

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1428

Short Title: Inheritance & Gift Tax Changes.

(Public)

Sponsors: Representatives Cansler; Aldridge, Arnold, Barbee, Berry, Brawley, J. Brown, Capps, Carpenter, Clary, Cocklereece, Creech, Eddins, Edwards, Esposito, Hayes, Hightower, Hill, Howard, Hurley, Ives, McComas, McMahan, Neely, Nichols, Rayfield, Reynolds, Russell, Sexton, Sharpe, Sherrill, Shubert, and C. Wilson.

Referred to: Finance.

June 3, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO SIMPLIFY AND REDUCE INHERITANCE TAXES AND REPEAL
3 GIFT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-6.1. Phaseout of inheritance tax.

When this Article imposes an inheritance tax on property transferred by a decedent but no state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax is reduced by the appropriate percentage in the phaseout table set out below. When this Article imposes an inheritance tax on property transferred by a decedent and a state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax that exceeds the maximum credit for state death taxes is reduced by the appropriate percentage in the following phaseout table:

Calendar Year of

Decedent's Death Percentage Reduction

— 1997 20%

1998 40%

1999 60%

2000 80%

2001 and after 100%."

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

"(11) Property transferred to another when the transfer of the property is exempt from federal estate and gift taxes under section 2056(b)(7) of the Code because it is considered qualified terminable interest property."

Sec. 3. G.S. 105-188 is amended by adding a new subsection to read:

"(j) The tax does not apply to property transferred to another when the transfer of the property is exempt from federal estate and gift taxes under section 2523(f) of the Code because it is considered qualified terminable interest property."

Sec. 4. G.S. 105-2(a) reads as rewritten:

1 "(a) A tax shall be and is hereby imposed upon the transfer of any property, real or
2 personal, or of any interest therein or income therefrom, in trust or otherwise, to persons
3 or corporations, in the following cases:

(1) When the transfer is from a person who dies seized of the property while a resident of the State and it is made:

a. By will or by intestacy;

b. Pursuant to a final judgment entered in a proceeding to caveat a will; or

c. Pursuant to a settlement agreement, to which the personal representative is a party, that, in the determination of the Secretary of Revenue in his sole discretion based on evidence presented by the personal representative, reflects the good faith, arm's-length compromise of an actual dispute between beneficiaries, heirs, or personal representatives and does not have the primary purpose of avoiding inheritance tax.

(2) When the transfer is by will or intestate laws of this or any other state of real property or goods, wares, and merchandise within this State, or of any property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has a taxing jurisdiction, including State and municipal bonds, and the decedent was a resident of the State at the time of death; when the transfer is of real property or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, and the decedent was a nonresident of the State at the time of death.

(3) When the transfer of property made by a resident, or nonresident, is of real property within this State, or of goods, wares and merchandise within this State, or of any other property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has taxing jurisdiction, including State and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (i) the possession or enjoyment of, or the income from, the property or (ii) the right to designate the persons who shall possess or enjoy the property

or the income therefrom. The aggregate value exceeding ten thousand dollars (\$10,000) of transfers to any one donee within a tax year by deed, grant, bargain, sale, gift, or combination thereof, made within three years prior to the death of the grantor, vendor, or donor, without an adequate valuable consideration, shall be presumed, subject to rebuttal, to have been made in contemplation of death within the meaning of this section; the first ten thousand dollars (\$10,000) in value shall be deemed not made in contemplation of death.

(4) When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a nonresident decedent when such nonresident decedent's property consists of real property within this State or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939.

(5) a. For purposes of this Article, the term 'general power of appointment' means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that:

1. A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment.

2. A power of appointment which is exercisable by the decedent only in conjunction with another person:

I. If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment.

II. If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

III. If (after the application of clauses I and II) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

IV. For purposes of clauses II and III, a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

b. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall, for the purposes of this Article, be deemed the owner of such interest and accordingly:

1. If in connection with any transfer of property taxable under this Article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor shall be deemed to have given such interest in such property to such person.

2. If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, either by will or by an appointment made in contemplation of the death of such person, or by an appointment intended to take effect in possession or enjoyment at or after such death, he shall be deemed to have made a transfer of such interest to such person or persons.

3. If any person holding a general power of appointment with respect to any interest in property shall relinquish such power by any action taken in contemplation of death or intended to take effect at or after his death, or shall die without fully exercising such power, he shall be deemed, to the extent of such relinquishment or nonexercise, to have made a transfer of such interest to the person or persons who shall benefit thereby.

(6) Neither the exercise nor the relinquishment of a special power of appointment (which shall mean any power other than a general power) with respect to an interest in property shall be deemed to constitute a transfer of such interest within the meaning of this Article. If in connection with any transfer taxable under this Article the transferor shall give to any person a special power of appointment with respect to any interest in property, he shall be deemed, for the purpose of computing the tax applicable thereto, to have given such interest in equal shares to those persons, not more than two, among the possible appointees and takers in default of appointment whom the transferor's executor or administrator may designate as transferees in the inheritance tax return, except that:

a. If a gift tax return is filed with respect to such transfer, the persons designated therein shall also be designated in the inheritance tax return, and

b. The tax shall be computed according to the relationship of the donee of the power to the persons designated if the possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and if such computation would produce a higher tax.

(7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.

(8) Where the proceeds of life insurance policies are payable as provided in G.S. 105-13.

(9) Whenever any person or corporation comes into possession or enjoyment of any real or personal property, including bonds of the United States and bonds of a state or subdivision or agency thereof, at or after the death of an individual and by reason of said individual's having entered into a contract or other arrangement with the United States, a state or any person or corporation to pay, transfer or deliver said real or personal property, including bonds of the United States and bonds of a state, to the person or corporation receiving the same, whether said person or corporation is named in the contract or other arrangement or not: Provided, that no tax shall be due or collected on

that portion of the real or personal property received under the conditions outlined herein which the person or corporation receiving the same purchased or otherwise acquired by funds or property of the person or corporation receiving the same, or had acquired by a completed inter vivos gift.

Nothing in subdivision (9) shall apply to the proceeds of life insurance policies.

(10) Upon the death of a decedent who had a qualifying income interest for life in qualified terminable interest property whose previous transfer was exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-188(j), the qualified terminable interest property that was previously exempt is considered to pass from the decedent to the person who is entitled to the property upon the termination of the decedent's qualifying income interest for life. This subdivision does not apply to an interest in qualified terminable interest property that the decedent transferred to another and was not part of the decedent's qualifying income interest for life.

However, nothing in this Article shall be construed as imposing a tax upon any transfer of intangibles not having a commercial or business situs in this State, by a person, or by reason of the death of a person, who was not a resident of this State at the time of his death, and, if held or transferred in trust, such intangibles shall not be deemed to have a commercial or business situs in this State merely because the trustee is a resident or, if a corporation, is doing business in this State, unless the same be employed in or held or used in connection with some business carried on in whole or in part in this State."

Sec. 5. G.S. 105-9(8) reads as rewritten:

"(8) Costs of ~~administration, including~~ administration not claimed as a deduction on the federal income tax return filed under the Code by the fiduciary for the decedent's estate. Costs of administration include reasonable attorneys' fees."

Sec. 6. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-23.1. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section."

Sec. 7. Effective January 1, 1999, Article 6 of Chapter 105 of the General Statutes is repealed.

Sec. 8. Effective January 1, 2001, Article 1 of Chapter 105 of the General Statutes is repealed.

Sec. 9. Effective January 1, 2001, Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Estate Taxes."§ 105-32.1. Definitions.

The following definitions apply in this Article:

- (1) Code. – Defined in G.S. 105-228.90.
- (2) Personal representative. – The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.
- (3) Secretary. – Defined in G.S. 105-228.90.

"§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.

(a) Tax. – An estate tax is imposed on the transfer of the estate of a decedent when a federal estate tax is imposed on the transfer of the estate under section 2001 of the Code and any of the following apply:

- (1) The decedent was a resident of this State at death.
- (2) The decedent was not a resident of this State at death and owned any of the following:
 - a. Real property or tangible personal property that is located in this State.
 - b. Intangible personal property that has a tax situs in this State.

- 1 (b) Amount. – The amount of the estate tax imposed by this section is the
- 2 maximum credit for state death taxes allowed under section 2011 of the Code. If
- 3 property in the estate is located in a state other than North Carolina, the amount of tax
- 4 payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of real property in the estate that is located in North Carolina plus the net value of all personal property in the estate that does not have a tax situs in another state, divided by the net value of all the property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property in the estate that is located in North Carolina plus the net value of any personal property in the estate that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine the North Carolina percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts of the estate.

"§ 105-32.3. Liability for estate tax.

- 5 (a) Primary. – The tax imposed by this Article is payable from the assets of the
- 6 estate. A person who receives property from an estate is liable for the amount of estate
- 7 tax attributable to that property.

(b) Personal Representative. – The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the

personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

1 (c) Clerk of Court. – A clerk of court who allows a personal representative to
2 make a final settlement of an estate without presenting one of the following is liable on
3 the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the
estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has
been satisfied.

"§ 105-32.4. Payment of estate tax.

4 (a) Due Date. – The estate tax imposed by this Article is due when an estate tax
5 return is due. An estate tax return is due on the date a federal estate tax return is due.

6 (b) Filing Return. – An estate tax return must be filed under this Article if a federal
7 estate tax return is required. The return must be filed by the personal representative of
8 the estate on a form provided by the Secretary.

9 (c) Extension. – An extension of time to file a federal estate tax return is an
10 automatic extension of the time to file an estate tax return under this Article. The
11 Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate
12 tax imposed by this Article or for filing an estate tax return.

13 (d) Interest and Penalties. – The penalties in G.S. 105-236 apply to the failure to
14 file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S.
15 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. – The personal representative of an estate may sell assets in
the estate to obtain money to pay the tax imposed by this Article.

"§ 105-32.5. Making installment payments of tax due when federal estate tax is payable
in installments.

A personal representative who elects under section 6166 of the Code to make installment
payments of federal estate tax may elect to make installment payments of the tax imposed
by this Article. An election under this section extends the time for payment of the tax due
in accordance with the extension elected under section 6166 of the Code. Payments of
tax are due under this section at the same time and in the same proportion to the total
amount of tax due as payments of federal estate tax under section 6166 of the Code.
Acceleration of payments under section 6166 of the Code accelerates the payments due
under this section.

"§ 105-32.6. Estate tax is a lien on property in the estate.

The tax imposed by this Article on an estate is a lien on the real property in the estate and
on the proceeds of the sale of the real property in the estate. The lien is extinguished
when one of the following occurs:

(1) The personal representative certifies to the clerk of court that no tax is due on the
estate because this Article does not require an estate tax return to be filed for that estate.

(2) The Secretary issues a certificate stating that the tax liability of the estate has been
satisfied.

(3) For specific real property, when the Secretary issues a tax waiver for that property.

(4) Ten years have elapsed since the date of the decedent's death.

"§ 105-32.7. Federal determination that changes the maximum state death tax credit allowed.

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. The Secretary must assess and collect any additional tax due on the estate as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A personal representative who fails to report a federal correction or determination is subject to the penalties in G.S. 105-236 and forfeits the right of the estate to any refund due by reason of the determination.

"§ 105-32.8. Generation-skipping transfer tax.

1 (a) Tax. – A tax is imposed on a generation-skipping transfer that is subject to the
2 tax imposed by Chapter 13 of Subtitle B of the Code in the following circumstances:

(1) When the original transferor is a resident of this State at the date of the original transfer. In this circumstance, the tax is the amount of the credit for State generation-skipping transfer taxes allowed under section 2604 of the Code that exceeds the amount of taxes paid on the transfer to all states other than this State.

(2) When the original transferor is not a resident of this State at the date of the original transfer and the transfer includes real or personal property with a situs in this State. In this circumstance, the tax is the amount of the credit for State generation-skipping transfer taxes allowed under section 2604 of the Code, reduced by an amount that bears the same ratio to the federal credit as the value of the transferred property taxable by all states other than this State bears to the gross value of the generation-skipping transfer.

(b) Payment. – The tax imposed by this section is due when a return is due. A return is due the same date as the federal return for payment of the federal generation-skipping transfer tax. The tax is payable by the person who is liable for the federal generation-skipping transfer tax."

Sec. 10. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 11. Sections 1 through 4 of this act become effective January 1, 1997, and apply to the estates of decedents dying on or after that date. Sections 5 and 6 of this act become effective July 1, 1996, and apply to the estates of decedents dying on or after that date. Section 7 of this act becomes effective January 1, 1999, and applies to gifts made on or after that date. Sections 8 and 9 of this act become effective January 1, 2001, and apply to the estates of decedents dying on or after that date. The remainder of this act is effective upon ratification.