
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #96-1 (TAX)

SUBJECT: Disability Retirement
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-7-435 (Supp. 1994)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's **official advisory opinion** of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Will the retirement income of a person who is permanently and totally disabled remain exempt from South Carolina income taxes under Code Section 12-7-435(g) if such person is required to, or exercises the option to, change from a disability retirement plan to the regular retirement plan?

Conclusion:

The retirement income of a person who is permanently and totally disabled is no longer exempt from South Carolina income taxes under Code Section 12-7-435(g) if such person changes, whether mandatorily or optionally, from a disability retirement plan to the regular retirement plan.

However, such person is entitled to the partial exemption available under Code Section 12-7-435(k) if the income received is from a "qualified retirement plan" as defined in Code Section 12-7-435(k)(6).

Facts:

Employers may provide to their employees a variety of benefits, including health and retirement plans. As part of these plans, employers may also provide a pension type plan for employees who have become permanently and totally disabled, are no longer able to work, and who have not yet become eligible for retirement.

Under many of these "disability retirement" plans, employees who have become permanently and totally disabled and are no longer able to work will receive a monthly annuity. However, once that person reaches the age at which the person would have been eligible for retirement, the disability retirement plan may terminate and the employer's regular retirement plan begins paying the employee's pension or the disability retirement plan converts into the employer's regular retirement plan¹. This places the person in the position that person would have been in if the person had not become disabled and had been able to continue working until eligible for retirement.

The question has arisen as to whether this change in benefit plans changes the taxation of the person's monthly income received through these plans.

Discussion:

South Carolina's income tax structure follows the federal income tax laws. Federal taxable income is the starting point in determining a person's state income tax liability.

South Carolina law allows certain additional adjustments, exemptions, and deductions not allowed under federal law. With respect to disability and retirement income, Code Section 12-7-435² provides in part:

There is allowed as a deduction from South Carolina taxable income of an individual the following amounts:

¹Depending on the benefit plans provided by the employer, the employee may also have the option to change from the disability plan to the regular retirement plan.

²The General Assembly, during the 1995 Session, recodified the State Income Tax. The recodified version has simplified the law by updating language and reorganizing and combining code sections in a logical manner. This law is effective for taxable years beginning after 1995. As such, the provisions of Code Section 12-7-435 can be found in Code Section 12-6-1170 for taxable years beginning after 1995.

* * * *

(g) The amount received for disability retirement due to permanent and total disability by any person who could qualify for the homestead exemption under ' 12-37-250 by reason of being classified as totally and permanently disabled.

* * * *

(k)(1) Beginning with the taxable year in which a taxpayer first receives retirement income, the taxpayer may:

- (A) deduct his retirement income in an amount not to exceed three thousand dollars annually; or
 - (B) elect irrevocably to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer may deduct his retirement income in an amount not to exceed ten thousand dollars annually.
- (2) A taxpayer who does not claim a retirement income deduction before the taxable year in which he attains the age of sixty-five years is considered to have made the election allowed pursuant to subitem (1)(B) of this item.
- (3) A taxpayer who has attained the age of sixty-five years before 1994 is considered to have made the election allowed pursuant to subitem (1)(B) of this item.
- (4) A taxpayer who in 1993 has not yet attained the age of sixty-five years and who receives retirement income in 1993 may:
- (A) deduct his retirement income in an amount not to exceed three thousand dollars annually; or
 - (B) elect irrevocably to defer claiming a retirement income deduction until the taxable year the taxpayer attains the age of sixty-five years, at which time the taxpayer may deduct his retirement income in an amount not to exceed ten thousand dollars annually.

- (5) The deduction allowed by this item extends to the taxpayer's surviving spouse and, to the extent the surviving spouse receives retirement income attributable to the deceased spouse, applies in the same manner that the deduction applied to the deceased spouse. If the surviving spouse also has another retirement income, an additional retirement exclusion is allowed.
- (6) For purposes of this item, "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer's surviving spouse in a taxable year from qualified retirement plans which include those plans defined in Internal Revenue Code Sections 401, 403, 408, and 457, and all public employee retirement plans of federal, state, and local governments, including military retirement for persons with twenty or more years active military duty.

* * * *

- (8) (A) For a taxpayer born in the years 1943 through 1959, where subitems (1), (2), and (4) of this item refer to age sixty-five, the applicable age is sixty-six.
- (B) For a taxpayer born after 1959, where subitems (1), (2), and (4) of this item refer to age sixty-five, the applicable age is sixty-seven.

Therefore, the statute provides two types of deductions for retirement income - one for the entire amount received under a disability retirement plan and one for \$3,000 or \$10,000 (depending on the election made by the retiree) of income received under a "qualified retirement plan".

It is a general rule that the courts, in the interpretation of a statute, may not take, strike, or read anything out of a statute, or delete, subtract, or omit anything therefrom. To the contrary, it is a cardinal rule of statutory construction that significance and effect should, if possible, be accorded to every word, phrase, sentence, and part of an act. 73 Am. Jur. 2d, Statutes, Section 200.

In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). Smalls v. Weed, 293 S.C. 364, 293 S.E.2d 531 (1987).

In giving significance to every word, the word "disability" in describing the deduction allowed under Code Section 12-7-435(g) was inserted in the statute to distinguish the complete deduction for "disability retirement income" from the deduction for retirement income from a qualified retirement plan.

In addition, the clear language of the statute only allows the deduction for disability retirement income. Retirement income received from a qualified retirement plan, as that term is defined in the statute, may only receive the limited deduction provided for under Code Section 12-7-435(k).

Therefore, the retirement income of a person who is permanently and totally disabled is no longer exempt from South Carolina income taxes under Code Section 12-7-435(g) if such person changes, whether mandatorily or optionally, from a disability retirement plan to the regular retirement plan.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

January 8 _____, 1996
Columbia, South Carolina