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April 25, 2011

Dear Representative:

The Michigan State Employee Retirees Association represents over 50,000 state employee retirees. While we recognize the need to address the state's structural deficit of \$1.4 billion, we oppose doing so at the expense of public pensioners.

**First**, taxing the pensions of public employee retirees is unconstitutional under Article IX, Section 24 of the Michigan Constitution. It states:

**§ 24 Public pension plans and retirement systems, obligation.**

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

In 1991, the Attorney General was asked if the tax exemption in Section 40 of the State Employee Retirement System Act constituted accrued financial benefits protected by Mich Const, Art 9, § 24. The Attorney General opined in OAG 1990-1991, No 6697 (December 18, 1991) as follows:

(a) Amending or repealing the public pension tax exemption in the Income Tax Act would not affect the statutory exemption in Section 40 of the State Employee Retirement System Act.

(b) The legislature could repeal or limit the tax exemption for state retirees in the SERS Act, but only prospectively for new members of the retirement system. Existing state retiree benefits cannot be taxed because these benefits are accrued financial benefits protected by Mich Const, Art 9, § 24.

The administration has stated it is relying on a recent Michigan Supreme Court decision, *Studier v Michigan Public School Employees Retirement System*, 472 Mich 642 (2005) to justify its plan to tax public pensions. *Studier* dealt with school employee retiree health care benefits, not public retiree pensions. The *Studier* court concluded that school employee retiree health care benefits were not a contractual property right guaranteed under the Michigan Constitution. The *Studier* analysis and decision simply does not address public employee retiree pensions and offers no basis for concluding that public pensions can be taxed.

**Second**, even if taxing public pensions were not unconstitutional, the compromise plan's effective tax rates on pensioners and seniors is still unacceptable. The proposed elimination of the senior personal exemption of \$2300, the proposed elimination of the senior exemption of \$10,000 for other income from dividends, interest, and capitol gains, and elimination of the senior trigger for a full Homestead Property Tax Credit for qualifying seniors will work an additional hardship.

According to Lieutenant Governor Calley's presentation to the House Tax Policy Committee last week, the plan will eventually have the following effects on taxpayer effective tax rates:

- increase state taxes 420% for seniors with qualifying pensions;
- increase state taxes 40% for seniors without qualifying pensions;
- increase state taxes 6% for non-seniors;
- decrease state taxes 72% for pass-through businesses without certified tax credits; and
- decrease state taxes 58% for C-corporations without certified tax credits.

**Lastly**, about 75% of state employee pensioners have pensions of \$24,000 or less; about one-third have pensions of \$12,000 or less. State employee retirees served this state for many years. They made decisions to retire based on the guarantee in our Michigan Constitution that our pensions would never be taxed and that senior tax preferences would be available.

It is ill-advised for the Legislature to violate the Michigan Constitution and break promises it made to state retirees by amending the Income Tax Act (HB 4361) and the various public employee retirement system acts (HB 4480 – 4484) with the intent of taxing current public pensioners, at whatever age. The elimination of senior exemptions and credits will create additional hardships. We urge a NO vote on these measures.

Sincerely,

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