

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1176*

Short Title: Construction of Wills and Trusts. (Public)

Sponsors: Senators Clodfelter, Blue, Brunstetter, Hartsell, Hoyle, Jenkins, Stein, and Tillman.

Referred to: Finance.

May 18, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL
3 ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 7 of Chapter 31 of the General Statutes is amended by adding
6 a new section to read:

7 **"§ 31-46.1. Construction of certain formula clauses applicable to estates of decedents**
8 **dying in calendar year 2010.**

9 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired
10 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills
11 and trusts, and to promote judicial economy in the administration of trusts and estates, this
12 section construes certain formula clauses that reference federal estate and generation-skipping
13 transfer tax laws and that are used in wills of decedents who die in calendar year 2010.

14 (b) Applicability. – This section applies to a will of a decedent who dies after December
15 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement
16 of the federal estate tax and generation-skipping transfer tax. This section does not apply to a
17 will that is executed or amended after December 31, 2009, or to a will that clearly manifests an
18 intent that a contrary rule applies when a decedent dies on a date on which there is no
19 then-applicable federal estate or generation-skipping transfer tax.

20 (c) Construction. – A will that is subject to this section is considered to refer to the
21 federal estate and generation-skipping transfer tax laws as they applied with respect to estates
22 of decedents dying on December 31, 2009, if the will contains a formula that meets one or
23 more of the following conditions:

24 (1) The formula refers to any of the following: 'applicable credit amount,'
25 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable
26 fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,'
27 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital
28 deduction,' 'unified credit,' or 'unlimited marital deduction.'

29 (2) The formula measures a share of an estate or trust based on the amount that
30 can pass free of federal estate taxes or the amount that can pass free of
31 federal generation-skipping transfer taxes.

32 (3) The formula is otherwise based on a provision of federal estate tax or federal
33 generation-skipping transfer tax law similar to the provisions in subdivision
34 (1) or (2) of this subsection.

35 (d) Judicial Determination. – The personal representative or an affected beneficiary
36 under a will or testamentary trust may bring an action in the superior court division of the



1 General Court of Justice under Article 26 of Chapter 1 of the General Statutes, and the trustee
2 of a trust created under the will or an affected beneficiary under the trust may bring a
3 proceeding as permitted under Article 2 of Chapter 36C of the General Statutes to determine
4 whether the decedent intended that the references under subsection (c) of this section be
5 construed with respect to the federal law as it existed after December 31, 2009. The action must
6 be commenced within 12 months following the death of the decedent."

7 **SECTION 2.** Article 1 of Chapter 36C of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents**
10 **dying in calendar year 2010.**

11 (a) Purpose. – The federal estate tax and generation-skipping transfer tax expired
12 January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills
13 and trusts, and to promote judicial economy in the administration of trusts and estates, this
14 section construes certain formula clauses that reference federal estate and generation-skipping
15 transfer tax laws and that are used in trusts created by settlors who die in calendar year 2010.

16 (b) Applicability. – This section applies to a trust created by a settlor who dies after
17 December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the
18 reinstatement of the federal estate tax and generation-skipping transfer tax. This section does
19 not apply to a trust that is executed or amended after December 31, 2009, or to a trust that
20 clearly manifests an intent that a contrary rule applies when a decedent dies on a date on which
21 there is no then-applicable federal estate or generation-skipping transfer tax.

22 (c) Construction. – A trust subject to this section is considered to refer to the federal
23 estate and generation-skipping transfer tax laws as they applied with respect to estates of
24 decedents dying on December 31, 2009, if the trust contains a formula that meets one or more
25 of the following conditions:

26 (1) The formula refers to any of the following: 'applicable credit amount,'
27 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable
28 fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,'
29 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital
30 deduction,' 'unified credit,' or 'unlimited marital deduction.'

31 (2) The formula measures a share of a trust based on the amount that can pass
32 free of federal estate taxes or the amount that can pass free of federal
33 generation-skipping transfer taxes.

34 (3) The formula is otherwise based on a provision of federal estate tax or federal
35 generation-skipping transfer tax law similar to the provisions in subdivision
36 (1) or (2) of this subsection.

37 (d) Judicial Determination. – The trustee of the trust or an affected beneficiary under
38 the trust may commence a proceeding to determine whether the settlor intended that the
39 references under subsection (c) of this section be construed with respect to the federal law as it
40 existed after December 31, 2009. The proceeding must be commenced within 12 months
41 following the death of the settlor."

42 **SECTION 3.** G.S. 36C-2-203(f) is amended by adding a new subdivision to read:

43 "(f) Without otherwise limiting the jurisdiction of the superior court division of the
44 General Court of Justice, proceedings concerning the internal affairs of trusts shall not include,
45 and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this
46 section of any of the following:

47 (1) Actions to reform, terminate, or modify a trust as provided by
48 G.S. 36C-4-410 through ~~G.S. 36C-4-416~~; G.S. 36C-4-416.

49 (2) Actions by or against creditors or debtors of a ~~trust~~; trust.

50 (3) Actions involving claims for monetary damages, including claims for breach
51 of fiduciary duty, fraud, and ~~negligence~~; negligence.

- 1 (4) Actions to enforce a charitable trust under ~~G.S. 36C-4-405.1;~~
2 G.S. 36C-4-405.1.
3 (5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1;~~ and
4 G.S. 36C-4A-1.
5 (6) Actions involving the exercise of the trustee's special power to appoint to a
6 second trust pursuant to G.S. 36C-8-816.1.
7 (7) Actions to construe a formula contained in a trust subject to
8 G.S. 36C-1-113."

9 **SECTION 4.** This act is effective when it becomes law and applies to the estates of
10 decedents dying after December 31, 2009, and to trusts created by settlors who die after
11 December 31, 2009.