

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

1

HOUSE BILL 235

Short Title: Simplify Gift Tax.

(Public)

---

Sponsors: Representatives Brubaker; Blackwood, Carney, Church, Dockham, Folwell, Gulley, Hill, Luebke, McGee, Starnes, Thomas, Wainwright, and Wilkins.

---

Referred to: Finance.

---

February 19, 2007

A BILL TO BE ENTITLED

AN ACT TO REFORM THE STATE GIFT TAX SO THAT IT IS BASED ON THE FEDERAL GIFT TAX, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 6 of Chapter 105 of the General Statutes is repealed.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 1B.

"Gift Taxes.

**"§ 105-32.20. Gift taxes; rates of tax.**

(a) Definitions. – As used in this Article, 'taxable gift' has the same meaning as under section 2503 of the Code.

(b) Tax. – A gift tax is imposed on a gift when a federal gift tax is imposed on the gift under section 2501 of the Code and any of the following applies:

(1) The donor was a resident of this State at the time the gift was made.

(2) The donor was not a resident of this State at the time the gift was made and the gift consisted of either of the following:

a. Real property or tangible personal property that was located in this State at the time the gift was made.

b. Intangible personal property that had a tax situs in this State at the time the gift was made.

(c) Rate. – The rates of tax, which are based on the value of the taxable gift, are as follows:

**Amount of Taxable Gift**

**Rate**

Up to \$40,000

0%

Over \$40,000 up to \$90,000

0.8%

1	<u>Over \$90,000 up to \$140,000</u>	<u>1.6%</u>
2	<u>Over \$140,000 up to \$240,000</u>	<u>2.4%</u>
3	<u>Over \$240,000 up to \$440,000</u>	<u>3.2%</u>
4	<u>Over \$440,000 up to \$640,000</u>	<u>4.0%</u>
5	<u>Over \$640,000 up to \$840,000</u>	<u>4.8%</u>
6	<u>Over \$840,000 up to \$1,040,000</u>	<u>5.6%</u>
7	<u>Over \$1,040,000 up to \$1,540,000</u>	<u>6.4%</u>
8	<u>Over \$1,540,000 up to \$2,040,000</u>	<u>7.2%</u>
9	<u>Over \$2,040,000 up to \$2,540,000</u>	<u>8.0%</u>
10	<u>Over \$2,540,000 up to \$3,040,000</u>	<u>8.8%</u>
11	<u>Over \$3,040,000 up to \$3,540,000</u>	<u>9.6%</u>
12	<u>Over \$3,540,000 up to \$4,040,000</u>	<u>10.4%</u>
13	<u>Over \$4,040,000 up to \$5,040,000</u>	<u>11.2%</u>
14	<u>Over \$5,040,000 up to \$6,040,000</u>	<u>12.0%</u>
15	<u>Over \$6,040,000 up to \$7,040,000</u>	<u>12.8%</u>
16	<u>Over \$7,040,000 up to \$8,040,000</u>	<u>13.6%</u>
17	<u>Over \$8,040,000 up to \$9,040,000</u>	<u>14.4%</u>
18	<u>Over \$9,040,000 up to \$10,040,000</u>	<u>15.2%</u>
19	<u>Over \$10,040,000</u>	<u>16.0%</u>

20 (d) Value of Gift. – The value of a gift is determined in accordance with the  
 21 Code. If any property composing part of the gift is located in a state other than North  
 22 Carolina, the amount of tax payable depends on whether the donor was a resident of this  
 23 State at the time of the gift. If the donor was a resident of this State at the time of the  
 24 gift, the amount of tax due under this section is reduced by the lesser of the amount of  
 25 the gift tax paid the other state or an amount computed by multiplying the amount  
 26 otherwise due by a fraction, the numerator of which is the value of the taxable gift that  
 27 was located or had a tax situs in another state at the time of the gift and the denominator  
 28 of which is the value of the total taxable gift. If the donor was not a resident of this State  
 29 at the time of the gift, the amount of tax due under this section is an amount computed  
 30 by multiplying the amount otherwise due by a fraction, the numerator of which is the  
 31 value of real or tangible personal property that was located in North Carolina at the time  
 32 of the gift plus the value of any intangible property that had a tax situs in North Carolina  
 33 at the time of the gift and the denominator of which is the value of the taxable gift.

34 **"§ 105-32.21. Lien for tax; collection of tax.**

35 The tax imposed by this Article is a lien upon all gifts that constitute the basis for the  
 36 tax for a period of 10 years from the time they are made. If the tax is not paid by the  
 37 donor when due, each donee is personally liable, to the extent of his or her respective  
 38 gifts, for so much of the tax as has been assessed, or may be assessed, thereon. Any part  
 39 of the property comprised in the gift that has been sold by the donee to a bona fide  
 40 purchaser is divested of the lien imposed by this section and the lien, to the extent of the  
 41 value of the gift, shall attach to all the property of the donee (including after-acquired  
 42 property) except any part sold to a bona fide purchaser.

1        If the tax is not paid within 30 days after it has become due, the Department of  
2 Revenue may use any of the methods authorized in this Subchapter for the collection of  
3 other taxes to enforce the payment of taxes assessed under this Article.

4        In any proceeding by warrant or otherwise to enforce the collection of the tax, the  
5 donor is liable for the full amount of the tax due by reason of all the gifts constituting  
6 the basis for the tax, and each donee is liable only for so much of the tax as may be due  
7 on account of his or her respective gift.

8        **"§ 105-32.22. Death of donor within three years; time of assessment.**

9        If a donor dies within three years after filing a return, gift taxes may be assessed at  
10 any time within those three years, or on or before the date of final settlement of the  
11 donor's State estate taxes, whichever is later.

12        **"§ 105-32.23. When return required; due date of tax and return.**

13        (a) When Return Required. – A gift tax return must be filed under this Article if a  
14 federal gift tax return is required. The return must be filed on a form provided by the  
15 Secretary.

16        (b) Due Date. – The gift tax imposed by this Article is due when the gift tax  
17 return is due. The gift tax return is due on the date a federal gift tax return is due.

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

22        (d) Administration. – Article 9 of this Chapter applies to this Article.

23        **"§ 105-32.24. Federal corrections.**

24        If the amount of a taxpayer's taxable gifts is corrected or otherwise determined by  
25 the federal government, the taxpayer must, within six months after being notified of the  
26 correction or final determination by the federal government, file a gift tax return with  
27 the Secretary of Revenue reflecting the corrected or determined taxable gifts. The  
28 Secretary of Revenue shall determine from all available evidence the taxpayer's correct  
29 tax liability for the taxable year. As used in this section, the term 'all available evidence'  
30 means evidence of any kind that becomes available to the Secretary from any source,  
31 whether or not the evidence was considered in the federal correction or determination.

32        The Secretary shall assess and collect any additional tax due from the taxpayer as  
33 provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax  
34 as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this  
35 section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund  
36 due by reason of the determination."

37        **SECTION 3.** This act becomes effective January 1, 2008, and applies to  
38 gifts made on or after that date.