

Title 4. Flag and Seal, Seat of Government, and the States ([Refs & Annos](#))

☞ [Chapter 4](#). The States ([Refs & Annos](#))

➔ **§ 114. Limitation on State income taxation of certain pension income**

Print date: September, 2006.

(a) No State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State).

(b) For purposes of this section--

(1) The term "retirement income" means any income from--

(A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;

(B) a simplified employee pension as defined in section 408(k) of such Code;

(C) an annuity plan described in section 403(a) of such Code;

(D) an annuity contract described in section 403(b) of such Code;

(E) an individual retirement plan described in section 7701(a)(37) of such Code;

(F) an eligible deferred compensation plan (as defined in section 457 of such Code);

(G) a governmental plan (as defined in section 414(d) of such Code);

(H) a trust described in section 501(c)(18) of such Code; or

(I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code (or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins), if such income--

(i) is part of a series of substantially equal periodic payments (not less frequently than annually) which may include income described in subparagraphs (A) through (H) made for--

(I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(II) a period of not less than 10 years, or

(ii) is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1 or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the "substantially equal periodic payments" test.

- (2) The term "income tax" has the meaning given such term by [section 110\(c\)](#).
- (3) The term "State" includes any political subdivision of a State, the District of Columbia, and the possessions of the United States.
- (4) For purposes of this section, the term "retired partner" is an individual who is described as a partner in [section 7701\(a\)\(2\) of the Internal Revenue Code](#) of 1986 and who is retired under such individual's partnership agreement.
- (e) [\[FN1\]](#) Nothing in this section shall be construed as having any effect on the application of section 514 of the Employee Retirement Income Security Act of 1974.

CREDIT(S)

(Added [Pub.L. 104-95, § 1\(a\)](#), Jan. 10, 1996, 109 Stat. 979; [Pub.L. 109-264, § 1\(a\)](#), Aug. 3, 2006, 120 Stat. 667.)

[\[FN1\]](#) So in original. No subsecs. (c) and (d) were enacted.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. [House Report No. 104-389](#), see 1995 U.S. Code Cong. and Adm. News, p. 1006.

References in Text

The Internal Revenue Code of 1986, referred to in subsec. (b)(1), (4), is classified principally to Title 26.

Section 514 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (e), is [section 514 of Pub.L. 93-406](#), Title I, Sept. 2, 1974, 88 Stat. 897, which is classified to section 1144 of Title 29, Labor.

Codifications

[Pub.L. 109-264, § 1\(a\)\(4\)](#), which directed the addition of par. (4) at the end of section [114\(b\)\(1\)\(I\)](#) of Title 4, was executed by adding par. (4) at the end of subsec. (b), as the probable intent of Congress.

Amendments

2006 Amendments. Subsec. (b)(1)(I). [Pub.L. 109-264, § 1\(a\)\(1\)](#), inserted "(or any plan, program, or arrangement that is in writing, that provides for retirement payments in recognition of prior service to be made to a retired partner, and that is in effect immediately before retirement begins)" after "section 3121(v)(2)(C) of such Code".

[Pub.L. 109-264, § 1\(a\)\(3\)](#), added at the end the following: "The fact that payments may be adjusted from time to time pursuant to such plan, program, or arrangement to limit total disbursements under a predetermined formula, or to provide cost of living or similar adjustments, will not cause the periodic payments provided under such plan, program, or arrangement to fail the 'substantially equal periodic payments' test.".

Subsec. (b)(1)(I)(i). [Pub.L. 109-264, § 1\(a\)\(2\)](#), inserted "which may include income described in subparagraphs (A) through (H)" after "(not less frequently than annually)".

Subsec. (b)(4). [Pub.L. 109-264, § 1\(a\)\(4\)](#), added par. (4).

Effective and Applicability Provisions

2006 Acts. [Pub.L. 109-264, § 1\(b\)](#), Aug. 3, 2006, 120 Stat. 667, provided that: "The amendments made by this section [amending this section] apply to amounts received after December 31, 1995."

1996 Acts. Section 1(c) of [Pub.L. 104-95](#) provided that: "The amendments made by this section [enacting this section] shall apply to amounts received after December 31, 1995."