

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1348

Short Title: Deferred Comp Tax Exempt.

(Public)

Sponsors: Senator Winner.

Referred to: Finance.

May 23, 1990

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM INCOME TAX DEFERRED COMPENSATION
BENEFITS RECEIVED FROM A FEDERAL, STATE, OR LOCAL DEFERRED
COMPENSATION PLAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.1 reads as rewritten:

"§ 105-134.1. Definitions.

The following definitions apply in this Division:

(1) Code. The Internal Revenue Code as enacted as of January 1, 1989, including any provisions enacted as of that date which become effective either before or after that date, but not including sections 63(c)(4) and 151(d)(3).

(1a) Deferred compensation plan. A plan under which a limited portion of the employee's compensation may, upon the election of the employee, be deferred and excluded from income until the employee's retirement, death, disability, separation from service, hardship, or attainment of an age over 57 years.

(2) Department. The Department of Revenue.

(3) Educational institution. An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(4) Fiscal year. Defined in section 441(e) of the Code.

(5) Gross income. Defined in section 61 of the Code.

- 1 (6) Head of household. Defined in section 2(b) of the Code.
2 (7) Individual. A natural person.
3 (8) Married individual. An individual who is married and is considered
4 married as provided in section 7703 of the Code.
5 (9) Nonresident individual. An individual who is not a resident of this
6 State.
7 (10) North Carolina taxable income. Defined in G.S. 105-134.5.
8 (11) Person. An individual, a fiduciary, a partnership, or a corporation.
9 The term includes an officer or employee of a corporation or a member
10 or employee of a partnership who, as officer, employee, or member, is
11 under a duty to perform an act in meeting the requirements of this
12 Division.
13 (12) Resident. An individual who is domiciled in this State at any time
14 during the taxable year or who resides in this State during the taxable
15 year for other than a temporary or transitory purpose. In the absence
16 of convincing proof to the contrary, an individual who is present
17 within the State for more than 183 days during the taxable year is
18 presumed to be a resident, but the absence of an individual from the
19 State for more than 183 days raises no presumption that the individual
20 is not a resident. A resident who removes from the State during a
21 taxable year is considered a resident until he has both established a
22 definite domicile elsewhere and abandoned any domicile in this State.
23 The fact of marriage does not raise any presumption as to domicile or
24 residence.
25 (13) Retirement benefits. Amounts paid to a former employee or the
26 beneficiary of a former employee under a written retirement plan
27 established by the employer to provide payments to an employee or the
28 beneficiary of an employee after the end of the employee's
29 employment with the employer where the right to receive the
30 payments is based upon the employment relationship. With respect to
31 a self-employed individual or the beneficiary of a self-employed
32 individual, the term means amounts paid to the individual or
33 beneficiary of the individual under a written retirement plan
34 established by the individual to provide payments to the individual or
35 the beneficiary of the individual after the end of the self-employment.
36 In addition, the term includes amounts received from an individual
37 retirement account described in section 408 of the Code or from an
38 individual retirement annuity described in section 408 of the Code.
39 The term does not include amounts received from a state, local, or
40 federal government deferred compensation plan. For the purpose of
41 this subdivision, the term 'employee' includes a volunteer worker.
42 (14) S Corporation. Defined in G.S. 105-131(b).
43 (15) Secretary. The Secretary of Revenue.
44 (16) Taxable income. Defined in section 63 of the Code.

- 1 (17) Taxable year. Defined in section 441(b) of the Code.
2 (18) Taxpayer. An individual subject to the tax imposed by this Division.
3 (19) This State. The State of North Carolina."
4 Sec. 2. G.S. 105-134.6(b) reads as rewritten:
5 "(b) Deductions. The following deductions from taxable income shall be made in
6 calculating North Carolina taxable income, to the extent each item is included in gross
7 income:
8 (1) Interest upon the obligations of (i) the United States or its possessions,
9 (ii) this State or a political subdivision of this State, or (iii) a nonprofit
10 educational institution organized or chartered under the laws of this
11 State.
12 (2) Interest upon obligations and gain from the disposition of obligations
13 to the extent the interest or gain is exempt from tax under the laws of
14 this State.
15 (3) Benefits received under Title II of the Social Security Act and amounts
16 received from retirement annuities or pensions paid under the
17 provisions of the Railroad Retirement Act of 1937.
18 (4) Any amount not to exceed one thousand five hundred dollars (\$1,500)
19 received by the taxpayer during the taxable year as compensation for
20 the performance of duties as a member of the North Carolina
21 organized militia, the national guard as defined in G.S. 127A-3.
22 (5) Refunds of State, local, and foreign income taxes included in the
23 taxpayer's gross income.
24 (6) a. An amount, not to exceed four thousand dollars (\$4,000), equal to
25 the sum of the amount calculated in subparagraph b. plus the amount
26 calculated in subparagraph c.
27 b. The amount calculated in this subparagraph is the amount
28 received during the taxable year from one or more state, local,
29 or federal government retirement plans.
30 c. The amount calculated in this subparagraph is the amount
31 received during the taxable year from one or more retirement
32 plans other than state, local, or federal government retirement
33 plans, not to exceed a total of two thousand dollars (\$2,000) in
34 any taxable year.
35 d. In the case of a married couple filing a joint return where both
36 spouses received retirement benefits during the taxable year, the
37 maximum dollar amounts provided in this subdivision for
38 various types of retirement benefits apply separately to each
39 spouse's benefits.
40 (6a) The amount received during the taxable year from one or more state,
41 local, or federal government deferred compensation plans.
42 (7) The amount of inheritance tax attributable to an item of income in
43 respect of a decedent required to be included in gross income under the
44 Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-

1 134.7. The amount of inheritance tax attributable to an item of income
2 in respect of a decedent is (i) the amount by which the inheritance tax
3 paid under Article 1 of this Chapter on property transferred to a
4 beneficiary by a decedent exceeds the amount of inheritance tax that
5 would have been payable by the beneficiary if the item of income in
6 respect of a decedent had not been included in the property transferred
7 to the beneficiary by the decedent, (ii) multiplied by a fraction, the
8 numerator of which is the amount required to be included in gross
9 income for the taxable year under the Code, adjusted as provided in
10 G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of
11 which is the total amount of income in respect of a decedent
12 transferred to the beneficiary by the decedent. For an estate or trust,
13 the deduction allowed by this subdivision shall be computed by
14 excluding from the gross income of the estate or trust the portion, if
15 any, of the items of income in respect of a decedent that are properly
16 paid, credited, or to be distributed to the beneficiaries during the
17 taxable year.

18 The Secretary of Revenue may provide to a beneficiary of an item
19 of income in respect of a decedent any information contained on an
20 inheritance tax return that the beneficiary needs to compute the
21 deduction allowed by this subdivision."

22 Sec. 3. This act is effective for taxable years beginning on or after January 1,

23 1990.