

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2376\*

Short Title: Deferred Comp. Tax Exempt.

(Public)

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Sponsors: Representatives Warren; and Wood.

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Referred to: Finance.

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June 6, 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 BY A PERSON WHO RETIRED BEFORE JANUARY 1, 1990.

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.

- 1 (5) Gross income. Defined in section 61 of the Code.  
2 (6) Head of household. Defined in section 2(b) of the Code.  
3 (7) Individual. A natural person.  
4 (8) Married individual. An individual who is married and is considered  
5 married as provided in section 7703 of the Code.  
6 (9) Nonresident individual. An individual who is not a resident of this  
7 State.  
8 (10) North Carolina taxable income. Defined in G.S. 105-134.5.  
9 (11) Person. An individual, a fiduciary, a partnership, or a corporation.  
10 The term includes an officer or employee of a corporation or a member  
11 or employee of a partnership who, as officer, employee, or member, is  
12 under a duty to perform an act in meeting the requirements of this  
13 Division.  
14 (12) Resident. An individual who is domiciled in this State at any time  
15 during the taxable year or who resides in this State during the taxable  
16 year for other than a temporary or transitory purpose. In the absence  
17 of convincing proof to the contrary, an individual who is present  
18 within the State for more than 183 days during the taxable year is  
19 presumed to be a resident, but the absence of an individual from the  
20 State for more than 183 days raises no presumption that the individual  
21 is not a resident. A resident who removes from the State during a  
22 taxable year is considered a resident until he has both established a  
23 definite domicile elsewhere and abandoned any domicile in this State.  
24 The fact of marriage does not raise any presumption as to domicile or  
25 residence.  
26 (13) Retirement benefits. Amounts paid to a former employee or the  
27 beneficiary of a former employee under a written retirement plan  
28 established by the employer to provide payments to an employee or the  
29 beneficiary of an employee after the end of the employee's  
30 employment with the employer where the right to receive the  
31 payments is based upon the employment relationship. With respect to  
32 a self-employed individual or the beneficiary of a self-employed  
33 individual, the term means amounts paid to the individual or  
34 beneficiary of the individual under a written retirement plan  
35 established by the individual to provide payments to the individual or  
36 the beneficiary of the individual after the end of the self-employment.  
37 In addition, the term includes amounts received from an individual  
38 retirement account described in section 408 of the Code or from an  
39 individual retirement annuity described in section 408 of the Code.  
40 The term does not include amounts received from a state, local, or  
41 federal government deferred compensation plan. For the purpose of  
42 this subdivision, the term 'employee' includes a volunteer worker.  
43 (14) S Corporation. Defined in G.S. 105-131(b).  
44 (15) Secretary. The Secretary of Revenue.

- 1 (16) Taxable income. Defined in section 63 of the Code.  
2 (17) Taxable year. Defined in section 441(b) of the Code.  
3 (18) Taxpayer. An individual subject to the tax imposed by this Division.  
4 (19) This State. The State of North Carolina."

5 Sec. 2. G.S. 105-134.6(b) reads as rewritten:

6 "(b) Deductions. The following deductions from taxable income shall be made in  
7 calculating North Carolina taxable income, to the extent each item is included in gross  
8 income:

- 9 (1) Interest upon the obligations of (i) the United States or its possessions,  
10 (ii) this State or a political subdivision of this State, or (iii) a nonprofit  
11 educational institution organized or chartered under the laws of this  
12 State.  
13 (2) Interest upon obligations and gain from the disposition of obligations  
14 to the extent the interest or gain is exempt from tax under the laws of  
15 this State.  
16 (3) Benefits received under Title II of the Social Security Act and amounts  
17 received from retirement annuities or pensions paid under the  
18 provisions of the Railroad Retirement Act of 1937.  
19 (4) Any amount not to exceed one thousand five hundred dollars (\$1,500)  
20 received by the taxpayer during the taxable year as compensation for  
21 the performance of duties as a member of the North Carolina  
22 organized militia, the national guard as defined in G.S. 127A-3.  
23 (5) Refunds of State, local, and foreign income taxes included in the  
24 taxpayer's gross income.  
25 (6) a. An amount, not to exceed four thousand dollars (\$4,000), equal to  
26 the sum of the amount calculated in subparagraph b. plus the amount  
27 calculated in subparagraph c.  
28 b. The amount calculated in this subparagraph is the amount  
29 received during the taxable year from one or more state, local,  
30 or federal government retirement plans.  
31 c. The amount calculated in this subparagraph is the amount  
32 received during the taxable year from one or more retirement  
33 plans other than state, local, or federal government retirement  
34 plans, not to exceed a total of two thousand dollars (\$2,000) in  
35 any taxable year.  
36 d. In the case of a married couple filing a joint return where both  
37 spouses received retirement benefits during the taxable year, the  
38 maximum dollar amounts provided in this subdivision for  
39 various types of retirement benefits apply separately to each  
40 spouse's benefits.  
41 (6a) The amount received during the taxable year from one or more state,  
42 local, or federal government deferred compensation plans as a result of  
43 the taxpayer's retirement before January 1, 1990.

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

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

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

26          1990.