

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1385

Short Title: Reform Death Tax.

(Public)

Sponsors: Senator Gulley.

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO MAKE STATE TAXES SIMPLER AND FAIRER BY REPEALING THE
NORTH CAROLINA INHERITANCE TAX AND SUBSTITUTING A STATE
ESTATE TAX BASED ON THE FEDERAL STATE DEATH TAX CREDIT.

The General Assembly of North Carolina enacts:

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 Article 1 of Chapter 105 of the General Statutes is repealed.

Section 2. 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.

1 (a) Tax. – An estate tax is imposed on the estate of a decedent when a federal
2 estate tax is imposed on the estate under section 2001 of the Code and any of the
3 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. – If no property in the estate is located in a state other than North
11 Carolina, the amount of the estate tax imposed by this section is two hundred percent
12 (200%) of the maximum credit for state death taxes allowed under section 2011 of the
13 Code. If any property in the estate is located in a state other than North Carolina, the
14 amount of tax payable is two hundred percent (200%) of the North Carolina percentage
15 of the credit.

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

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

28 **"§ 105-32.3. Liability for estate tax.**

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

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

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

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

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

3 **"§ 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.

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

18 **"§ 105-32.5. Making installment payments of tax due when federal estate tax is**
19 **payable in installments.**

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

28 **"§ 105-32.6. Estate tax is a lien on real property in the estate.**

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

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

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

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

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

40 **"§ 105-32.7. Generation-skipping transfer tax.**

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

1 (1) The original transferor is a resident of this State at the date of the
2 original transfer.

3 (2) The original transferor is not a resident of this State at the date of the
4 original transfer and the transfer includes any of the following:

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

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

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

11 If the original transferor was a resident of this State at the date of the original transfer,
12 the North Carolina percentage is the net value of the property transferred that does not
13 have a tax situs in another state, divided by the net value of all property transferred. If
14 the original transferor was not a resident of this State at the date of the original transfer,
15 the North Carolina percentage is the net value of real property that is located in North
16 Carolina plus the net value of any personal property that has a tax situs in North Carolina,
17 divided by the net value of all property transferred, unless the original transferor's state of
18 residence uses a different formula to determine that state's percentage. In that
19 circumstance, the North Carolina percentage is the amount determined by the formula
20 used by the original transferor's state of residence.

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

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

28 **"§ 105-32.8. Federal determination that changes the amount of tax payable to the**
29 **State.**

30 If the federal government corrects or otherwise determines the amount of the
31 maximum state death tax credit allowed an estate under section 6166 of the Code, the
32 personal representative must, within two years after being notified of the correction or
33 final determination by the federal government, file an estate tax return with the Secretary
34 reflecting the correct amount of tax payable under this Article. If the federal government
35 corrects or otherwise determines the amount of the maximum state generation-skipping
36 transfer tax credit allowed under section 2604 of the Code, the person who made the
37 transfer must, within two years after being notified of the correction or final
38 determination by the federal government, file a tax return with the Secretary reflecting
39 the correct amount of tax payable under this Article.

40 The Secretary must assess and collect any additional tax due as provided in Article 9
41 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this
42 Chapter. A person who fails to report a federal correction or determination in accordance

1 with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any
2 refund due by reason of the determination."

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

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