

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 1756  
Finance Committee Substitute Adopted 5/29/08**

Short Title: Estate and Gift Tax Law Changes.

(Public)

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Sponsors:

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Referred to:

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May 21, 2008

A BILL TO BE ENTITLED

1 AN ACT TO MODIFY THE FORMULA FOR CALCULATING NORTH  
2 CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN  
3 ONE STATE AND TO ELIMINATE THE TAX ON TRANSFERRING  
4 PROPERTY WHILE LIVING BY REPEALING THE GIFT TAX.  
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-32.2(b) reads as rewritten:

8 "(b) Amount. – The amount of the estate tax imposed by this section is the amount  
9 of the state death tax credit that, as of December 31, 2001, would have been allowed  
10 under section 2011 of the Code against the federal taxable estate. The tax may not  
11 exceed the amount of federal estate tax due under the Code. The federal taxable estate  
12 and the amount of the federal estate tax due are determined without taking into account  
13 the deduction for state death taxes allowed under Section 2058 of the Code and the  
14 credits allowed under sections 2011 through 2015 of the Code.

15 If any property in the estate is located in a state other than North Carolina, the  
16 amount of tax payable depends on whether the decedent was a resident of this State at  
17 death. If the decedent was a resident of this State at death, the amount of tax due under  
18 this section is reduced by ~~the lesser of the amount of the death tax paid the other state or~~  
19 an amount computed by multiplying the credit by a fraction, the numerator of which is  
20 the gross value of the estate that has a tax situs in another state and the denominator of  
21 which is the value of the decedent's gross estate. If the decedent was not a resident of  
22 this State at death, the amount of tax due under this section is an amount computed by  
23 multiplying the credit by a fraction, the numerator of which is the gross value of real  
24 property that is located in North Carolina plus the gross value of any personal property  
25 that has a tax situs in North Carolina and the denominator of which is the value of the  
26 decedent's gross estate. For purposes of this section, the gross value of property is its  
27 gross value as finally determined in the federal estate tax proceedings."

28 **SECTION 2.** Article 6 of Chapter 105 of the General Statutes is repealed.

29 **SECTION 3.** G.S. 105-236(a)(5a) reads as rewritten:

1       (a) Penalties. – The following civil penalties and criminal offenses apply:

2       ...

3       (5) Negligence. –

- 4           a. Finding of negligence. – For negligent failure to comply with  
5           any of the provisions to which this Article applies, or rules  
6           issued pursuant thereto, without intent to defraud, the Secretary  
7           shall assess a penalty equal to ten percent (10%) of the  
8           deficiency due to the negligence.
- 9           b. Large individual income tax deficiency. – In the case of  
10           individual income tax, if a taxpayer understates taxable income,  
11           by any means, by an amount equal to twenty-five percent (25%)  
12           or more of gross income, the Secretary shall assess a penalty  
13           equal to twenty-five percent (25%) of the deficiency. For  
14           purposes of this subdivision, "gross income" means gross  
15           income as defined in section 61 of the Code.
- 16           c. Other large tax deficiency. – In the case of a tax other than  
17           individual income tax, if a taxpayer understates tax liability by  
18           twenty-five percent (25%) or more, the Secretary shall assess a  
19           penalty equal to twenty-five percent (25%) of the deficiency.
- 20           d. No double penalty. – If a penalty is assessed under subdivision  
21           (6) of this section, no additional penalty for negligence shall be  
22           assessed with respect to the same deficiency.
- 23           e. ~~Inheritance and gift~~ Estate tax deficiencies. – This subdivision  
24           does not apply to ~~inheritance, estate, and gift~~ estate tax  
25           deficiencies that are the result of valuation understatements."

26       **SECTION 4.** G.S. 105-263 reads as rewritten:

27       "**§ 105-263. Extensions of time for filing a report or return.**

28       The Secretary may extend the time in which a person must file a report or return  
29       with the Secretary. To obtain an extension of time for filing a report or return, a person  
30       must comply with any application requirement set by the Secretary. An extension of  
31       time for filing a franchise tax ~~return, return or~~ an income tax ~~return, or a gift tax~~ return  
32       does not extend the time for paying the tax due or the time when a penalty attaches for  
33       failure to pay the tax. An extension of time for filing a report or any return other than a  
34       franchise tax ~~return, return or~~ an income tax ~~return, or a gift tax~~ return extends the time  
35       for paying the tax due and the time when a penalty attaches for failure to pay the tax.  
36       When an extension of time for filing a report or return extends the time for paying the  
37       tax expected to be due with the report or return, interest, at the rate established pursuant  
38       to G.S. 105-241.21, accrues on the tax due from the original due date of the report or  
39       return to the date the tax is paid."

40       **SECTION 5.** This act does not affect the rights or liabilities of the State, a  
41       taxpayer, or another person arising under a statute repealed by this act before the  
42       effective date of its repeal; nor does it affect the right to any refund or credit of a tax  
43       that accrued under the repealed statute before the effective date of its repeal.

1           **SECTION 6.** Section 1 of this act is effective when it becomes law and  
2 applies retroactively to the estates of decedents for which the statute of limitations for  
3 claiming a refund had not expired as of December 28, 2007. A personal representative  
4 of an estate for which the statute of limitations had not expired as of December 28,  
5 2007, may file a claim for refund under G.S. 105-241.6. Sections 2 through 4 of this act  
6 become effective January 1, 2008, and apply to gifts made on or after that date. The  
7 remainder of this act is effective when it becomes law.