

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2010-126  
SENATE BILL 1176**

AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.

The General Assembly of North Carolina enacts:

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

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

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

(b) Applicability. – This section applies to the following:

- (1) To a will or codicil executed by a decedent before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the decedent dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.
- (2) To the terms of a will or codicil executed by a decedent who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the will or codicil clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

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

- (1) The formula refers to any of the following: 'applicable credit amount,' 'applicable exclusion amount,' 'applicable exemption amount,' 'applicable fraction,' 'estate tax exemption,' 'generation-skipping transfer tax exemption,' 'GST exemption,' 'inclusion ratio,' 'marital deduction,' 'maximum marital deduction,' 'unified credit,' or 'unlimited marital deduction.'
- (2) The formula measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.
- (3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

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



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

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

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

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

(b) Applicability. – This section applies to the following:

(1) To a trust instrument or an amendment to a trust instrument executed by a settlor before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the settlor dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(2) To the terms of a trust instrument or an amendment to a trust instrument executed by a settlor who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

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

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

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

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

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

**SECTION 3.** G.S. 36C-2-203(f) reads as rewritten:

"(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include,

and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of any of the following:

- (1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through ~~G.S. 36C-4-416~~; G.S. 36C-4-416.
- (2) Actions by or against creditors or debtors of a ~~trust~~; trust.
- (3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and ~~negligence~~; negligence.
- (4) Actions to enforce a charitable trust under ~~G.S. 36C-4-405.1~~; G.S. 36C-4-405.1.
- (5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1~~; and G.S. 36C-4A-1.
- (6) Actions involving the exercise of the trustee's special power to appoint to a second trust pursuant to G.S. 36C-8-816.1.
- (7) Actions to construe a formula contained in a trust subject to G.S. 36C-1-113."

**SECTION 4.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8<sup>th</sup> day of July, 2010.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 5:03 p.m. this 21<sup>st</sup> day of July, 2010