

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 792
HOUSE BILL 1311

AN ACT TO PROVIDE INCOME TAX EXEMPTIONS FOR ALL RETIREES AND
TO INCREASE STATE AND LOCAL RETIREMENT BENEFITS.

The General Assembly of North Carolina enacts:

Part I.

Retirement Tax Exemptions.

Section 1.1. G.S. 105-134.6(b), as enacted by Chapter 728 of the 1989 Session Laws, is amended by adding a new subdivision to read:

- "(6) a. An amount, not to exceed four thousand dollars (\$4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.
- b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.
- c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars (\$2,000) in any taxable year.
- d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits."

Sec. 1.2. G.S. 105-134.1(13), as enacted by Senate Bill 51, Chapter 728 of the 1989 Session Laws, reads as rewritten:

- "(13) Retirement benefits. Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or

the beneficiary of the individual after the end of the self-employment. In addition, the term includes amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of the Code. For the purpose of this subdivision, the term 'employee' includes a volunteer worker."

Part II.

Repeal Existing Exemptions.

Sec. 2.1. G.S. 118-49 reads as rewritten:

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

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

Sec. 2.2. G.S. 120-4.29 reads as rewritten:

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

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

Sec. 2.3. G.S. 127A-40(e) is repealed.

Sec. 2.4. G.S. 128-31 reads as rewritten:

"§ 128-31. Exemptions from execution.

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

contributions or any other right accruing under this Chapter to the same person, the person's estate, or designated beneficiary."

Sec. 2.5. G.S. 135-9 reads as rewritten:

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

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

Sec. 2.6. G.S. 135-95 reads as rewritten:

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

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

Sec. 2.7. G.S. 143-166.30(g) reads as rewritten:

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

Sec. 2.8. G.S. 143-166.60(h) reads as rewritten:

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

Sec. 2.9. G.S. 143-166.85(e) is repealed.

Sec. 2.10. G.S. 147-9.4 reads as rewritten:

"§ 147-9.4. Deferred Compensation Plan.

Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a

contract with an employee under which the employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before 1 January 1983, and is not constructively received by the employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

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

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

Sec. 2.11. G.S. 161-50.5(e) is repealed.

Sec. 2.12. Chapter 1307 of the 1979 Session Laws and Chapter 1076 of the 1969 Session Laws are repealed.

Part III.

Retirement Benefits Amendments.

Sec. 3.1. G.S. 135-5(b10) reads as rewritten:

"(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988. 1988, but before July 1, 1989. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

- a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b., c. and d."

Sec. 3.2. G.S. 135-5 is amended by adding a new subsection to read:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service

or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b. c. and d."

Sec. 3.3. G.S. 135-5 is amended by adding a new subsection to read:

"(qq) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (o) of this section or otherwise granted by act of the 1989 Session of the General Assembly."

Sec. 3.4. G.S. 128-27(b10) reads as rewritten:

"(b10) Service Retirement Allowance of Members Retiring on or after July 1, 1988. 1988, but before July 1, 1989. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1988, but before July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. Such allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service, or on or after his 60th birthday upon the completion of 25 years of creditable service, such allowance shall be equal to one and sixty-hundredths percent (1.60%) of his average final compensation, multiplied by the number of years of his creditable service.

- b. Such allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a), (2b) and (3)."

Sec. 3.5. G.S. 128-27 is amended by adding a new section to read:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, 1989. – Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.
 - b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3)."

Sec. 3.6. G.S. 128-27 is amended by adding a new subsection to read:

"(gg) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1989. From and after July 1, 1989, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1989, shall be increased by one and nine-tenths percent (1.9%) of the allowance payable on June 1, 1989. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1989, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1989 Session of the General Assembly."

Sec. 3.7. The State's employer contribution rate budgeted for the University Employees' Optional Retirement Program is increased from eight and seventeen hundredths percent (8.17%), as contained in the Expansion Budget Appropriations Act of 1989, to eight and twenty-seven hundredths percent (8.27%), beginning September 1, 1989.

Sec. 3.8. It is the intention of the First Session of the 1989 General Assembly that the benefit accrual rates of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System be further increased as a result of this act, on or after July 1, 1990, for active and retired members and beneficiaries of the Systems upon the availability of unencumbered actuarial gains in the Retirement Systems for the years ending on or after December 31, 1988, subsequent to the application of such unencumbered actuarial gains for the provisions of G.S. 128-27(k) and G.S. 135-5(o).

Sec. 3.9. Part III of this act shall become effective July 1, 1989. The remainder of this act is effective for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.