

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 848

Short Title: Conform QTIP Provisions.

(Public)

Sponsors: Senator Daniel.

Referred to: Finance.

May 1, 1991

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA INHERITANCE AND GIFT TAX PROVISIONS TO FEDERAL ESTATE AND GIFT TAX PROVISIONS REGARDING QUALIFIED TERMINABLE INTEREST PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2 is amended by adding a new subsection to read:

"(c) Whenever a person has a qualifying income interest for life in any property and an exemption was allowed with respect to the transfer of the property to that person under G.S. 105-3(11) or under G.S. 105-188(h)(4) by reason of G.S. 105-188.2, that person is, for the purpose of this Article, deemed the owner of the property. At death, the person is deemed to have made a transfer of the property to the person who will benefit from the property unless G.S. 105-188.2(c) applied with respect to a disposition by the decedent of part or all of the property. For the purpose of this Article, property deemed transferred by the decedent under this subsection shall be treated as property passing from the decedent."

Sec. 2. G.S. 105-3 is amended by adding a new subdivision to read:

"(11) Qualified terminable interest property. Qualified terminable interest property shall be treated for purpose of this Article as passing to the surviving spouse of the decedent and no part of the property shall be treated as passing to any person other than the surviving spouse. Qualified terminable interest property is property, or an interest in property, (i) passing from the decedent, (ii) in which the surviving spouse has a qualifying income interest for life, and (iii) as to which an election is made by the personal

1 representative of the decedent's estate on the tax return required by
2 G.S. 105-23. Such an election is irrevocable. As used in this
3 subdivision, the term 'qualifying income interest for life' has the
4 same meaning as under section 2056(b)(7) of the Code. In the case
5 of an annuity included in the gross estate of the decedent under this
6 Article and described in section 2056(b)(7)(C) of the Code, the
7 interest of the surviving spouse shall be treated as a qualifying
8 income interest for life and the personal representative shall be
9 treated as having made an election under this subdivision with
10 respect to the annuity unless the personal representative elects
11 otherwise on the tax return required by G.S. 105-23. Such an
12 election is irrevocable. A specific portion of property shall be
13 treated as separate property."

14 Sec. 3. Article 6 of Chapter 105 of the General Statutes is amended by
15 adding a new section to read as follows:

16 **"§ 105-188.2. Qualified terminable interest property.**

17 (a) For the purposes of this Article, 'qualified terminable interest property' means
18 any property or interest in property:

19 (1) That is transferred by one spouse;

20 (2) In which the other spouse has a qualifying income interest for life;
21 and

22 (3) As to which an election is made on a gift tax return on or before the
23 date prescribed by G.S. 105-191 for filing a gift tax return with
24 respect to the transfer. Such an election is irrevocable. A specific
25 portion of property shall be treated as separate property.

26 The phrase 'qualifying income interest for life' shall have the same meaning as under
27 section 2523(f) of the Code.

28 (b) For purposes of this Article, qualified terminable interest property shall be
29 treated as passing exclusively to one spouse from the other spouse. No part of the
30 property shall be treated as retained in the donor or transferred to any person other than
31 the donee spouse; the donee spouse is deemed the owner of the property.

32 (c) For purposes of this Article and Article 1 of this Chapter, any disposition by
33 the donee spouse of all or part of a qualifying income interest for life in any property as
34 to which an exemption was allowed with respect to the transfer of the property to the
35 donee spouse under G.S. 105-188(h)(4) by reason of this section or under G.S. 105-
36 3(11) shall be treated as a transfer by the donee spouse of all interests in the property
37 other than the qualifying income interest.

38 (d) Qualified terminable interest property is not includable in the gross estate of
39 the donor spouse under Article 1 of this Chapter and any subsequent transfer by the
40 donor spouse of an interest in the property shall not be treated as a transfer for purposes
41 of this Article. This subsection does not apply with respect to any property after the
42 donee spouse is treated as having transferred the property under subsection (c), or after
43 the property is includable in the donee spouse's estate under G.S. 105-2.

1 (e) In the case of an annuity described in section 2523(f)(6) of the Code, the
2 donee spouse's interest shall be treated as a qualifying income interest for life and the
3 donor spouse shall be treated as having made an election under subsection (a) of this
4 section with respect to the annuity unless the donor spouse elects otherwise on the gift
5 tax return on or before the date prescribed by G.S. 105-191 for filing a gift tax return
6 with respect to the transfer. Subsections (c) and (d) do not apply to the donor spouse's
7 interest in the annuity, and, if the donee spouse dies before the donor spouse, no amount
8 is includable in the gross estate of the donee spouse under G.S. 105-2 with respect to the
9 annuity. An election under this subsection is irrevocable."

10 Sec. 4. This act becomes effective July 1, 1991, and applies to the estates of
11 decedents dying on or after that date.