

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1577

Short Title: Simplify & Reduce Death Tax.

(Public)

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Sponsors: Senators Blust; Ballantine, Forrester, Horton, and Moore.

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Referred to: Finance.

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June 1, 1998

1 A BILL TO BE ENTITLED  
2 AN ACT TO SIMPLIFY AND REDUCE DEATH TAXES BY REPLACING THE  
3 NORTH CAROLINA INHERITANCE TAX WITH A STATE ESTATE TAX  
4 BASED ON THE FEDERAL ESTATE TAX.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 1 of Chapter 105 of the General Statutes is repealed.

7 Section 2. Chapter 105 of the General Statutes is amended by adding a new  
8 Article to read:

9 **"ARTICLE 1A.**

10 **"ESTATE TAXES.**

11 **"§ 105-32.1. Definitions.**

12 The following definitions apply in this Article:

13 (1) Code. – Defined in G.S. 105-228.90.

14 (2) Personal representative. – The person appointed by the clerk of superior  
15 court under Chapter 28A of the General Statutes to administer the estate  
16 of a decedent or, if no one is appointed under that Chapter, the person  
17 required to file a federal estate tax return for the estate of the decedent.

18 (3) Secretary. – Defined in G.S. 105-228.90.

19 **"§ 105-32.2. Estate tax imposed.**

1 (a) Tax. – An estate tax is imposed on the North Carolina taxable estate of a  
 2 decedent when a federal estate tax is imposed on the decedent's estate under section 2001  
 3 of the Code and any of the following apply:

4 (1) The decedent was a resident of this State at death.

5 (2) The decedent was not a resident of this State at death and owned any of  
 6 the following:

7 a. Real property or tangible personal property that is located in this  
 8 State.

9 b. Intangible personal property that has a tax situs in this State.

10 (b) Amount. – The amount of the estate tax imposed by this section is the base  
 11 amount calculated in subsection (c) of this section, minus the credit against the base  
 12 amount calculated in subsection (d) of this section, plus the pick-up amount, if any,  
 13 calculated in subsection (e) of this section.

14 (c) Base Amount. – The base amount is a tax at the following rates for each one  
 15 hundred dollars (\$100.00) of value of the decedent's North Carolina taxable estate:First \$  
 16 10,000 1 percent

17 Over \$ 10,000 and to \$ 25,000 2 percent

18 Over \$ 25,000 and to \$ 50,000 3 percent

19 Over \$ 50,000 and to \$ 100,000 4 percent

20 Over \$ 100,000 and to \$ 200,000 5 percent

21 Over \$ 200,000 and to \$ 500,000 6 percent

22 Over \$ 500,000 and to \$1,000,000 7 percent

23 Over \$1,000,000 and to \$1,500,000 8 percent

24 Over \$1,500,000 and to \$2,000,000 9 percent

25 Over \$2,000,000 and to \$2,500,000 10 percent

26 Over \$2,500,000 and to \$3,000,000 11 percent

27 Over \$3,000,000 12 percent(d)

28 Credit Against

29 Base Amount. – A

30 credit is allowed

31 against the base

32 amount equal to

33 what the base

34 amount would be

35 if the value of the

36 decedent's taxable

37 estate under the

38 Code were equal to

39 the applicable

40 exclusion amount

41 provided in section

42 2010(c) of the

43 Code based on the

1 date of the  
2 decedent's death.  
3 If the decedent's  
4 taxable estate  
5 under the Code  
6 exceeds ten  
7 million dollars  
8 (\$10,000,000), the  
9 credit amount is  
10 reduced by five  
11 percent (5%) of the  
12 amount by which  
13 the decedent's  
14 taxable estate  
15 under the Code  
16 exceeds ten  
17 million dollars  
18 (\$10,000,000).  
19 The credit may not  
20 exceed the base  
21 amount.

22 (e) Pick-Up Amount. – The pick-up amount is the amount, if any, by which the  
23 applicable federal credit for state death taxes exceeds the base amount minus the credit  
24 against the base amount. If no property in the estate is located in a state other than North  
25 Carolina, the applicable federal credit for state death taxes is the maximum credit for  
26 state death taxes allowed under section 2011 of the Code. If any property in the estate is  
27 located in a state other than North Carolina, the applicable federal credit for state death  
28 taxes is the North Carolina percentage of the maximum credit for state death taxes  
29 allowed under section 2011 of the Code.

30 (f) North Carolina Taxable Estate. – If no property in the estate is located in a  
31 state other than North Carolina, the North Carolina taxable estate is the decedent's taxable  
32 estate under the Code. If any property in the estate is located in a state other than North  
33 Carolina, the North Carolina taxable estate is the North Carolina percentage of the  
34 decedent's taxable estate under the Code.

35 (g) North Carolina Percentage. – If the decedent was a resident of this State at  
36 death, the North Carolina percentage is the net value of the estate that does not have a tax  
37 situs in another state, divided by the net value of all property in the estate. If the decedent  
38 was not a resident of this State at death, the North Carolina percentage is the net value of  
39 real property that is located in North Carolina plus the net value of any personal property  
40 that has a tax situs in North Carolina, divided by the net value of all property in the estate,  
41 unless the decedent's state of residence uses a different formula to determine that state's  
42 percentage. In that circumstance, the North Carolina percentage is the amount  
43 determined by the formula used by the decedent's state of residence.

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

4 **"§ 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.

8       (b) Personal Representative. – The personal representative of an estate is liable for  
9 an estate tax that is not paid within two years after it was due. This liability is limited to  
10 the value of the assets of the estate that were under the control of the personal  
11 representative. The amount for which the personal representative is liable may be  
12 recovered from the personal representative or from the surety on any bond filed by the  
13 personal representative under Article 8 of Chapter 28A of the General Statutes.

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

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

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

22 **"§ 105-32.4. Payment of estate tax.**

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

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

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

32       (d) Interest and Penalties. – The penalties in G.S. 105-236 apply to the failure to  
33 file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S.  
34 105-241.1 accrues on estate taxes paid after the date they are due.

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

37 **"§ 105-32.5. Making installment payments of tax due when federal estate tax is**  
38 **payable in installments.**

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

1 the total amount of tax due as payments of federal estate tax under section 6166 of the  
2 Code. Acceleration of payments under section 6166 of the Code accelerates the  
3 payments due under this section.

4 **"§ 105-32.6. Estate tax is a lien on real property in the estate.**

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

- 8 (1) The personal representative certifies to the clerk of court that no tax is  
9 due on the estate because this Article does not require an estate tax  
10 return to be filed for that estate.
- 11 (2) The Secretary issues a certificate stating that the tax liability of the  
12 estate has been satisfied.
- 13 (3) For specific real property, when the Secretary issues a tax waiver for  
14 that property.
- 15 (4) Ten years have elapsed since the date of the decedent's death.

16 **"§ 105-32.7. Generation-skipping transfer tax.**

17 (a) Tax. – A tax is imposed on a generation-skipping transfer that is subject to the  
18 tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

- 19 (1) The original transferor is a resident of this State at the date of the  
20 original transfer.
- 21 (2) The original transferor is not a resident of this State at the date of the  
22 original transfer and the transfer includes any of the following:
  - 23 a. Real or tangible personal property that is located in this State.
  - 24 b. Intangible personal property that has a tax situs in this State.

25 (b) Amount. – The amount of the tax imposed by this section is the maximum  
26 credit for state generation-skipping transfer taxes allowed under section 2604 of the  
27 Code. If property in the transfer is located in a state other than North Carolina, the  
28 amount of tax payable is the North Carolina percentage of the credit.

29 If the original transferor was a resident of this State at the date of the original transfer,  
30 the North Carolina percentage is the net value of the property transferred that does not  
31 have a tax situs in another state, divided by the net value of all property transferred. If  
32 the original transferor was not a resident of this State at the date of the original transfer,  
33 the North Carolina percentage is the net value of real property that is located in North  
34 Carolina plus the net value of any personal property that has a tax situs in North Carolina,  
35 divided by the net value of all property transferred, unless the original transferor's state of  
36 residence uses a different formula to determine that state's percentage. In that  
37 circumstance, the North Carolina percentage is the amount determined by the formula  
38 used by the original transferor's state of residence.

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

42 (c) Payment. – The tax imposed by this section is due when a return is due. A  
43 return is due the same date as the federal return for payment of the federal generation-

1 skipping transfer tax. The tax is payable by the person who is liable for the federal  
2 generation-skipping transfer tax.

3 **"§ 105-32.8. Federal determination that changes the amount of tax payable to the**  
4 **State.**

5 If the federal government corrects or otherwise determines the amount of the  
6 maximum state death tax credit allowed an estate under section 6166 of the Code, the  
7 personal representative must, within two years after being notified of the correction or  
8 final determination by the federal government, file an estate tax return with the Secretary  
9 reflecting the correct amount of tax payable under this Article. If the federal government  
10 corrects or otherwise determines the amount of the maximum state generation-skipping  
11 transfer tax credit allowed under section 2604 of the Code, the person who made the  
12 transfer must, within two years after being notified of the correction or final  
13 determination by the federal government, file a tax return with the Secretary reflecting  
14 the correct amount of tax payable under this Article.

15 The Secretary must assess and collect any additional tax due as provided in Article 9  
16 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this  
17 Chapter. A person who fails to report a federal correction or determination in accordance  
18 with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any  
19 refund due by reason of the determination."

20 Section 3. This act does not affect the rights or liabilities of the State, a  
21 taxpayer, or another person arising under a statute amended or repealed by this act before  
22 the effective date of its amendment or repeal; nor does it affect the right to any refund or  
23 credit of a tax that was available under the amended or repealed statute before the  
24 effective date of its amendment or repeal.

25 Section 4. This act becomes effective January 1, 1999, and applies to the  
26 estates of decedents dying on or after that date.