

1	<u>1998</u>	<u>40%</u>
2	<u>1999</u>	<u>60%</u>
3	<u>2000</u>	<u>80%</u>
4	<u>2001 and after</u>	<u>100%."</u>

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

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

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

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

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

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

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

- 20 a. By will or by intestacy;
21 b. Pursuant to a final judgment entered in a proceeding to caveat a
22 will; or
23 c. Pursuant to a settlement agreement, to which the personal
24 representative is a party, that, in the determination of the
25 Secretary of Revenue in his sole discretion based on evidence
26 presented by the personal representative, reflects the good faith,
27 arm's-length compromise of an actual dispute between
28 beneficiaries, heirs, or personal representatives and does not have
29 the primary purpose of avoiding inheritance tax.

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

39 (3) When the transfer of property made by a resident, or
40 nonresident, is of real property within this State, or of goods, wares
41 and merchandise within this State, or of any other property, real,
42 personal, or mixed, tangible or intangible, over which the State of
43 North Carolina has taxing jurisdiction, including State and municipal

1 bonds, by deed, grant, bargain, sale, or gift made in contemplation of
2 the death of the grantor, vendor, or donor, or intended to take effect in
3 possession or enjoyment at or after such death, including a transfer
4 under which the transferor has retained for his life or any period not
5 ending before his death (i) the possession or enjoyment of, or the
6 income from, the property or (ii) the right to designate the persons
7 who shall possess or enjoy the property or the income therefrom. The
8 aggregate value exceeding ten thousand dollars (\$10,000) of transfers
9 to any one donee within a tax year by deed, grant, bargain, sale, gift,
10 or combination thereof, made within three years prior to the death of
11 the grantor, vendor, or donor, without an adequate valuable
12 consideration, shall be presumed, subject to rebuttal, to have been
13 made in contemplation of death within the meaning of this section; the
14 first ten thousand dollars (\$10,000) in value shall be deemed not made
15 in contemplation of death.

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

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

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

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

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

40 II. If the power is not exercisable by the decedent
41 except in conjunction with a person having a
42 substantial interest in the property, subject to the
43 power, which is adverse to exercise of the power in

1 favor of the decedent, such power shall not be
2 deemed a general power of appointment. For the
3 purposes of this clause a person who, after the
4 death of the decedent, may be possessed of a power
5 of appointment (with respect to the property subject
6 to the decedent's power) which he may exercise in
7 his own favor shall be deemed as having an interest
8 in the property and such interest shall be deemed
9 adverse to such exercise of the decedent's power.

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

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

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

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

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

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

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

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

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

31 (7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.

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

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

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

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

8 (10) Upon the death of a spouse who had a qualifying income interest for life
9 in qualified terminable interest property whose previous transfer was
10 exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-
11 188(j), the qualified terminable interest property that was previously
12 exempt is considered to pass from the spouse to the person who is
13 entitled to the property upon the termination of the spouse's qualifying
14 income interest for life.

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

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

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

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

30 **"§ 105-23.1. Making installment payments of tax due when federal estate tax is**
31 **payable in installments.**

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

40 Sec. 7. Effective January 1, 2001, Article 1 of Chapter 105 of the General
41 Statutes is repealed.

42 Sec. 8. Effective January 1, 2001, Chapter 105 of the General Statutes is
43 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 estate of a decedent when a federal estate tax is imposed on 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.

(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax 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 the estate that does not have a tax situs in another state, divided by the net value of all 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 that is located in North Carolina plus the net value of any personal property 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 that state's 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 and deductions of the estate.

"§ 105-32.3. Liability for estate tax.

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

1 representative. The amount for which the personal representative is liable may be
2 recovered from the personal representative or from the surety on any bond filed by the
3 personal representative under Article 8 of Chapter 28A of the General Statutes.

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

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

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

12 **"§ 105-32.4. Payment of estate tax.**

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

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

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

22 (d) Interest and Penalties. – The penalties in G.S. 105-236 apply to the failure to
23 file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S.
24 105-241.1 accrues on estate taxes paid after the date they are due.

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

27 **"§ 105-32.5. Making installment payments of tax due when federal estate tax is**
28 **payable in installments.**

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

37 **"§ 105-32.6. Estate tax is a lien on property in the estate.**

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

41 (1) The personal representative certifies to the clerk of court 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) The Secretary issues a certificate stating that the tax liability of the
2 estate has been satisfied.

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

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

6 **"§ 105-32.7. Generation-skipping transfer tax.**

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

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

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

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

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

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

19 If the original transferor was a resident of this State at the date of the original transfer,
20 the North Carolina percentage is the net value of the property transferred that does not
21 have a tax situs in another state, divided by the net value of all property transferred. If
22 the original transferor was not a resident of this State at the date of the original transfer,
23 the North Carolina percentage is the net value of real property that is located in North
24 Carolina plus the net value of any personal property that has a tax situs in North Carolina,
25 divided by the net value of all property transferred, unless the original transferor's state of
26 residence uses a different formula to determine that state's percentage. In that
27 circumstance, the North Carolina percentage is the amount determined by the formula
28 used by the original transferor's state of residence.

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

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

36 **"§ 105-32.8. Federal determination that changes the amount of tax payable to the**
37 State.

38 If the federal government corrects or otherwise determines the amount of the
39 maximum state death tax credit allowed an estate under section 6166 of the Code, the
40 personal representative must, within two years after being notified of the correction or
41 final determination by the federal government, file an estate tax return with the Secretary
42 reflecting the correct amount of tax payable under this Article. If the federal government
43 corrects or otherwise determines the amount of the maximum state generation-skipping

1 transfer tax credit allowed under section 2604 of the Code, the person who made the
2 transfer must, within two years after being notified of the correction or final
3 determination by the federal government, file a tax return with the Secretary reflecting
4 the correct amount of tax payable under this Article.

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

10 Sec. 9. Sections 1 through 4 of this act become effective January 1, 1997, and
11 apply to the estates of decedents dying on or after that date. Sections 5 and 6 of this act
12 become effective August 1, 1996, and apply to the estates of decedents dying on or after
13 that date. Sections 7 and 8 of this act become effective January 1, 2001, and apply to the
14 estates of decedents dying on or after that date.