

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 566  
Finance Committee Substitute Adopted 3/31/93

Short Title: Conform QTIP Provisions.

(Public)

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Sponsors:

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Referred to:

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March 25, 1993

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA INHERITANCE AND GIFT TAX  
PROVISIONS TO FEDERAL ESTATE AND GIFT TAX PROVISIONS  
REGARDING QUALIFIED TERMINABLE INTEREST PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2 is amended by adding a new subsection to read:

"(c) Whenever a person has a qualifying income interest for life in any property and an exemption was allowed with respect to the transfer of the property to that person under G.S. 105-3(11) or under G.S. 105-188(h)(4) by reason of G.S. 105-188.2, that person is, for the purpose of this Article, deemed the owner of the property. At death, the person is deemed to have made a transfer of the property to the person who will benefit from the property unless G.S. 105-188.2(c) applied with respect to a disposition by the decedent of part or all of the property. For the purpose of this Article, property deemed transferred by the decedent under this subsection shall be treated as property passing from the decedent."

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

"(11) Qualified terminable interest property. – Qualified terminable interest property shall be treated for purposes of this Article as passing to the surviving spouse of the decedent and no part of the property shall be treated as passing to any person other than the surviving spouse. Qualified terminable interest property is property, or an interest in property, (i) passing from the decedent, (ii) in which the surviving spouse has a qualifying income interest

1                   for life, and (iii) as to which an election is made by the personal  
2                   representative of the decedent's estate under section 2056(b)(7) of  
3                   the Code. Such an election is irrevocable. As used in this  
4                   subdivision, the term 'qualifying income interest for life' has the  
5                   same meaning as under section 2056(b)(7) of the Code. In the case  
6                   of an annuity included in the gross estate of the decedent under this  
7                   Article and described in section 2056(b)(7)(C) of the Code, the  
8                   interest of the surviving spouse shall be treated as a qualifying  
9                   income interest for life and the personal representative shall be  
10                  treated as having made an election under this subdivision with  
11                  respect to the annuity unless the personal representative elects  
12                  otherwise on the tax return required by section 2001 of the Code.  
13                  Such an election is irrevocable. A specific portion of property shall  
14                  be treated as separate property."

15                  Sec. 3. Article 6 of Chapter 105 of the General Statutes is amended by  
16 adding a new section to read:

17 **"§ 105-188.2. Qualified terminable interest property.**

18                  (a) For the purposes of this Article, 'qualified terminable interest property' means  
19 any property or interest in property:

20                         (1) That is transferred by one spouse;

21                         (2) In which the other spouse has a qualifying income interest for life;  
22                                 and

23                         (3) As to which an election is made under section 2523(f) of the Code.

24                  The phrase 'qualifying income interest for life' shall have the same meaning as under  
25 section 2523(f) of the Code.

26                  (b) For purposes of this Article, qualified terminable interest property shall be  
27 treated as passing exclusively to one spouse from the other spouse. No part of the  
28 property shall be treated as retained in the donor or transferred to any person other than  
29 the donee spouse; the donee spouse is deemed the owner of the property.

30                  (c) For purposes of this Article and Article 1 of this Chapter, any disposition by  
31 the donee spouse of all or part of a qualifying income interest for life in any property as  
32 to which an exemption was allowed with respect to the transfer of the property to the  
33 donee spouse under G.S. 105-188(h)(4) by reason of this section or under G.S. 105-  
34 3(11) shall be treated as a transfer by the donee spouse of all interests in the property  
35 other than the qualifying income interest.

36                  (d) Qualified terminable interest property is not includable in the gross estate of  
37 the donor spouse under Article 1 of this Chapter and any subsequent transfer by the  
38 donor spouse of an interest in the property shall not be treated as a transfer for purposes  
39 of this Article. This subsection does not apply with respect to any property after the  
40 donee spouse is treated as having transferred the property under subsection (c) of this  
41 section, or after the property is includable in the donee spouse's estate under G.S. 105-2.

42                  (e) In the case of an annuity described in section 2523(f)(6) of the Code, the  
43 donee spouse's interest shall be treated as a qualifying income interest for life and the  
44 donor spouse shall be treated as having made an election under subsection (a) of this

1 section with respect to the annuity unless the donor spouse elects otherwise on the gift  
2 tax return on or before the date prescribed by G.S. 105-191 for filing a gift tax return  
3 with respect to the transfer. Subsections (c) and (d) of this section do not apply to the  
4 donor spouse's interest in the annuity, and, if the donee spouse dies before the donor  
5 spouse, no amount is includable in the gross estate of the donee spouse under G.S. 105-  
6 2 with respect to the annuity. An election under this subsection is irrevocable."

7           Sec. 4. This act becomes effective January 1, 1993, and applies to the estates  
8 of decedents dying on or after that date and to gifts made on or after that date.