

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996

CHAPTER 19
HOUSE BILL 30

AN ACT TO REFUND TO FEDERAL RETIREES THE UNCONSTITUTIONAL TAXES THEY PAID ON THEIR PENSIONS FOR TAX YEARS 1985 THROUGH 1988.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.20 reads as rewritten:

"§ 105-151.20. Credit or partial refund for tax paid on certain government-federal retirement benefits.

(a) Purpose; Definitions. – The purpose of this section is to benefit certain retired federal government workers on account of their public service. The following definitions apply in this section:

- (1) Federal retirement benefits. – Retirement benefits received from one or more federal government retirement plans.
- (2) Net pension tax. – The amount of tax a taxpayer paid under this Division for the 1985, 1986, 1987, and 1988 tax years on federal retirement benefits, without interest, less any part of the tax for which the taxpayer received a credit under this section before 1997 and any part of the tax refunded to the taxpayer before 1997.
- (3) Tax year. – The taxpayer's taxable year beginning on a day in the applicable calendar year.

(b) Credit. – A taxpayer who received government-federal retirement benefits during the 1985, 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this Division equal to the net pension tax on those benefits. The amount by which the tax under this Division paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this Division on government retirement benefits for the 1988 tax year, the amount of the refund reduces the amount of the credit allowed under this section.

~~As used in this section, the term "government retirement benefits" means retirement benefits received from one or more state, local, or federal government retirement plans. As used in this section, the term "1988 tax year" means the taxpayer's taxable year beginning on a day in 1988.~~

The credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1990-1996. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced

by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer.

(c) Partial Refund Alternative. – If the amount of tax imposed by this Division on the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits allowed against the tax except payments of tax made by or on behalf of the taxpayer, is less than five percent (5%) of the taxpayer's net pension tax for which credit is allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu of claiming the credit. The partial refund allowed under this subsection is equal to the lesser of eighty-five percent (85%) of the taxpayer's net pension tax or the reduced amount determined by the Secretary as provided in this subsection. To elect the partial refund, an eligible taxpayer must file with the Secretary on or before April 15, 1997, a written request for a partial refund of the taxpayer's net pension. The Secretary shall calculate from these requests eighty-five percent (85%) of the total amount of net pension tax for which partial refunds have been claimed and, if this sum exceeds the amount in the Federal Retiree Refund Account created in this section, shall allocate the amount in the Account among the eligible taxpayers claiming partial refunds by reducing each taxpayer's claimed refund in proportion to the size of the claimed refund. The Secretary shall remit these partial refunds before January 1, 1998.

(d) Substantiation; Deceased Taxpayers. – In order to claim a refund or credit under this section, a taxpayer must provide any information required by the Secretary to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit. In the case of a taxpayer who is deceased, the representative of the taxpayer's estate may claim the refund or credit in the name of the deceased taxpayer.

(e) Federal Retiree Accounts. – There are created in the Department of Revenue two special accounts to be known as the Federal Retiree Refund Account and the Federal Retiree Administration Account. Funds in the Federal Retiree Refund Account shall be spent only for partial refunds pursuant to subsection (c) of this section. The Department of Revenue may use funds in the Federal Retiree Administration Account only for the costs of administering this section. Funds in the Federal Retiree Refund Account and the Federal Retiree Administration Account shall not revert to the General Fund until the Director of the Budget certifies that the Department of Revenue has completed all duties necessary to implement this section, including processing the escheat of refund checks that have not been cashed."

Sec. 2. Effective January 1, 2003, G.S. 105-151.20 is repealed.

Sec. 3. (a) The State Controller shall reserve from the unreserved credit balance as determined on a cash basis remaining in the General Fund at the end of the 1995-96 fiscal year the sum of twenty-five million dollars (\$25,000,000) to the credit of the Federal Retiree Refund Account created in this act. These funds shall be used to make refunds to federal retirees as provided in Section 1 of this act.

(b) The State Controller shall reserve from the unreserved credit balance as determined on a cash basis remaining in the General Fund at the end of the 1995-96 fiscal year the sum of one million two hundred thousand dollars (\$1,200,000) to the credit of the Federal Retiree Administration Account created in this act. These funds

shall be used to administer the credits and refunds to federal retirees as provided in Section 1 of this act.

(c) The earmarking contained in this section comes from the excess of General Fund revenues collected for the 1995-96 fiscal year over prior estimates used in the calculation of General Fund budget availability for the purpose of adopting changes to the 1996-97 General Fund budget. These funds were not included in earlier budget reform statements for proposals to adjust the 1996-97 General Fund budget.

Sec. 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1996. Section 2 of this act is effective January 1, 2003. Section 3 of this act is effective June 30, 1996. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives