1977 S.C. Op. Atty. Gen. 324 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-395, 1977 WL 24731

Office of the Attorney General

State of South Carolina
Opinion No. 77-395
December 14, 1977

***1** Defined contribution plans and defined benefit plans are defined in §§ 414(i) and 414(j) of the Internal Revenue Code and the provisions specifically relating thereto in § 401, et seq., of the Revenue Code are incorporated as South Carolina law by the provisions of § 12–7–90 of the 1976 Code of Laws.

TO: Director
Income Tax Division

QUESTION

You have inquired:

Do the provisions of Section 12–7–90 of the South Carolina Code if Laws, 1976, include deferred compensation plans?

STATUTES

Section 12–7–90, South Carolina Code of Laws, 1976; 26 U.S.C.A. 401, et seq.

DISCUSSION

Section 12–7–90 of the 1976 Code, as amended, states:
'The provisions of the Employee Retirement Income Security Act of 1974 (Public Law 93–406) and Tax Reform Act of 1976 as related to income tax treatment of Defined Contribution Plan and Defined Benefit Plan contributions of and benefits to individuals, partnerships, corporations, trusts and associations shall apply for all South Carolina income tax purposes.'

This section incorporates by reference the provisions of the Employee Retirement Income Security Act that relate only to defined contribution plans and defined benefit plans. The applicable sections of the Federal law may be found beginning in the Internal Revenue Code at Section 401 (26 U.S.C.401). Section 414(i) defines a defined contribution plan and Section 414(j) defines a defined benefit plan. Section 415(k) further states:
'For purposes of this title, the term 'defined contribution plan' or 'defined benefit plan' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—
(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) a qualified bond purchase plan described in section 405(a),

(D) an annuity contract described in section 403(b),

(E) an individual retirement account described in section 408(a),

(F) an individual retirement annuity described in section 408(b), or

(G) an individual retirement bond described in section 409.'

We advise that South Carolina law includes those plans as here defined and that the sections of the Revenue Code set forth herein must be applied as regards such plans.

CONCLUSION

Defined contribution plans and defined benefit plans are defined in Sections 414(i) and 414(j) of the Internal Revenue Code and the provisions specifically relating thereto in Section 401, et seq., of the Revenue Code are incorporated as South Carolina law by the provisions of Section 12–7–90 of the 1976 Code of Laws.

G. Lewis Argoe, Jr.
Assistant Attorney General

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