

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1216

Short Title: Refund Illegal Taxes.

(Public)

Sponsors: Representatives Redwine; Hill, W. Brown, Allred, Beall, Fox, Hensley, Hunt, H. Hunter, R. Hunter, Hurley, McCrary, Owens, Wainwright, Wilkins, Womble, and Yongue.

Referred to: Finance.

May 16, 1996

A BILL TO BE ENTITLED

**AN ACT TO REFUND THE UNCONSTITUTIONAL INTANGIBLES TAX PAID ON
STOCK AND TO REFUND THE INCOME TAX PAID BY FEDERAL RETIREES
ON THEIR PENSIONS PRIOR TO 1989.**

The General Assembly of North Carolina enacts:

Section 1. This act provides for the refund of the unconstitutional intangibles tax on stock and the refund of State income tax paid by federal retirees on their pensions prior to the 1989 tax year. Funds to pay for the refunds are derived from the credit balance remaining in the General Fund at the end of the 1995-96 and 1996-97 fiscal years. The General Fund will include sufficient funds to pay for these refunds by the end of the 1997-98 fiscal year because:

(1) Funds that would otherwise be reserved to the Savings Reserve Account pursuant to G.S. 143-15.2 and G.S. 143-15.3 will become available beginning this year when the Savings Reserve Account reaches its cap of five percent (5%) of the prior year's General Fund operating budget; and

(2) Funds that would otherwise be reserved to the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.2 and G.S. 143-15.3A will

1 become available beginning this year when the reserve requirement is
2 returned to its pre-1995 level of one and one-half percent (1.5%) of the
3 replacement value of all State buildings supported from the General
4 Fund, as provided in Section 2 of this act.

5 Refunds of intangibles tax to those who paid under protest and have a right to a
6 refund without regard to this act will be paid from these funds during the 1996-97 fiscal
7 year. The remaining refunds will be paid from these funds during the 1997-98 fiscal
8 year.

9 Sec. 2. (a) G.S. 143-15.2 reads as rewritten:

10 **"§ 143-15.2. Use of General Fund credit balance.**

11 The State Controller shall reserve up to one-fourth of any unreserved credit balance,
12 as determined on a cash basis, remaining in the General Fund at the end of each fiscal
13 year to the Savings Reserve Account as provided in G.S. 143-15.3, unless that would
14 result in the Savings Reserve Account having funds in excess of five percent (5%) of the
15 amount appropriated the preceding year for the General Fund operating budget, including
16 local government tax-sharing funds; in that case, only funds sufficient to reach the five
17 percent (5%) level shall be reserved. The State Controller shall also reserve the ~~greater~~
18 lesser of (i) one-fourth of any unreserved credit balance, as determined on a cash basis,
19 remaining in the General Fund and (ii) ~~three percent (3%)~~ one and one-half percent (1.5%)
20 of the replacement value of all State buildings supported from the General Fund, at the
21 end of each fiscal year to the Repairs and Renovations Reserve Account as provided in
22 G.S. 143-15.3A. The General Assembly may appropriate that part of the anticipated
23 General Fund credit balance not expected to be reserved to the Savings Reserve Account
24 or the Repairs and Renovations Reserve Account only for capital improvements or other
25 one-time expenditures. As used in this section, the term 'unreserved credit balance' means
26 the credit balance amount, as determined on a cash basis, before funds are reserved by the
27 Controller to the Savings Reserve Account or the Repairs and Renovations Reserve
28 Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A."

29 (b) G.S. 143-15.3A(a) reads as rewritten:

30 "(a) There is established a Repairs and Renovations Reserve Account as a restricted
31 reserve in the General Fund. The State Controller shall reserve to the Repairs and
32 Renovations Reserve Account the ~~greater~~ lesser of (i) one-fourth of any unreserved credit
33 balance as determined on a cash basis, remaining in the General Fund and (ii) ~~three~~
34 ~~percent (3%)~~ one and one-half percent (1.5%) of the replacement value of all State
35 buildings supported from the General Fund, at the end of each fiscal year. As used in this
36 section, the term 'unreserved credit balance' means the credit balance amount, as
37 determined on a cash basis, before funds are reserved by the Controller to the Savings
38 Reserve Account or the Repairs and Renovations Reserve Account pursuant to this
39 section and G.S. 143-15.3."

40 (c) This section becomes effective June 30, 1996.

41 Sec. 3. Effective retroactively for the 1993 and 1994 tax years, G.S. 105-203
42 is repealed.

43 Sec. 4. G.S. 105-266(c) is amended by adding a new subdivision to read:

1 "(5) Repealed Tax. – If an act of the General Assembly repeals a tax
2 retroactively, each taxpayer's payment of the repealed tax is an
3 overpayment for the purpose of this section except that it shall not bear
4 interest. On the date the act becomes law, the Secretary shall discover
5 these overpayments of the repealed tax; the Secretary's discoveries are
6 timely for the purposes of this section."

7 Sec. 5. If a taxpayer has a right to a refund under G.S. 105-267 of an
8 overpayment of the tax repealed by Section 3 of this act, the refund shall be made
9 pursuant to G.S. 105-267 rather than pursuant to this act. Refunds shall be made pursuant
10 to Section 4 of this act and this section only for overpayments the refund of which would
11 otherwise be barred by G.S. 105-267 if Section 3 of this act had not been enacted.
12 Notwithstanding the provisions of G.S. 105-266(a), refunds of a taxpayer's overpayment
13 of the tax repealed by Section 3 of this act shall be made between July 1 and October 1 of
14 1997.

15 Sec. 6. G.S. 105-151.20 reads as rewritten:

16 "**§ 105-151.20. Credit Refund for tax paid on certain federal government retirement**
17 **benefits.**

18 ~~A taxpayer who received government retirement benefits during the 1988 tax year may~~
19 ~~claim a credit against the tax imposed by this Division equal to the amount by which the~~
20 ~~tax under this Division paid by the taxpayer for the 1988 tax year would have been~~
21 ~~reduced if none of the taxpayer's government retirement benefits had been included in the~~
22 ~~taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this~~
23 ~~Division on government retirement benefits for the 1988 tax year, the amount of the~~
24 ~~refund reduces the amount of the credit allowed under this section.~~

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

29 ~~The credit allowed under this section shall be taken in equal installments over the~~
30 ~~taxpayer's first three taxable years beginning on or after January 1, 1990. The credit~~
31 ~~allowed under this section may not exceed the amount of tax imposed by this Division~~
32 ~~reduced by the sum of all credits allowed against the tax, except payments of tax made by~~
33 ~~or on behalf of the taxpayer.~~

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

37 (1) Federal retirement benefits. – Retirement benefits received from one or
38 more federal government retirement plans.

39 (2) Net pension tax. – The amount of tax a taxpayer paid under this
40 Division for the 1985, 1986, 1987, and 1988 tax years on federal
41 retirement benefits, without interest, less any part of the tax for which
42 the taxpayer received a credit under this section or that was previously
43 refunded to the taxpayer.

1 (3) Tax year. – The taxpayer's taxable year beginning on a day in the
2 applicable calendar year.

3 (b) Request for Refund. – Notwithstanding the time limitations of G.S. 105-267,
4 and subject to the conditions set in this section, if on or before April 15, 1997, a taxpayer
5 or the representative of the estate of a deceased taxpayer requests a refund of the
6 taxpayer's net pension tax, that request shall be timely for the purposes of G.S. 105-267.
7 Notwithstanding the provisions of G.S. 105-266, refunds pursuant to this section that
8 would otherwise be barred by G.S. 105-267 shall bear no interest.

9 (c) Procedure. – The Secretary shall print on the individual income tax instructions
10 for the 1996 tax year a prominent notice of the right to refunds authorized by this section
11 and the procedure for requesting a refund. The Secretary shall also circulate copies of
12 this notice among organizations and individuals the Secretary considers likely to be
13 affected by this section. The Secretary shall verify the amount of each refund requested
14 and pay the refund to the taxpayer between July 1 and December 1 of 1997."

15 Sec. 7. Effective January 1, 1998, G.S. 105-151.20 is repealed.

16 Sec. 8. There is appropriated from the General Fund to the Department of
17 Revenue the sum of two million three hundred thousand dollars (\$2,300,000) for the
18 1996-97 fiscal year to pay for the costs of administering this act. These funds shall not
19 revert until the Director of the Budget certifies that the Department of Revenue has
20 completed all duties necessary to administer this act, including processing the escheat of
21 refund checks that have not been cashed.

22 Sec. 9. This act does not affect the rights or liabilities of the State, a taxpayer,
23 or another person arising under a statute amended or repealed by this act before its
24 amendment or repeal; nor does it affect the right to any refund or credit of a tax that
25 would otherwise have been available under the amended or repealed statute before its
26 amendment or repeal.

27 Sec. 10. Section 2 of this act becomes effective June 30, 1996. Section 3 of
28 this act is effective retroactively for the 1993 and 1994 tax years. Section 7 of this act
29 becomes effective January 1, 1998. Section 8 of this act becomes effective July 1, 1996.
30 The remainder of this act is effective upon ratification.