

1 HB98
2 115897-1
3 By Representative Canfield
4 RFD: Education Appropriations
5 First Read: 12-JAN-10
6 PFD: 01/06/2010

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8 SYNOPSIS: Current state individual income tax law
9 provides for the exemption of retirement income
10 derived from "defined benefit" pension plans.
11 However, the same provision is not currently
12 available for "defined contribution plans."

13 For tax years beginning after December 31,
14 2009, this act would annually phase in, if certain
15 conditions are attained, an increasing exemption up
16 to a maximum of \$10,000 of payments made to a
17 retiree or designated beneficiary under a "defined
18 contribution plan," as defined in Section 414(i) of
19 the Internal Revenue Code, as amended from time to
20 time.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT
25

26 To amend Section 40-18-19, Code of Alabama 1975, to
27 allow an increased exemption for tax years beginning after

1 December 31, 2009, that will annually phase in, if certain
2 conditions are attained, and increase up to a maximum of
3 \$10,000 for payments made to a retiree or designated
4 beneficiary under a "defined contribution plan," as defined in
5 Section 414(i) of the Internal Revenue Code, as amended from
6 time to time.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 40-18-19, Code of Alabama 1975,
9 is amended to read as follows:

10 "§40-18-19.

11 "(a) The following exemptions from income taxation
12 shall be allowed to every individual resident taxpayer:

13 "(1) Retirement allowances, pensions and annuities,
14 or optional allowances, approved by the Board of Control of
15 the Teachers' Retirement System of Alabama, which exempt
16 status is set out in Section 16-25-23.

17 "2 Retirement allowances, pensions and annuities or
18 optional allowances, approved by the Board of Control of the
19 Employees' Retirement System of Alabama, which exempt status
20 is set out in Section 36-27-28.

21 "(3) The first eight thousand dollars (\$8,000) of
22 any retirement compensation, retirement allowances, pensions
23 and annuities, or optional allowances, received by any
24 eligible firefighter, as defined in Sections 36-32-1 and
25 36-32-2, or his or her designated beneficiary, from any
26 firefighting agency established in the State of Alabama, but
27 only if such retirement compensation, retirement allowances,

1 pensions and annuities, or optional allowances as are awarded
2 as a result of fire protection services rendered. This
3 subdivision shall become effective for the taxable years
4 beginning January 1, 1987, and thereafter following its
5 passage and approval by the Governor, or upon its otherwise
6 becoming a law; provided, that for the taxable years beginning
7 on or after January 1, 1991, all of the pension and retirement
8 payments shall be exempt from taxation.

9 "(4) The first eight thousand dollars (\$8,000) of
10 any retirement compensation, retirement allowances, pensions
11 and annuities, or optional allowances received by any eligible
12 peace officer, as defined in subsection (11) of Section
13 36-21-60, or his or her designated beneficiary, from any
14 police retirement system established in the State of Alabama,
15 but only if the retirement compensation, retirement
16 allowances, pensions and annuities, or optional allowances are
17 awarded as a result of police services rendered. This
18 subdivision shall become effective for taxable years beginning
19 January 1, 1984, and thereafter; provided, that for the
20 taxable years beginning on or after January 1, 1991, all of
21 the pension and retirement payments shall be exempt from
22 taxation.

23 "(5) Income received as annuities under the United
24 States Retirement System from the United States Government
25 Civil Service Retirement and Disability Fund including income
26 received from the Tennessee Valley Authority's pension system,
27 income received as annuities under the United States Foreign

1 Service Retirement and Disability Fund or income received from
2 any other United States government retirement and disability
3 fund.

4 "(6) Beginning January 1, 1991, all payments made on
5 or after such date to a retiree or his designated beneficiary
6 under a "defined benefit plan," as defined under Section
7 414(j) of the Internal Revenue Code of 1986, as amended from
8 time to time, to the extent such payment would be taxable for
9 federal income tax purposes.

10 "(7) The first ten thousand dollars (\$10,000) of
11 payments received by a retiree or designated beneficiary under
12 a "defined contribution plan," as defined in Section 414(i) of
13 the Internal Revenue Code, as amended from time to time. In no
14 event shall the exemption provided for in this subdivision be
15 allowed for individuals with adjusted gross income in excess
16 of seventy-five thousand dollars (\$75,000), one hundred fifty
17 thousand dollars (\$150,000) if married filing a joint return.
18 The provisions of this section shall be phased in as provided
19 by Section 2.

20 "~~(7)~~(8) Net income realized by individuals and
21 partnerships from time to time in the business of conducting a
22 financial business employing moneyed capital coming into
23 competition with the business of national banks, but only if
24 such individuals and partnerships are subject to an excise tax
25 imposed by this state on or with respect to such income.

26 "~~(8)~~(9) In the case of a single person or a married
27 person not living with husband or wife, a personal exemption

1 of one thousand five hundred dollars (\$1,500) or, in the case
2 of a head of a family or a married person living with husband
3 or wife, a personal exemption of three thousand dollars
4 (\$3,000), but a husband and wife living together shall receive
5 only one personal exemption of three thousand dollars (\$3,000)
6 against their aggregate income, and in case they make separate
7 returns each must claim a personal exemption of one thousand
8 five hundred dollars (\$1,500).

9 ~~"(9)~~ (10) a. Three hundred dollars (\$300) for each
10 person, other than husband or wife, dependent upon the
11 taxpayer, and over half of whose support, for the calendar
12 year in which the taxable year for the taxpayer begins, was
13 received from the taxpayer.

14 "b. For tax years beginning after December 31, 2006,
15 for taxpayers with adjusted gross income equal to or less than
16 \$20,000, one thousand dollars for each person other than
17 husband or wife, dependent upon the taxpayer, and over half of
18 whose support, for the calendar year in which the taxable year
19 for the taxpayer begins, was received from the taxpayer.

20 "c. For tax years beginning after December 31, 2006,
21 for taxpayers with adjusted gross income in excess of \$20,000
22 and equal to or less than \$100,000, five hundred dollars for
23 each person other than husband and wife, dependent upon the
24 taxpayer, and over half of whose support, for the calendar
25 year in which the taxable year for the taxpayer begins, was
26 received from the taxpayer.

1 "For the purposes of this section, "dependent" shall
2 mean: A son or daughter of the taxpayer or a descendant of
3 either; a stepson or stepdaughter of the taxpayer; a brother,
4 sister, stepbrother, or stepsister of the taxpayer; the father
5 or mother of the taxpayer or an ancestor of either; a
6 stepfather or stepmother of the taxpayer; a son or daughter of
7 a brother or sister of the taxpayer; a brother or sister of
8 the father or mother of the taxpayer; a son-in-law,
9 daughter-in-law, father-in-law, mother-in-law, brother-in-law,
10 or sister-in-law of the taxpayer. As used in this paragraph
11 the terms "brother" and "sister" include a brother or sister
12 by the half blood. For the purpose of determining whether any
13 of the foregoing relationships exist, a legally adopted child
14 of a person shall be considered a child of such a person by
15 blood.

16 "~~(10)~~(11) Beginning January 1, 1998, all income,
17 interest, dividends, gains, or benefits of any kind received
18 from savings accounts or prepaid tuition contracts
19 administered under Title 16, Chapter 33C, are exempt from all
20 income taxation by the state and by all of its political
21 subdivisions to the extent that the amounts remain on deposit
22 in the PACT Trust Fund or the ACES Trust Fund, or are used to
23 pay the designated beneficiary's qualified higher education
24 expenses as defined in Section 529 of the Internal Revenue
25 Code of 1986, as amended, or are refunded under such terms as
26 would not carry a penalty under Section 529 of the Internal
27 Revenue Code of 1986, as amended.

1 "(b) Of the following personal exemptions allowed
2 resident taxpayers, each nonresident individual taxpayer shall
3 be allowed that proportion thereof that the adjusted gross
4 income received by said nonresident individual taxpayer from
5 sources within the State of Alabama bears to his or her
6 adjusted gross income received from sources within and without
7 the State of Alabama: In the case of a single person or a
8 married person not living with husband or wife, a personal
9 exemption of one thousand five hundred dollars (\$1,500) or, in
10 the case of a head of a family or a married person living with
11 husband or wife, a personal exemption of three thousand
12 dollars (\$3,000), a husband and wife living together shall
13 receive but one personal exemption of three thousand dollars
14 (\$3,000) against their aggregate income; and, in case they
15 make separate returns, each must claim a personal exemption of
16 one thousand five hundred dollars (\$1,500); and the amount in
17 subdivision (9) of subsection (a) for each person, other than
18 husband or wife, dependent upon and receiving his chief
19 support from the taxpayer."

20 Section 2. (a) The provisions of Section 1 shall be
21 phased in over a period of four adjustment years in equal
22 installments. An adjustment year is a tax year beginning on or
23 after January 1 following certification by the Department of
24 Finance of sufficient (at least three percent) estimated
25 growth in the Education Trust Fund as described below. Phase
26 one of implementation shall provide for 25 percent of the
27 exemption, phase two shall provide for 50 percent of the

1 exemption and so forth until the exemption is fully phased
2 into effect.

3 (b) Beginning with the 2011 Regular Session of the
4 Legislature, and on an annual basis thereafter until the
5 provisions of this act are fully phased in, the Department of
6 Finance shall certify to the Department of Revenue that the
7 estimated growth in revenues in the Education Trust Fund will
8 or will not equal or exceed three percent in the subsequent
9 fiscal year. The Department of Finance shall provide written
10 certification to the Department of Revenue on or before the
11 second legislative day of each regular legislative session
12 stating the Department of Finance's estimate of revenue growth
13 in the Education Trust Fund for the subsequent fiscal year, as
14 required in Section 41-19-7(b) (3) of the Code of Alabama 1975.
15 Upon receipt of the aforementioned certification, the
16 Department of Revenue will take the actions necessary to
17 implement this act.

18 Section 3. The provisions of this act are severable.
19 If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 which remains.

22 Section 4. All laws or parts of laws which conflict
23 with this act are hereby repealed.

24 Section 5. This act shall become effective for the
25 tax years beginning on or after January 1, 2011.