S T A T E   O F   N E W   Y O R K

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I N A S S E M B L Y

January 8, 2010

Introduced by M. of A. DelMONTE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to increasing amounts of tax exemptions with respect to pensions and annuities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 3-a of subsection (c) of section 612 of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of [twenty] THIRTY thousand dollars, which are periodic payments attributable to personal services performed by such individual prior to his retirement from employment, which arise (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes. However, the term "pensions and annuities" shall also include distributions received by an individual who has attained the age of fifty-nine and one-half from an individual retirement account or an individual retirement annuity, as defined in section four hundred eight of the internal revenue code, and distributions received by an individual who has attained the age of fifty-nine and one-half from self-employed individual and owner-employee retirement plans which qualify under section four hundred one of the internal revenue code, whether or not the payments are periodic in nature. Nevertheless, the term "pensions and annuities" shall not include any lump sum distribution, as defined in subparagraph (A) of paragraph four of subsection (e) of section four hundred two of the internal revenue code and taxed under section six hundred three of this article. Where a husband and wife file a joint state personal income tax return, the modification provided for in this paragraph shall be computed as if they were filing separate state personal income tax returns. Where a payment would otherwise come within the meaning of the term "pensions and annui-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ties" as set forth in this paragraph, except that such individual is deceased, such payment shall, nevertheless, be treated as a pension or annuity for purposes of this paragraph if such payment is received by such individual's beneficiary.

S 2. Paragraph 3-b of subsection (c) of section 612 of the tax law, as added by chapter 961 of the laws of 1984, subparagraphs (i) and (ii) as amended by chapter 28 of the laws of 1987, is amended to read as follows:

(3-b) (i) Disability income included in federal gross income, to the extent that such disability income would have been excluded from federal gross income pursuant to the provisions of subsection (d) of section one hundred five of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-three as they were in effect immediately prior to the repeal of such subsection. Notwithstanding the foregoing, the sum of disability income excluded pursuant to this paragraph, and pension and annuity income excluded pursuant to paragraph three-a of this subsection, shall not exceed [twenty] THIRTY thousand dollars.

(ii) Notwithstanding subsection (f) of this section, if a husband and wife determine their federal income tax on a joint return but are required to determine their New York income taxes separately, the amounts of exclusion allowed under subparagraph (i) of this paragraph shall be determined in the same joint manner as such amounts would have been determined under the provisions of paragraph five of subsection (d) of section one hundred five of the internal revenue code as such provisions were in effect immediately prior to the repeal of such subsection, but shall be attributed for New York income tax purposes to the spouse who would have been required to report any such amount as income if the spouses had determined their federal income taxes separately.

(iii) Where a husband and wife file a joint state income tax return, the [twenty] THIRTY thousand dollar limitation provided in subparagraph (i) of this paragraph shall be applied as if they were filing separate state income tax returns.

S 3. This act shall take effect immediately and shall apply to all taxable years commencing on or after January 1, 2010.