

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1229

Short Title: Abolish Inheritance Tax Waivers.

(Public)

Sponsors: Senators Kerr, Cochrane, Dalton, Hartsell, Hoyle, and Webster.

Referred to: Finance.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE
OF A DECEDENT'S PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"§ 105-2.1. ~~Internal Revenue Code definition.~~ Definitions.

~~As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90.~~

The following definitions apply in this Article:

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

(2) Collector. – Defined in G.S. 28A-1-1.

(3) Personal representative. – Defined in G.S. 28A-1-1."

Section 2. G.S. 105-11 is repealed.

Section 3. G.S. 105-11.1 is repealed.

Section 4. G.S. 105-12 is repealed.

Section 5. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-13.1. Notices to Secretary of certain payments.

(a) Life Insurance Policy. – When a company pays the proceeds of a life insurance policy as a result of the death of an individual who owned the policy and was the named

1 insured under the policy, the company must notify the Secretary of the payment on a
2 form approved by the Secretary unless one of the following applies:

3 (1) The payment is to the surviving spouse.

4 (2) The payment is to a Class A beneficiary, as described in G.S. 105-4(a),
5 and the proceeds of the policy do not exceed one hundred thousand
6 dollars (\$100,000).

7 (b) Annuity and IRA. – When a company pays the initial payment of an annuity or
8 the initial distribution of an IRA as a result of the death of the annuitant or owner of the
9 IRA, the company must notify the Secretary of the payment or distribution on a form
10 approved by the Secretary unless one of the following applies:

11 (1) The payment or distribution is to the surviving spouse.

12 (2) The payment or distribution is to a Class A beneficiary, as described in
13 G.S. 105-4(a), and the total amount to be paid under the annuity or
14 distributed under the IRA does not exceed one hundred thousand dollars
15 (\$100,000)."

16 Section 6. G.S. 105-20 reads as rewritten:

17 "**§ 105-20. Legacy charged upon real estate, heir or devisee to deduct and pay tax;**
18 **limitation; Inheritance or Estate Tax Waiver. Taxes are a lien on real**
19 **property in an estate.**

20 Whenever such legacy shall be charged upon or payable out of real estate, the heir or
21 devisee of such real estate, before paying the same to such legatee, shall deduct the tax
22 therefrom at the rates aforesaid, and pay the amount so deducted to the executor or
23 administrator or the Secretary of Revenue, and the same shall remain a charge upon such
24 real estate until paid, and in default thereof the same shall be enforced by the decrees of
25 the court in the same manner as the payment of such legacy may be enforced: Provided,
26 that all taxes imposed by this Article shall be a lien upon the real and personal property of
27 the estate on which the tax is imposed or upon the proceeds arising from the sale of such
28 property from the time said tax is due and payable, and shall continue a lien until said tax
29 is paid and receipted for by the proper officer of the State: Provided further, that no lien
30 for inheritance or estate taxes shall attach or affect the land after 10 years from the date of
31 death of the decedent: Provided further, that no taxes imposed by this Article shall be a
32 lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by
33 the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary
34 of Revenue and bearing the signature or official facsimile signature of the Secretary of
35 Revenue covering real property may be registered in the office of the Register of Deeds
36 of the county or counties where the real estate described in the waiver is located. No
37 formalities as to acknowledgement, probate, or approval by any officer shall be required
38 as a condition to such registration. An Inheritance or Estate Tax Waiver so registered
39 shall be conclusive evidence that the real property described in such waiver is not subject
40 to the lien of any taxes imposed by this Article.

41 The taxes imposed by this Article on the transfer of real or personal property are a lien
42 on the real property in an estate and on the proceeds arising from the sale of real property.
43 The lien is created at the date of death of the decedent and continues until the tax is paid,

1 10 years have elapsed since the date of the decedent's death, or the lien is released. A lien
2 is released when the Secretary issues a tax waiver for the lien, the Secretary issues an
3 inheritance tax certificate, or the personal representative files a tax certification with the
4 clerk of superior court. A tax waiver may be filed in the office of the register of deeds of
5 each county where the property is located. No formalities as to acknowledgment,
6 probate, or approval by any officer are required as a condition to filing. The filing of a
7 tax waiver is conclusive evidence that the real property described in the waiver is not
8 subject to a lien for taxes imposed by this Article."

9 Section 7. G.S. 105-24 reads as rewritten:

10 **"§ 105-24. Tax waiver required for transfer of decedents' property in some cases;
11 inventory of lock boxes; withdrawal of bank deposits, etc., payable to
12 either husband or wife or survivor. Inventory of safe-deposit boxes.**

13 (a) No safe deposit company, trust company, corporation, bank, or other
14 institution, person or persons having in possession or control or custody, in whole or in
15 part, securities, deposits, assets, or property belonging to or standing in the name of a
16 decedent, or belonging to or standing in the joint names of decedent and one or more
17 persons, shall deliver or transfer the same to any person whatsoever, whether in a
18 representative capacity or not, or to the survivor or to the survivors when held in the joint
19 names of a decedent and one or more persons, without retaining a sufficient portion or
20 amount thereof to pay taxes or interest assessed under this Article on property transferred
21 by the decedent; but the Secretary of Revenue may consent in writing to such delivery or
22 transfer, and such consent shall relieve said safe deposit company, trust company,
23 corporation, bank or other institution, person or persons from the obligation herein
24 imposed. Securities whose declaration date is after the decedent's death, or interest that
25 accrues after the decedent's death on money on deposit at a bank, savings and loan
26 association, credit union, or other corporation, however, may be transferred or delivered
27 without retaining a portion of the property for the payment of taxes or interest and
28 without obtaining the written consent of the Secretary to the delivery or transfer.
29 Provided: The clerk of superior court of the resident county of a decedent may authorize
30 in writing one or more banks, safe deposit companies, trust companies or any other
31 institutions to transfer to the properly qualified representative of the estate any funds on
32 deposit in the name of the decedent or the decedent and one or more persons when the
33 aggregate amount of all such deposits in all such institutions is two thousand dollars
34 (\$2,000) or less, and when such deposit or deposits compose the total cash assets of the
35 estate. Such authorization shall have the same force and effect as when issued in writing
36 by the Secretary of Revenue.

37 (b) Except as provided in subsection (c) of this section, every safe deposit
38 company, trust company, corporation, bank or other institution, person, or persons
39 engaged in the business of renting ~~lock~~ safe-deposit boxes for the safekeeping of valuable
40 papers and personal effects, or having in their possession or supervision in such ~~lock~~ safe-
41 deposit boxes such valuable papers or personal effects shall, upon the death of any person
42 using or having access to such ~~lock~~ safe-deposit box, as a condition precedent to the
43 opening of such ~~lock~~ safe-deposit box by the executor, administrator, personal representative

1 lessee—representative, collector, lessee, or cotenant of such deceased person, require the
2 presence of the clerk of the superior court of the county in which such ~~lock~~ the box is
3 located. It shall be the duty of the clerk of the superior court, or his representative, in the
4 presence of ~~an officer or a~~ representative of the safe deposit company, trust company,
5 corporation, bank, or other institution, person or persons, to make an inventory of the
6 contents of such ~~lock~~ the box and to furnish a copy of such inventory ~~to the Secretary of~~
7 Revenue, ~~to the executor, administrator,~~ personal representative, collector, lessee, or
8 cotenant of the decedent, and a copy to the safe deposit company, trust company,
9 corporation, bank, or other institution, person, or persons having possession of such ~~lock~~
10 the safe-deposit box; provided, that for ~~lock~~ boxes to which decedent merely had access
11 the inventory shall include only assets in which the decedent has or had an interest.
12 ~~Immediately after~~ After the clerk of superior court has made an inventory of the contents
13 of the ~~lock~~ safe-deposit box, the safe deposit company, trust company, corporation, bank
14 or other institution, or person shall, upon request, release to the lessee personal
15 representative, collector, lessee, or cotenant of the ~~lock~~ box any life insurance policy stored
16 in the lock box for delivery to the beneficiary named in the policy. No other contents of the lock
17 box may be released ~~except~~ Notwithstanding any of the provisions of this section any life
18 insurance company may pay the proceeds of any policy upon the life of a decedent to the person
19 entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form
20 as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such
21 notice be not mailed, all of the provisions of this section shall apply. the contents of the box.

22 (c) Notwithstanding the provisions of subsection (b) of this section, if the ~~properly~~
23 ~~qualified personal representative of an estate~~ personal representative, collector, lessee, or
24 cotenant believes upon reliable information that a ~~lock~~ safe-deposit box to which the
25 decedent had access is empty, ~~the personal representative that person~~ may so certify to the
26 clerk of superior court of the county in which the ~~lock~~ box is located. Upon receipt of this
27 certificate, the clerk may authorize in writing the personal ~~representative or the personal~~
28 ~~representative's named agent~~ representative, collector, lessee, or cotenant to open the ~~lock~~
29 box outside of the clerk's presence. The ~~personal representative or the personal~~
30 ~~representative's agent~~ authorized person shall open the ~~lock~~ box in the presence of ~~an officer~~
31 ~~or a~~ representative of the institution having control or custody of the ~~lock~~ box, and ~~the~~
32 ~~personal representative or the personal representative's agent~~ shall certify to the clerk whether
33 the ~~lock~~ box is or is not empty. The certificate shall include the name of the ~~officer or~~
34 representative of the institution who was present at the time the ~~lock~~ box was opened and
35 shall be signed by the ~~officer or~~ representative to indicate that ~~he or she~~ the representative
36 was present. If the lock box is empty, no tax waiver will be required from, and no notice given
37 to, the Secretary of Revenue. ~~If the lock~~ safe-deposit box is not empty, the ~~officer or~~
38 representative of the institution shall close the ~~lock~~ box at once and the ~~lock~~ box may be
39 reopened only in accordance with subsection (b) of this section.

40 (d) ~~Notwithstanding any of the provisions of this section, in any case where a bank~~
41 ~~deposit has been heretofore made or is hereafter made, or where savings and loan stock~~
42 ~~has heretofore been issued or is hereafter issued, in the names of two or more persons and~~
43 ~~payable to either or the survivor or survivors of them, such bank or savings and loan~~

1 association may, upon the death of either of such persons, allow the person or persons
2 entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and
3 the balance thereof shall be retained by the bank or savings and loan association to cover
4 any taxes that may thereafter be assessed under this Article. When it is ascertained that
5 there is no liability of such deposit or stock for taxes under this Article, the Secretary of
6 Revenue shall furnish the bank or savings and loan association his written consent for the
7 payment of the retained percentage to the person or persons entitled thereto by law; and
8 the Secretary of Revenue may furnish such written consent to the bank or savings and
9 loan association upon the qualification of a personal representative of the deceased. If the
10 person entitled to funds in an account is the surviving spouse and the account is a joint
11 account of the surviving spouse and the decedent with right of survivorship, no tax
12 waiver is required from the Secretary of Revenue to release the funds in the account.

13 (e) Failure to comply with the provisions of this section shall render such safe
14 deposit company, trust company, corporation, bank or other institution, person or persons
15 liable for the amount of the taxes and interest due under this Article on property
16 transferred by the decedent. In any action brought under this provision it shall be a
17 sufficient defense that the delivery or transfer of securities, deposits, assets, or property
18 was made in good faith without knowledge of the death of the decedent and without
19 knowledge of circumstances sufficient to place the defendant on inquiry."

20 Section 8. G.S. 105-30 is repealed.

21 Section 9. G.S. 105-31 reads as rewritten:

22 **"§ 105-31. ~~Additional remedies for enforcement of tax.~~ Action to collect tax due.**

23 ~~In addition to all other remedies which may now exist under the law, or may hereafter~~
24 ~~be established, for the collection of the taxes imposed by the preceding sections of this~~
25 ~~Article, the tax so imposed shall be a lien upon all of the property and upon all of the~~
26 ~~estate, with respect to which the taxes are levied, as well as collectible out of any other~~
27 ~~property, resort to which may be had for their payment; and the said taxes shall constitute~~
28 ~~a debt, which may be recovered in an action brought by the Secretary of Revenue in any~~
29 ~~court of competent jurisdiction in this State, and/or in any court having jurisdiction of~~
30 ~~actions of debt in any state of the United States, and/or in any court of the United States~~
31 ~~against an administrator, executor, trustee, or personal representative, and/or any person,~~
32 ~~corporation, or concern having in hand any property, funds, or assets of any nature, with~~
33 ~~respect to which such tax has been imposed. No title or interest to such estate, funds,~~
34 ~~assets, or property shall pass, and no disposition thereof shall be made by any person~~
35 ~~claiming an interest therein until said taxes have been fully paid or until the Secretary of~~
36 ~~Revenue has released such property by the issuance of an Inheritance or Estate Tax~~
37 ~~Waiver. Taxes payable under this Article are a debt that may be recovered in an action~~
38 ~~brought by the Secretary against the personal representative or against any other person~~
39 ~~having in hand any property with respect to which the taxes have been imposed."~~

40 Section 10. G.S. 25-4-405(c) reads as rewritten:

41 "(c) A transaction, although subject to this Article, is also subject to G.S. 405-24,
42 41-2.1, 53-146.1, 54-109.58, and 54B-129, and in case of conflict between the provisions
43 of this section and either of those sections, the provisions of those sections control."

1 Section 11. G.S. 41-2.1(f) reads as rewritten:

2 "(f) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
3 modify any of the provisions of G.S. 105-24 relating to the administration of the
4 inheritance laws or any other provisions of the law relating to inheritance taxes."

5 Section 12. G.S. 41-2.2(d) reads as rewritten:

6 "(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
7 modify any of the provisions of G.S. 105-2, 105-11, and 105-24, relating to the
8 administration of the inheritance tax laws, or any other provisions of the law relating to
9 inheritance taxes."

10 Section 13. G.S. 53-146.1(b) reads as rewritten:

11 "(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
12 modify any of the provisions of G.S. 105-24, relating to the administration of the estate
13 tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein
14 shall regulate, govern and protect taxes. This section regulates and protects the bank in
15 its relationship with such joint owners of deposit accounts as herein provided. accounts."

16 Section 14. G.S. 53-146.2(d) reads as rewritten:

17 "(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
18 modify any of the provisions of G.S. 105-24, relating to the administration of the estate
19 tax laws of this State, or provisions of laws relating to estate taxes."

20 Section 15. G.S. 54-109.58(b) reads as rewritten:

21 "(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
22 modify any of the provisions of G.S. 105-24, relating to the administration of the estate
23 tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein
24 shall regulate, govern and protect taxes. This section regulates and protects the credit
25 union in its relationship with such joint owners of accounts as herein provided. accounts."

26 Section 16. G.S. 54B-129(b) reads as rewritten:

27 "(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
28 modify any of the provisions of G.S. 105-24, relating to the administration of the estate
29 tax laws of this State, or provisions of law relating to estate taxes; the provisions herein
30 shall regulate, govern and protect taxes. This section regulates and protects the
31 association in its relationships with such joint owners of deposit accounts as herein
32 provided. accounts."

33 Section 17. G.S. 54B-130(d) reads as rewritten:

34 "(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or
35 modify any of the provisions of G.S. 105-24, relating to the administration of the estate
36 tax laws of this State, or provisions of laws relating to estate taxes."

37 Section 18. G.S. 54C-165(b) reads as rewritten:

38 "(b) ~~Nothing in this section is construed to~~ This section does not repeal or modify
39 any provision of G.S. 105-24 relating to the administration of the estate tax laws of this
40 State or any other law relating to estate taxes. This section shall regulate, govern, and
41 protect regulates and protects the savings bank in its relationships with the joint owners
42 of deposit accounts."

43 Section 19. G.S. 54C-166(d) reads as rewritten:

1 "~~(d) Nothing in this section is construed to~~ This section does not repeal or modify
2 any ~~provision of G.S. 105-24 relating to the administration of estate tax laws of this State~~
3 ~~or any other law relating to estate taxes.~~"

4 Section 20. This act becomes effective October 1, 1998, and applies to estates
5 of decedents who die on or after that date.