

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 900
HOUSE BILL 1052

AN ACT TO ALLOW DEDUCTIONS FOR INDIVIDUAL INCOME TAX PURPOSES FOR CONTRIBUTIONS MADE BY AN INDIVIDUAL FOR THE BENEFIT OF HIMSELF AND HIS SPOUSE TO INDIVIDUAL RETIREMENT ACCOUNTS, INDIVIDUAL RETIREMENT ANNUITIES, OR INDIVIDUAL RETIREMENT BONDS WHICH ARE DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES, AND TO EXEMPT FROM INHERITANCE TAX DISTRIBUTIONS FROM SUCH RETIREMENT PLANS WHICH ARE EXCLUDED FROM THE DECEDENT'S GROSS ESTATE FOR FEDERAL ESTATE TAX PURPOSES, AND TO MAKE OTHER TECHNICAL AMENDMENTS TO CHAPTER 105.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-147(20) as it appears in the 1975 Cumulative Supplement to Volume 2D of the General Statutes of North Carolina is hereby amended by striking out "within the income year" in the first line of said subdivision; by adding after the word "benefit" in the ninth line of said subdivision the following: "or for the benefit of himself and his spouse"; by changing the semicolon after the word "hereunder" in the twenty-first line of said subdivision to a period; and by striking out "provided further, that in the case of taxpayers on the accrual basis, they shall be deemed to have made payments on the last day of the year of accrual if actual payments are made within the time fixed by statute for filing the taxpayer's return" which begins on the twenty-second line of said subdivision.

Sec. 2. G.S. 105-3(5) is hereby amended by striking out "other payment receivable by any beneficiary" in the first sentence of said subdivision and inserting in lieu thereof "other payment (other than a lump sum distribution described in Section 402(e)(4) of the United States Internal Revenue Code, determined without regard to the next to the last sentence of Section 402(e)(4)(A) of such code) receivable by any beneficiary"; by striking out "paragraph 3 of Section 401(a)" in the twelfth line of said subdivision and inserting in lieu thereof "Section 403(a)"; and by inserting after the third sentence of said subdivision and before the sentence which begins with the word "Provided" in the twenty-second line thereof the following:

"For purposes of this subdivision, contributions or payments on behalf of the decedent while he was an employee within the meaning of Section 401(c)(1) of the United States Internal Revenue Code made under a trust or plan described in clause (a) or (b) shall, to the extent allowable as a deduction under Section 404 of such code, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent."

Sec. 3. G.S. 105-3 is hereby amended by adding at the end thereof a new subdivision (6) to read as follows:

- "(6) The value of an annuity receivable by any beneficiary (other than the executor) under:
- a. an individual retirement account described in Section 408(a) of the Internal Revenue Code of 1954 as amended,
 - b. an individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1954 as amended, or

- c. a retirement bond described in Section 409(a) of the Internal Revenue Code of 1954 as amended.

If any payment to an account described in paragraph a. or for an annuity described in paragraph b. or a bond described in paragraph c. was not allowable as a deduction under Section 219 or 220 of the Internal Revenue Code of 1954 as amended and was not a rollover contribution described in Section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C) of such code, the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under Section 219 or 220 of such code and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subdivision, the term 'annuity' means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least 36 months after the date of the decedent's death."

Sec. 4. G.S. 105-141(a)(20) as it appears in the 1975 Cumulative Supplement to Volume 2D of the General Statutes of North Carolina is hereby amended, to correct a typographical error in said subdivision, to read as follows:

"(20) Subject to the provisions of G.S. 105-141(b)(4), amounts received or made available from:

- a. Individual retirement accounts described in Section 408(a) of the Internal Revenue Code of 1954 as amended;
- b. Individual retirement annuities described in Section 408(b) of the Internal Revenue Code of 1954 as amended; and
- c. Retirement bonds described in Section 409 of the Internal Revenue Code of 1954 as amended

to the extent such amounts are includable in the recipient's gross income under the Internal Revenue laws of the United States."

Sec. 5. G.S. 105-135 is hereby amended by adding at the end thereof a new subdivision (15) to read as follows:

"(15) the words 'Internal Revenue Code', 'Internal Revenue Code of 1954', 'Internal Revenue Code of 1954 as amended' and 'United States Internal Revenue Code' mean the Internal Revenue Code of 1954 as from time to time amended by the Congress of the United States of America and in effect for the applicable taxable period."

Sec. 6. G.S. 105-141(b)(17) is hereby amended by changing the period at the end of the first sentence of paragraph b. to a semicolon and by adding after said semicolon the following: "provided, however, that in the case of an employee who makes an election under Section 415(c)(4)(D) of the Internal Revenue Code of 1954 as amended to have the provisions of Section 415 apply, the exclusion allowance of the employee shall be computed under the provisions of Section 415 of the Internal Revenue Code of 1954 as amended", and by adding a new paragraph c. immediately following paragraph b. to read as follows:

- "c. For purposes of this division, amounts paid by an employer described in paragraph a. of this subdivision to a custodial account which satisfies the requirements of Section 401(f)(2) of the Internal Revenue Code of 1954 as amended shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee

and are to be invested in regulated investment company stocks to be held in that custodial account. For purposes of this division, a custodial account which satisfies the requirements of Section 401(f)(2) of the Internal Revenue Code of 1954 as amended shall be treated in the same manner as an exempt trust qualifying under the provisions of G.S. 105-161(f)(1)a. solely for purposes of taxing the income earned or received by such account."

Sec. 7. Sections 1, 5 and 6 of this act shall be effective for income years beginning on or after January 1, 1977; Sections 2 and 3 shall be effective for estates of decedents dying after December 31, 1976; and Section 4 shall be effective for income years beginning on or after January 1, 1976.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.