

**SUBSTITUTE FOR
HOUSE BILL NO. 4512**

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 30 (MCL 206.30), as amended by 2002 PA 615.

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.
- 11 (b) Add taxes on or measured by income to the extent the

1 taxes have been deducted in arriving at adjusted gross income.

2 (c) Add losses on the sale or exchange of obligations of the
3 United States government, the income of which this state is
4 prohibited from subjecting to a net income tax, to the extent
5 that the loss has been deducted in arriving at adjusted gross
6 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
14 premiums, 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
17 services 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
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 \$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)
17 or subdivision (e) and for tax years after the 1996 tax year by
18 the amount of a deduction claimed under subdivision (r). For the
19 1995 tax year and each tax year after 1995, the maximum amounts
20 allowed under this subparagraph shall be adjusted by the
21 percentage increase in the United States consumer price index for
22 the immediately preceding calendar year. The department shall
23 annualize the amounts provided in this subparagraph and
24 subparagraph (iv) as necessary for tax years that end after
25 September 30, 1994. As used in this subparagraph, "senior
26 citizen" means that term as defined in section 514.

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

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

3 (g) Adjustments resulting from the application of section
4 271.

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

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

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

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

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

19 (i) The amount of payment made under an advance tuition
20 payment contract as provided in the Michigan education trust act,
21 1986 PA 316, MCL 390.1421 to 390.1444.

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

25 (A) The contract is certified and approved by the board of
26 directors of the Michigan education trust to provide equivalent
27 benefits and rights to purchasers and beneficiaries as an advance

1 tuition payment contract as described in subparagraph (i).

2 (B) The contract applies only for a state institution of
3 higher education as defined in the Michigan education trust act,
4 1986 PA 316, MCL 390.1421 to 390.1444, or a community or junior
5 college in Michigan.

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

9 (D) The contract is entered into after either of the
10 following:

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

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

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

1 is less.

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

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

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

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

24 (r) After September 30, 1994 and before the 1997 tax year, a
25 taxpayer who is a senior citizen may deduct, to the extent
26 included in adjusted gross income, interest and dividends
27 received in the tax year not to exceed \$1,000.00 for a single

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

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

27 (i) The amount of a refund received in the tax year based on

1 taxes paid under this act.

2 (ii) The amount of a refund received in the tax year based on
3 taxes paid under the city income tax act, 1964 PA 284, MCL
4 141.501 to 141.787.

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

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

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

19 (v) For tax years that begin on and after January 1, 1994,
20 deduct, to the extent included in adjusted gross income, any
21 amount, and any interest earned on that amount, received in the
22 tax year by a taxpayer who is a Holocaust victim as a result of a
23 settlement of claims against any entity or individual for any
24 recovered asset pursuant to the German act regulating unresolved
25 property claims, also known as Gesetz zur Regelung offener
26 Vermögensfragen, as a result of the settlement of the action
27 entitled In re: Holocaust victims assets, CV-96-4849, CV-96-6161,

1 and CV-97-0461 (E.D. NY), or as a result of any similar action if
2 the income and interest are not commingled in any way with and
3 are kept separate from all other funds and assets of the
4 taxpayer. As used in this subdivision:

5 (i) "Holocaust victim" means a person, or the heir or
6 beneficiary of that person, who was persecuted by Nazi Germany or
7 any Axis regime during any period from 1933 to 1945.

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

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

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

27 (ii) The amount under section 30f.

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

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

14 (z) For tax years that begin after December 31, 2000, deduct,
15 to the extent included in adjusted gross income, an amount equal
16 to the qualified charitable distribution made in the tax year by
17 a taxpayer to a charitable organization. The amount allowed
18 under this subdivision shall be equal to the amount deductible by
19 the taxpayer under section 170(c) of the internal revenue code
20 with respect to the qualified charitable distribution in the tax
21 year in which the taxpayer makes the distribution to the
22 qualified charitable organization, reduced by both the amount of
23 the deduction for retirement or pension benefits claimed by the
24 taxpayer under subdivision (f)(i), (ii), (iv), or (v) and by 2
25 times the total amount of credits claimed under sections 260 and
26 261 for the tax year. As used in this subdivision, "qualified
27 charitable distribution" means a distribution of assets to a

1 qualified charitable organization by a taxpayer not more than 60
2 days after the date on which the taxpayer received the assets as
3 a distribution from a retirement or pension plan described in
4 subsection ~~—(8)(a)—~~ **(9)(a)**. A distribution is to a qualified
5 charitable organization if the distribution is made in any of the
6 following circumstances:

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

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

20 (A) The taxpayer who received the distribution from the
21 retirement or pension plan.

22 (B) The spouse of an individual described in sub-subparagraph
23 (A).

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

26 (aa) A taxpayer who is a resident tribal member may deduct,
27 to the extent included in adjusted gross income, all nonbusiness

1 income earned or received in the tax year and during the period
2 in which an agreement entered into between the taxpayer's tribe
3 and this state pursuant to section 30c of 1941 PA 122, MCL
4 205.30c, is in full force and effect. As used in this
5 subdivision:

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

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

11 (A) All income derived from wages whether the wages are
12 earned within the agreement area or outside of the agreement
13 area.

14 (B) All interest and passive dividends.

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

17 (D) All rents and royalties derived from tangible personal
18 property, to the extent the personal property is utilized within
19 the agreement area.

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

22 (F) Capital gains from the sale or exchange of tangible
23 personal property located within the agreement area at the time
24 of sale.

25 (G) Capital gains from the sale or exchange of intangible
26 personal property.

27 (H) All pension income and benefits including, but not

1 limited to, distributions from a 401(k) plan, individual
 2 retirement accounts under section 408 of the internal revenue
 3 code, or a defined contribution plan, or payments from a defined
 4 benefit plan.

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

7 (J) All gaming winnings.

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

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

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

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

17 (2) The following personal exemptions multiplied by the
 18 number of personal or dependency exemptions allowable on the
 19 taxpayer's federal income tax return pursuant to the internal
 20 revenue code shall be subtracted in the calculation that
 21 determines taxable income:

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

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

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

25 (d) For a tax year beginning after 1989 and before
 26 1995..... \$ 2,100.00.

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

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

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

6 (a) For tax years beginning after 1989 and before 2000,
7 \$900.00 in each of the following circumstances:

8 (i) The taxpayer is a paraplegic, a quadriplegic, a
9 hemiplegic, a person who is blind as defined in section 504, or a
10 person who is totally and permanently disabled as defined in
11 section 522.

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

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

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

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

24 (c) For tax years beginning after 1999, \$1,800.00 for each
25 taxpayer and every dependent of the taxpayer who is a deaf person
26 as defined in section 2 of the deaf persons' interpreters act,
27 1982 PA 204, MCL 393.502; a paraplegic, a quadriplegic, or a

1 hemiplegic; a person who is blind as defined in section 504; or a
2 person who is totally and permanently disabled as defined in
3 section 522. When a dependent of a taxpayer files an annual
4 return under this act, the taxpayer or dependent of the taxpayer,
5 but not both, may claim the additional exemption allowed under
6 this subdivision.

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

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

19 (5) For tax years that begin after December 31, 2003, a
20 taxpayer who, during the tax year, provides primary care for his
21 or her eligible parent or grandparent may claim 1 additional
22 exemption of \$1,500.00 if the primary care is preventing the
23 institutionalization of the eligible parent or grandparent. To
24 claim the additional exemption allowed under this subsection, the
25 taxpayer shall attach an affidavit to his or her annual return on
26 which the additional exemption is claimed that states the name,
27 age, address, and social security number of the eligible parent

1 or grandparent; the relationship to the taxpayer; the specific
2 types of primary care that are provided; and the approximate cost
3 of that care. Only 1 additional exemption under this subsection
4 is allowed for any eligible parent or grandparent for any tax
5 year. As used in this subsection:

6 (a) "Eligible parent or grandparent" means a parent or
7 grandparent of the taxpayer who meets the following criteria:

8 (i) He or she lives in his or her own home.

9 (ii) He or she is a senior citizen.

10 (iii) He or she is eligible for nursing home care paid for by
11 medicaid.

12 (b) "Grandparent" means the taxpayer's grandparent or
13 stepgrandparent.

14 (c) "Parent" means the taxpayer's mother, father, stepmother,
15 or stepfather.

16 (d) "Primary care" means activities of daily living provided
17 on a daily basis by the taxpayer himself or herself or by a child
18 who is a dependent of the taxpayer as follows:

19 (i) Personal care including bathing, dressing, and hair and
20 nail care.

21 (ii) Meal planning and preparation.

22 (iii) Grocery shopping and delivery and other errands.

23 (iv) Accompanying to medical, dental, and other health
24 related appointments.

25 (v) Housework, changing bed linens, laundry, and mending.

26 (vi) Medication reminders and administration.

27 (vii) Companionship, reading, hobbies, and social

1 activities.

2 (viii) Yard work.

3 (ix) Pet care and exercise and veterinary appointments.

4 (x) Help with bill paying and other financial matters.

5 (e) "Senior citizen" means that term as defined in section
6 514.

7 (6) ~~—(5)—~~ A nonresident or a part-year resident is allowed
8 that proportion of an exemption or deduction allowed under
9 subsection (2), (3), ~~—or—~~ (4), or (5) that the taxpayer's portion
10 of adjusted gross income from Michigan sources bears to the
11 taxpayer's total adjusted gross income.

12 (7) ~~—(6)—~~ For a tax year beginning after 1987, in calculating
13 taxable income, a taxpayer shall not subtract from adjusted gross
14 income the amount of prizes won by the taxpayer under the
15 McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL
16 432.1 to 432.47.

17 (8) ~~—(7)—~~ For each tax year after the 1997 tax year, the
18 personal exemption allowed under subsection (2) shall be adjusted
19 by multiplying the exemption for the tax year beginning in 1997
20 by a fraction, the numerator of which is the United States
21 consumer price index for the state fiscal year ending in the tax
22 year prior to the tax year for which the adjustment is being made
23 and the denominator of which is the United States consumer price
24 index for the 1995-96 state fiscal year. The resultant product
25 shall be rounded to the nearest \$100.00 increment. The personal
26 exemption for the tax year shall be determined by adding \$200.00
27 to that rounded amount. As used in this section, "United States

1 consumer price index" means the United States consumer price
2 index for all urban consumers as defined and reported by the
3 United States department of labor, bureau of labor statistics.
4 For each year after the 2000 tax year, the exemptions allowed
5 under subsection (3) shall be adjusted by multiplying the
6 exemption amount under subsection (3) for the tax year beginning
7 in 2000 by a fraction, the numerator of which is the United
8 States consumer price index for the state fiscal year ending the
9 tax year prior to the tax year for which the adjustment is being
10 made and the denominator of which is the United States consumer
11 price index for the 1998-1999 state fiscal year. The resultant
12 product shall be rounded to the nearest \$100.00 increment.

13 **(9)** ~~—(8)—~~ As used in subsection (1)(f), "retirement or
14 pension benefits" means distributions from all of the following:

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

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

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

26 (iii) Employee annuities or tax-sheltered annuities purchased
27 under section 403(b) of the internal revenue code by

1 organizations exempt under section 501(c)(3) of the internal
2 revenue code, or by public school systems.

3 (iv) Distributions from a 401(k) plan attributable to
4 employee contributions mandated by the plan or attributable to
5 employer contributions.

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

8 (i) Plans of the United States, state governments other than
9 this state, and political subdivisions, agencies, or
10 instrumentalities of this state.

11 (ii) Plans maintained by a church or a convention or
12 association of churches.

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

16 (c) Retirement or pension benefits received by a surviving
17 spouse if those benefits qualified for a deduction prior to the
18 decedent's death. Benefits received by a surviving child are not
19 deductible.

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

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

25 (A) Deferred compensation plans under section 457 of the
26 internal revenue code.

27 (B) Distributions from plans under section 401(k) of the

1 internal revenue code other than plans described in subdivision
2 (a)(iv).

3 (C) Distributions from plans under section 403(b) of the
4 internal revenue code other than plans described in subdivision
5 (a)(iii).

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

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