

Pension Exclusion and Restoration Act of 2021, Bill 24-0071

**The Committee on Business and Economic Development
The Honorable Kenyan McDuffie, Chairman**

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Good morning, Chairman McDuffie, and members of the Committee on Business and Economic Development. I am Elissa Borges, Assistant General Counsel, for the Office of Tax and Revenue of the District of Columbia. Thank you for the opportunity to provide testimony on behalf of the Office of Tax and Revenue (OTR) on Bill 24-0071, the “Pension Exclusion and Restoration Act of 2021.”

This legislation seeks to amend two sections of Chapter 18 of Title 47 of the D.C. Official Code by restoring and expanding District income tax benefits for (1) retired federal, military and District government employees and (2) taxpayers who itemize deductions and pay long-term care insurance premiums.

- **Section 47-1803.02(a)(2)(N) (Exclusion for pension, military retired pay and annuities)**

The first amendment to D.C. Official Code § 47-1803.02(a)(2)(N) restores and expands an income tax exclusion for certain retirement income received by federal or District government retirees.

By way of background, under District law, in general, the starting point for determining a District resident’s liability for District income tax is the calculation of that taxpayer’s *federal* gross income. Specifically, D.C. Official Code § 47-1803.02 provides that District gross income has the same meaning as gross income under § 61(b) of the Internal Revenue Code. Under Internal Revenue Code § 61(b), all income, from whatever source derived, is included in federal gross income and, therefore, is included in District income tax absent a specific statutory exclusion. D.C. Official Code § 47-1803.02(a)(2) lists over forty such exclusions.

Historically, D.C. Official Code § 47-1803.02(a)(2) excluded pension, military retired pay and annuity income up to \$3,000 received from the District of Columbia or the federal government by persons who are 62 years of age or older. However, the Fiscal Year 2015

Budget Support Act of 2014, effective February 26, 2015 (D.C. Law 20-155), effectively repealed this exclusion for all tax years beginning on or after January 1, 2015 based on the recommendation set forth in the Final Report of the District of Columbia Tax Revision Commission.¹

This bill seeks to restore this exclusion and to increase the limit to \$10,000 for retirees ages 62-63 and \$20,000 for retirees ages 64 and older. OTR can administer this exclusion as contemplated in this bill. However, based on OTR's experience in administering this exclusion prior to 2015, OTR recommends certain technical changes that will provide clarity to both taxpayers and OTR.

For example, in the past, there was confusion in erroneously interpreting this exclusion as providing a \$3,000 exclusion to each spouse for a total exclusion of \$6,000 even when only one spouse was receiving a government pension. To remedy this, OTR suggests changes that will clarify that the exclusion is per government *retiree*, not per *spouse*. OTR also suggests adding express language regarding the specific year to which the statutory change restoring this exclusion will apply. To assist in your review of the bill, a copy of the bill with OTR's suggested changes is attached.

- **Section 47-1803.03(b-1) (Premiums for Long-Term Care Insurance)**

The second amendment to D.C. Official Code § 47-1803.02(a)(2)(N) restores an income tax deduction for individuals for long-term care insurance premiums.

¹ See District of Columbia Tax Revision Commission Final Report, May 2014 at <https://www.dctaxrevisioncommission.org>.

Under D.C. Official Code § 47-1803.03, individuals are generally allowed the same itemized income tax deductions allowed under federal law. However, D.C. Official Code § 47-1803.02 sets forth several specific deductions where District law diverges from federal law by either disallowing specific deductions allowed under federal law or by allowing specific deductions not allowed under federal law. Under federal law, no deduction is allowed for payment of premiums for long-term care insurance. However, D.C. Official Code § 47-1803.03(b-1) historically allowed a deduction for long-term care insurance premiums but that deduction was also effectively repealed for all tax years beginning on or after January 1, 2015, again, based on the recommendation of the Tax Revision Commission.

The Office of Tax and Revenue can administer the long-term care insurance deduction as contemplated in this bill. However, OTR proposes technical and clarifying changes to the legislation. I have attached a mark-up of the bill with OTR's proposed changes to this testimony.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.