

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 997
Second Edition Engrossed 5/9/89

Short Title: Retirement Pay Tax Changes.

(Public)

Sponsors: Senator Guy.

Referred to: Pensions & Retirement.

April 25, 1989

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE FIRST TWENTY-FIVE THOUSAND
2 DOLLARS OF PUBLIC OR PRIVATE RETIREMENT PAY SHALL BE
3 EXEMPT FROM INCOME TAX AND TO EQUALIZE RETIREMENT PAY TAX
4 TREATMENT RETROACTIVELY FOR THE 1985 THROUGH 1988 TAX
5 YEARS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 105-141(b)(8), (13), (14), (18), and (30) are repealed.

9 Sec. 2. Effective for taxable years beginning on or after January 1, 1985, and
10 before January 1, 1989, G.S. 105-141(b) is amended by adding a new subdivision to
11 read:

12 "(31) Amounts received as retirement benefits. As used in this
13 subdivision, the term 'retirement benefits' means amounts paid to a
14 former employee or the surviving spouse of a former employee
15 under a written retirement plan established by the employer to
16 provide payments to an employee or the surviving spouse of an
17 employee after the end of the employee's employment with the
18 employer where the right to receive the payments is based upon the
19 employment relationship. With respect to a self-employed
20 individual or the surviving spouse of a self-employed individual,
21 the term means amounts paid to the individual or surviving spouse
22 of the individual under a written retirement plan established by the

1 individual to provide payments to the individual or the surviving
2 spouse of the individual after the end of the self-employment."

3 Sec. 3. Notwithstanding the 30-day time limitation of G.S. 105-267, a
4 taxpayer who has paid income tax on retirement benefits for the 1985, 1986, 1987, or
5 1988 taxable year may, on or before July 1, 1989, demand a refund of the income taxes
6 paid on retirement benefits for these taxable years. If a taxpayer makes such a demand,
7 the taxpayer's payment of taxes on the retirement benefits for these taxable years shall
8 be without prejudice to the taxpayer's claim for a refund based on the exemption of
9 retirement benefits from income taxes provided in Section 2 of this act.

10 Sec. 4. Effective for taxable years beginning on or after January 1, 1989,
11 G.S. 105-141(b)(31), as enacted by Section 2 of this act, reads as rewritten:

12 "(31) Amounts received as retirement ~~benefits~~-benefits during the taxable
13 year from one or more retirement plans, not to exceed a total of
14 twenty-five thousand dollars (\$25,000) in any taxable year. As
15 used in this subdivision, the term 'retirement benefits' means
16 amounts paid to a former employee or the surviving spouse of a
17 former employee under a written retirement plan established by the
18 employer to provide payments to an employee or the surviving
19 spouse of an employee after the end of the employee's employment
20 with the employer where the right to receive the payments is based
21 upon the employment relationship. With respect to a self-
22 employed individual or the surviving spouse of a self-employed
23 individual, the term means amounts paid to the individual or
24 surviving spouse of the individual under a written retirement plan
25 established by the individual to provide payments to the individual
26 or the surviving spouse of the individual after the end of the self-
27 employment."

28 Sec. 5. This act does not affect the rights or liabilities of the State, a taxpayer,
29 or other person arising under a statute amended or repealed by this act before its
30 amendment or repeal; nor does it affect the right to any refund or credit of a tax that
31 would otherwise have been available under the amended or repealed statute before its
32 amendment or repeal.

33 Sec. 6. (a) G.S. 118-49 reads as rewritten:

34 **"§ 118-49. Exemptions of pensions from attachment; rights nonassignable.**

35 Except for the applications of the provisions of G.S. 110-136, and in connection with
36 a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not
37 subject to attachment, garnishments or judgments against the fireman or rescue squad
38 worker entitled to them, nor are any rights in the fund or the pensions or benefits
39 ~~assignable nor are the pensions subject to any State or municipal tax.~~ assignable."

40 (b) G.S. 120-4.29 reads as rewritten:

41 **"§ 120-4.29. Exemption from taxes, garnishment, attachment.**

42 Except for the applications of the provisions of G.S. 110-136, and in connection with
43 a court-ordered equitable distribution under G.S. 50-20, the right of a person to a
44 pension, annuity, or retirement allowance, to the return of contributions, or to the receipt

1 of the pension, annuity or retirement allowance itself, any optional benefit or any other
2 right accrued or accruing to any person under the provisions of this Article, and the
3 moneys in the various funds created by this Article, ~~are exempt from any State or~~
4 ~~municipal tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other
5 process whatsoever, shall be unassignable except as this Article specifically provides.
6 Notwithstanding any provisions to the contrary, any overpayment of benefits to a
7 member in a state-administered retirement system or Disability Salary Continuation
8 Plan may be offset against any retirement allowance, return of contributions or any
9 other right accruing under this Chapter to the same person, the person's estate, or
10 designated beneficiary."

11 (c) G.S. 127A-40(e) is repealed.

12 (d) G.S. 128-31 reads as rewritten:

13 **"§ 128-31. Exemptions from execution.**

14 Except for the applications of the provisions of G.S. 110-136, and in connection with
15 a court-ordered equitable distribution under G.S. 50-20, the right of a person to a
16 pension, an annuity, or a retirement allowance, to the return of contributions, the
17 pension, annuity or retirement allowance itself, any optional benefit or any other right
18 accrued or accruing to any person under the provisions of this Article, and the moneys
19 in the various funds created by this Article, ~~are hereby exempt from any state or municipal~~
20 ~~tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other process
21 whatsoever, and shall be unassignable except as in this Article specifically otherwise
22 provided. Notwithstanding any provisions to the contrary, any overpayment of benefits
23 to a member in a State-administered retirement system or Disability Salary Continuation
24 Plan may be offset against any retirement allowance, return of contributions or any
25 other right accruing under this Chapter to the same person, the person's estate, or
26 designated beneficiary."

27 (e) G.S. 135-9 reads as rewritten:

28 **"§ 135-9. Exemption from taxes, garnishment, attachment, etc.**

29 Except for the applications of the provisions of G.S. 110-136, and in connection with
30 a court-ordered equitable distribution under G.S. 50-20, the right of a person to a
31 pension, or annuity, or a retirement allowance, to the return of contributions, the
32 pension, annuity or retirement allowance itself, any optional benefit or any other right
33 accrued or accruing to any person under the provisions of this Chapter, and the moneys
34 in the various funds created by this Chapter, ~~are hereby exempt from any State or municipal~~
35 ~~tax, and are~~ exempt from levy and sale, garnishment, attachment, or any other process
36 whatsoever, and shall be unassignable except as in this Chapter specifically otherwise
37 provided. Notwithstanding any provisions to the contrary, any overpayment of benefits
38 to a member in a state-administered retirement system or the former Disability Salary
39 Continuation Plan or the Disability Income Plan of North Carolina may be offset against
40 any retirement allowance, return of contributions or any other right accruing under this
41 Chapter to the same person, the person's estate, or designated beneficiary."

42 (f) G.S. 135-95 reads as rewritten:

43 **"§ 135-95. Exemption from taxes, garnishment, attachment.**

1 Except for the applications of the provisions of G.S. 110-136, and in connection with
2 a court-ordered equitable distribution under G.S. 50-20, the right of a member in the
3 Supplemental Retirement Income Plan to the benefits provided under this Article is
4 nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits payable under this~~
5 ~~Article are hereby exempt from any State and local government taxes. and garnishment.~~"

6 (g) G.S. 143-166.30(g) reads as rewritten:

7 "(g) Exemption from ~~Taxes, Garnishment and Attachment.~~ – The right of a
8 participant in the Supplemental Retirement Income Plan to the benefits provided under
9 this Article is nonforfeitable and exempt from levy, sale, ~~garnishment, and the benefits~~
10 ~~payable under this Article are hereby exempt from any State and local government taxes. and~~
11 ~~garnishment.~~"

12 (h) G.S. 143-166.60(h) reads as rewritten:

13 "(h) Exemption from ~~Taxes, Garnishment and Attachment.~~ – The right of a
14 participant in the Separate Insurance Benefits Plan to the benefits provided under this
15 Article is nonforfeitable and exempt from levy, sale, and ~~garnishment, and the benefits~~
16 ~~payable under this Article are exempt from any State and local government taxes.~~
17 ~~garnishment.~~"

18 (i) G.S. 143-166.85(e) is repealed.

19 (j) G.S. 147-9.4 reads as rewritten:

20 "**§ 147-9.4. Deferred Compensation Plan.**

21 Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision
22 of law relating to salaries or salary schedules of State employees, the chief executive
23 officer of an employer, on behalf of the employer, may from time to time enter into a
24 contract with an employee under which the employee irrevocably elects to defer receipt
25 of a portion of his scheduled salary in the future, but only if, as a result of such contract,
26 the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-
27 426.24 or pursuant to some other plan established before 1 January 1983, and is not
28 constructively received by the employee in the year in which it was earned, for State
29 and federal income tax purposes. In addition, the income so deferred shall be invested
30 in the manner provided in the applicable Plan; however, the employee may revoke his
31 election to participate and may amend the amount of compensation to be deferred by
32 signing and filing with the Board a written revocation or amendment on a form and in
33 the manner approved by the Board. Any such revocation or amendment shall be
34 effective prospectively only and shall cause no change in the allocation of amounts
35 invested prior to the filing date of such revocation or amendment.

36 An employee who has agreed to the deferral of income pursuant to the Plan shall
37 have the right to receive the income so deferred only in accordance with the provisions
38 of the Plan. Funds so deferred shall not be in lieu of any amount earned by the
39 employee before his election to defer compensation became effective. The agreement
40 to defer income referred to herein shall be effective under such necessary regulations
41 and procedures as are adopted by the Board, and on forms prepared or approved by it.
42 Notwithstanding any other provisions of law, the amount by which the salary of an
43 employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in
44 computing and making payroll deductions for social security and retirement system

1 purposes, if any, and in computing and providing matching funds for retirement system
2 purposes, if any.

3 Except for the applications of the provisions of G.S. 110-136, and in connection with
4 a court-ordered equitable distribution under G.S. 50-20, the right of an employee, who
5 elects to defer income pursuant to the North Carolina Public Employee Deferred
6 Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the
7 Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment,
8 except as provided by this section, ~~and exempt from all State and local taxation.~~ section."

9 (k) G.S. 161-50.5(e) is repealed.

10 (l) Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the 1969
11 Session Laws are repealed.

12 Sec. 7. Section 2 of this act is effective for taxable years beginning on or
13 after January 1, 1985, and before January 1, 1989. Section 3 of this act is effective
14 retroactively as of January 1, 1985. The remainder of this act is effective for taxable
15 years beginning on or after January 1, 1989.