
17 tax year:

18 (i) The amount of payment made under an advance tuition payment
19 contract as provided in the Michigan education trust act, 1986 PA
20 316, MCL 390.1421 to ~~390.1444~~ **390.1442**.

21 (ii) The amount of payment made under a contract with a private
22 sector investment manager that meets all of the following criteria:

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

27 (B) The contract applies only for a state institution of

1 higher education as defined in the Michigan education trust act,
2 1986 PA 316, MCL 390.1421 to ~~390.1444~~ **390.1442**, or a community or
3 junior college in Michigan.

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

7 (D) The contract is entered into after either of the
8 following:

9 (I) The purchaser has had his or her offer to enter into an
10 advance tuition payment contract rejected by the board of directors
11 of the Michigan education trust, if the board determines that the
12 trust cannot accept an unlimited number of enrollees upon an
13 actuarially sound basis.

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

17 (m) If an advance tuition payment contract under the Michigan
18 education trust act, 1986 PA 316, MCL 390.1421 to ~~390.1444~~
19 **390.1442**, or another contract for which the payment was deductible
20 under subdivision (l) is terminated and the qualified beneficiary
21 under that contract does not attend a university, college, junior
22 or community college, or other institution of higher education, add
23 the amount of a refund received by the taxpayer as a result of that
24 termination or the amount of the deduction taken under subdivision
25 (l) for payment made under that contract, whichever is less.

26 (n) Deduct from the taxable income of a purchaser the amount
27 included as income to the purchaser under the internal revenue code

1 after the advance tuition payment contract entered into under the
2 Michigan education trust act, 1986 PA 316, MCL 390.1421 to
3 ~~390.1444~~ **390.1442**, is terminated because the qualified beneficiary
4 attends an institution of postsecondary education other than either
5 a state institution of higher education or an institution of
6 postsecondary education located outside this state with which a
7 state institution of higher education has reciprocity.

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

11 (p) Deduct a net operating loss deduction for the taxable year
12 as determined under section 172 of the internal revenue code
13 subject to the modifications under section 172(b)(2) of the
14 internal revenue code and subject to the allocation and
15 apportionment provisions of chapter 3 of this act for the taxable
16 year in which the loss was incurred.

17 (q) For a tax year beginning after 1986, deduct, to the extent
18 included in adjusted gross income, benefits from a discriminatory
19 self-insurance medical expense reimbursement plan.

20 (r) After September 30, 1994 and before the 1997 tax year, a
21 taxpayer who is a senior citizen may deduct, to the extent included
22 in adjusted gross income, interest and dividends received in the
23 tax year not to exceed \$1,000.00 for a single return or \$2,000.00
24 for a joint return. However, for tax years before the 1997 tax
25 year, the deduction under this subdivision shall not be taken if
26 the taxpayer takes a deduction for retirement benefits under
27 subdivision (e) or a deduction under subdivision (f)(i), (ii), (iv),

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

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

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

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

26 (iii) The amount of a credit received in the tax year based on a
27 claim filed under sections 520 and 522 to the extent that the taxes

1 used to calculate the credit were not used to reduce adjusted gross
2 income for a prior year.

3 (t) Add the amount paid by the state on behalf of the taxpayer
4 in the tax year to repay the outstanding principal on a loan taken
5 on which the taxpayer defaulted that was to fund an advance tuition
6 payment contract entered into under the Michigan education trust
7 act, 1986 PA 316, MCL 390.1421 to ~~390.1444~~ **390.1442**, if the cost
8 of the advance tuition payment contract was deducted under
9 subdivision (l) and was financed with a Michigan education trust
10 secured loan.

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

13 (v) For tax years that begin on and after January 1, 1994,
14 deduct, to the extent included in adjusted gross income, any
15 amount, and any interest earned on that amount, received in the tax
16 year by a taxpayer who is a Holocaust victim as a result of a
17 settlement of claims against any entity or individual for any
18 recovered asset pursuant to the German act regulating unresolved
19 property claims, also known as Gesetz zur Regelung offener
20 Vermögensfragen, as a result of the settlement of the action
21 entitled In re: Holocaust victims— VICTIM assets LITIGATION, CV-96-
22 4849, ~~CV-96-6161~~ **CV-96-5161**, and CV-97-0461 (E.D. NY), or as a
23 result of any similar action if the income and interest are not
24 commingled in any way with and are kept separate from all other
25 funds and assets of the taxpayer. As used in this subdivision:

26 (i) "Holocaust victim" means a person, or the heir or
27 beneficiary of that person, who was persecuted by Nazi Germany or

1 any Axis regime during any period from 1933 to 1945.

2 (ii) "Recovered asset" means any asset of any type and any
3 interest earned on that asset including, but not limited to, bank
4 deposits, insurance proceeds, or artwork owned by a Holocaust
5 victim during the period from 1920 to 1945, withheld from that
6 Holocaust victim from and after 1945, and not recovered, returned,
7 or otherwise compensated to the Holocaust victim until after 1993.

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

11 (i) The total of all contributions made on and after October 1,
12 2000 by the taxpayer in the tax year less qualified withdrawals
13 made in the tax year to education savings accounts pursuant to the
14 Michigan education savings program act, 2000 PA 161, MCL 390.1471
15 to 390.1486, not to exceed \$5,000.00 for a single return or
16 \$10,000.00 for a joint return per tax year.

17 (ii) The amount under section 30f.

18 (x) For tax years that begin after December 31, 1999, add, to
19 the extent not included in adjusted gross income, the amount of
20 money withdrawn by the taxpayer in the tax year from education
21 savings accounts, not to exceed the total amount deducted under
22 subdivision (w) in the tax year and all previous tax years, if the
23 withdrawal was not a qualified withdrawal as provided in the
24 Michigan education savings program act, 2000 PA 161, MCL 390.1471
25 to 390.1486. This subdivision does not apply to withdrawals that
26 are less than the sum of all contributions made to an education
27 savings account in all previous tax years for which no deduction

1 was claimed under subdivision (w), less any contributions for which
2 no deduction was claimed under subdivision (w) that were withdrawn
3 in all previous tax years.

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

11 (z) For tax years that begin after December 31, 2000, deduct,
12 to the extent included in adjusted gross income, an amount equal to
13 the qualified charitable distribution made in the tax year by a
14 taxpayer to a charitable organization. The amount allowed under
15 this subdivision shall be equal to the amount deductible by the
16 taxpayer under section 170(c) of the internal revenue code with
17 respect to the qualified charitable distribution in the tax year in
18 which the taxpayer makes the distribution to the qualified
19 charitable organization, reduced by both the amount of the
20 deduction for retirement or pension benefits claimed by the
21 taxpayer under subdivision (f)(i), (ii), (iv), or (v) and by 2 times
22 the total amount of credits claimed under sections 260 and 261 for
23 the tax year. As used in this subdivision, "qualified charitable
24 distribution" means a distribution of assets to a qualified
25 charitable organization by a taxpayer not more than 60 days after
26 the date on which the taxpayer received the assets as a
27 distribution from a retirement or pension plan described in

1 subsection ~~-(8)(a)~~ **(9)(A)**. A distribution is to a qualified
2 charitable organization if the distribution is made in any of the
3 following circumstances:

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

8 (ii) To a charitable remainder annuity trust or a charitable
9 remainder unitrust as defined in section 664(d) of the internal
10 revenue code; to a pooled income fund as defined in section
11 642(c)(5) of the internal revenue code; or for the issuance of a
12 charitable gift annuity as defined in section 501(m)(5) of the
13 internal revenue code. A trust, fund, or annuity described in this
14 subparagraph is a qualified charitable organization only if no
15 person holds any interest in the trust, fund, or annuity other than
16 1 or more of the following:

17 (A) The taxpayer who received the distribution from the
18 retirement or pension plan.

19 (B) The spouse of an individual described in sub-subparagraph
20 (A).

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

23 (aa) A taxpayer who is a resident tribal member may deduct, to
24 the extent included in adjusted gross income, all nonbusiness
25 income earned or received in the tax year and during the period in
26 which an agreement entered into between the taxpayer's tribe and
27 this state pursuant to section 30c of 1941 PA 122, MCL 205.30c, is

1 in full force and effect. As used in this subdivision:

2 (i) "Business income" means business income as defined in
3 section 4 and apportioned under chapter 3.

4 (ii) "Nonbusiness income" means nonbusiness income as defined
5 in section 14 and, to the extent not included in business income,
6 all of the following:

7 (A) All income derived from wages whether the wages are earned
8 within the agreement area or outside of the agreement area.

9 (B) All interest and passive dividends.

10 (C) All rents and royalties derived from real property located
11 within the agreement area.

12 (D) All rents and royalties derived from tangible personal
13 property, to the extent the personal property is utilized within
14 the agreement area.

15 (E) Capital gains from the sale or exchange of real property
16 located within the agreement area.

17 (F) Capital gains from the sale or exchange of tangible
18 personal property located within the agreement area at the time of
19 sale.

20 (G) Capital gains from the sale or exchange of intangible
21 personal property.

22 (H) All pension income and benefits including, but not limited
23 to, distributions from a 401(k) plan, individual retirement
24 accounts under section 408 of the internal revenue code, or a
25 defined contribution plan, or payments from a defined benefit plan.

26 (I) All per capita payments by the tribe to resident tribal
27 members, without regard to the source of payment.

1 (J) All gaming winnings.

2 (iii) "Resident tribal member" means an individual who meets all
3 of the following criteria:

4 (A) Is an enrolled member of a federally recognized tribe.

5 (B) The individual's tribe has an agreement with this state
6 pursuant to section 30c of 1941 PA 122, MCL 205.30c, that is in
7 full force and effect.

8 (C) The individual's principal place of residence is located
9 within the agreement area as designated in the agreement under sub-
10 subparagraph (B).

11 (2) The following personal exemptions multiplied by the number
12 of personal or dependency exemptions allowable on the taxpayer's
13 federal income tax return pursuant to the internal revenue code
14 shall be subtracted in the calculation that determines taxable
15 income:

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

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

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

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

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

22 (f) Except as otherwise provided in subsection
23 ~~(7)~~ (8), for a tax year beginning after 1996 \$ 2,500.00.

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

27 (a) For tax years beginning after 1989 and before 2000,

1 \$900.00 in each of the following circumstances:

2 (i) The taxpayer is a paraplegic, a quadriplegic, a hemiplegic,
3 a person who is blind as defined in section 504, or a person who is
4 totally and permanently disabled as defined in section 522.

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

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

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

10 (b) For tax years beginning after 1999, \$1,800.00 for each
11 taxpayer and every dependent of the taxpayer who is 65 years of age
12 or older. When a dependent of a taxpayer files an annual return
13 under this act, the taxpayer or dependent of the taxpayer, but not
14 both, may claim the additional exemption allowed under this
15 subdivision. As used in this subdivision and subdivision (c),
16 "dependent" means that term as defined in section 30e.

17 (c) For tax years beginning after 1999, \$1,800.00 for each
18 taxpayer and every dependent of the taxpayer who is a deaf person
19 as defined in section 2 of the deaf persons' interpreters act, 1982
20 PA 204, MCL 393.502; a paraplegic, a quadriplegic, or a hemiplegic;
21 a person who is blind as defined in section 504; or a person who is
22 totally and permanently disabled as defined in section 522. When a
23 dependent of a taxpayer files an annual return under this act, the
24 taxpayer or dependent of the taxpayer, but not both, may claim the
25 additional exemption allowed under this subdivision.

26 (d) For tax years beginning after 1999, \$1,800.00 if the
27 taxpayer's return includes unemployment compensation that amounts

1 to 50% or more of adjusted gross income.

2 (4) For a tax year beginning after 1987, an individual with
3 respect to whom a deduction under section 151 of the internal
4 revenue code is allowable to another federal taxpayer during the
5 tax year is not considered to have an allowable federal exemption
6 for purposes of subsection (2), but may subtract \$500.00 in the
7 calculation that determines taxable income for a tax year beginning
8 in 1988, \$1,000.00 for a tax year beginning after 1988 and before
9 2000, and \$1,500.00 for a tax year beginning after 1999.

10 (5) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2004, A PERSON
11 WHO IS LESS THAN 18 YEARS OF AGE, LIVES WITH HIS OR HER PARENTS OR
12 GUARDIAN, IS ENROLLED IN A K-12 PROGRAM AT A PUBLIC SCHOOL OR
13 PUBLIC SCHOOL ACADEMY, AND IS EMPLOYED AT ANY TIME DURING THE TAX
14 YEAR MAY CLAIM 1 EXEMPTION OF \$2,000.00 IN ADDITION TO ANY OTHER
15 EXEMPTION HE OR SHE IS ELIGIBLE TO CLAIM UNDER THIS SECTION.

16 (6) ~~-(5)-~~ A nonresident or a part-year resident is allowed
17 that proportion of an exemption or deduction allowed under
18 subsection (2), (3), ~~or~~ (4), OR (5) that the taxpayer's portion of
19 adjusted gross income from Michigan sources bears to the taxpayer's
20 total adjusted gross income.

21 (7) ~~-(6)-~~ For a tax year beginning after 1987, in calculating
22 taxable income, a taxpayer shall not subtract from adjusted gross
23 income the amount of prizes won by the taxpayer under the McCauley-
24 Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to
25 432.47.

26 (8) ~~-(7)-~~ For each tax year after the 1997 tax year, the
27 personal exemption allowed under subsection (2) shall be adjusted

1 by multiplying the exemption for the tax year beginning in 1997 by
2 a fraction, the numerator of which is the United States consumer
3 price index for the state fiscal year ending in the tax year prior
4 to the tax year for which the adjustment is being made and the
5 denominator of which is the United States consumer price index for
6 the 1995-96 state fiscal year. The resultant product shall be
7 rounded to the nearest \$100.00 increment. The personal exemption
8 for the tax year shall be determined by adding \$200.00 to that
9 rounded amount. As used in this section, "United States consumer
10 price index" means the United States consumer price index for all
11 urban consumers as defined and reported by the United States
12 department of labor, bureau of labor statistics. For each year
13 after the 2000 tax year, the exemptions allowed under subsection
14 (3) shall be adjusted by multiplying the exemption amount under
15 subsection (3) for the tax year beginning in 2000 by a fraction,
16 the numerator of which is the United States consumer price index
17 for the state fiscal year ending the tax year prior to the tax year
18 for which the adjustment is being made and the denominator of which
19 is the United States consumer price index for the 1998-1999 state
20 fiscal year. The resultant product shall be rounded to the nearest
21 \$100.00 increment.

22 (9) ~~(8)~~ As used in subsection (1)(f), "retirement or pension
23 benefits" means distributions from all of the following:

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

27 (i) Plans for self-employed persons, commonly known as Keogh or

1 HR 10 plans.

2 (ii) Individual retirement accounts that qualify under section
3 408 of the internal revenue code if the distributions are not made
4 until the participant has reached 59-1/2 years of age, except in
5 the case of death, disability, or distributions described by
6 section 72(t)(2)(A)(iv) of the internal revenue code.

7 (iii) Employee annuities or tax-sheltered annuities purchased
8 under section 403(b) of the internal revenue code by organizations
9 exempt under section 501(c)(3) of the internal revenue code, or by
10 public school systems.

11 (iv) Distributions from a 401(k) plan attributable to employee
12 contributions mandated by the plan or attributable to employer
13 contributions.

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

16 (i) Plans of the United States, state governments other than
17 this state, and political subdivisions, agencies, or
18 instrumentalities of this state.

19 (ii) Plans maintained by a church or a convention or
20 association of churches.

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

24 (c) Retirement or pension benefits received by a surviving
25 spouse if those benefits qualified for a deduction prior to the
26 decedent's death. Benefits received by a surviving child are not
27 deductible.

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

2 (i) Amounts received from a plan that allows the employee to
3 set the amount of compensation to be deferred and does not
4 prescribe retirement age or years of service. These plans include,
5 but are not limited to, all of the following:

6 (A) Deferred compensation plans under section 457 of the
7 internal revenue code.

8 (B) Distributions from plans under section 401(k) of the
9 internal revenue code other than plans described in subdivision
10 (a)(iv).

11 (C) Distributions from plans under section 403(b) of the
12 internal revenue code other than plans described in subdivision
13 (a)(iii).

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

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