

May 17, 2010

**S 1176. CONSTRUCTION OF WILLS AND TRUSTS.** Filed 5/17/10. *TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.*

Makes changes to GS Chapter 31 (Wills) and GS Chapter 36C (Uniform Trust Code) to address issues related to the one year expiration of the federal estate tax and generation skipping transfer tax.

Enacts new GS 31-46.1 to construe certain formula clauses that (1) reference federal estate and generation-skipping transfer tax laws and (2) are used *in wills* of persons who die in 2010. Enacts new GS 36C-1-113 to construe certain formula clauses that (1) reference federal estate and generation-skipping transfer tax laws and (2) are used *in trusts* created by persons who die in calendar year 2010. Provides specific criteria for the applicability of the provisions of new GS 31-46.1 and GS 36C-1-113. Specifies how the proposed statutes are to be construed and includes specifications as to the content of the applicable formula clauses, and procedures governing actions for requesting a judicial determination as to the applicability of the proposed new statutory sections.

Provides that new GS 31-46.1 does not apply to a will that (1) is executed or amended after December 31, 2009 or (2) clearly manifests an intent that a contrary rule applies when a person dies on a date for which no federal estate or generation –skipping transfer tax is applicable. Proposed GS 36C-1-113 provides identical provisions as they apply to trusts.

Makes conforming changes to GS 36C-2-203(f) concerning the Clerk of Superior Court's jurisdiction.

Provides that this act applies to the estates of persons dying after December 31, 2009 and to trusts created by persons dying after December 31, 2009.

**Intro. by Clodfelter**

GS 31, 36C

June 10, 2010

**S 1176. CONSTRUCTION OF WILLS AND TRUSTS.** Filed 5/17/10. Senate amendment makes the following changes to 1st edition.

Amends proposed GS 31-46.1 (construction of certain formula clauses referencing federal estate and generation-skipping transfer tax laws in the wills of persons who die in 2010), providing that the statute does not apply to a will or codicil that is executed after December 31, 2009, or to a will or codicil that clearly manifests an intent that a contrary rule apply (was, to a will only). Amends proposed GS 36C-1-113 (construction of certain formula clauses referencing federal estate and generation-skipping transfer tax laws in the trusts of settlors who die in 2010), providing that the section does not apply to a trust instrument or an amendment to a trust instrument that is executed after December 31, 2009, or to a trust instrument or an amendment to a trust instrument that clearly manifests an intent that a contrary rule apply (was, to a trust only).

June 29, 2010

**S 1176. CONSTRUCTION OF WILLS AND TRUSTS.** Filed 5/17/10. House committee substitute makes the following changes to 2nd edition.

*Wills.* Amends proposed GS 31-46.1 to clarify that the statute applies to a will or codicil (was, will) that was executed by the decedent before December 31, 2009; and contains a formula provision as described in subsection (c) of the proposed statute.

Also provides that upon the death of a decedent before December 31, 2009, the statute applies to a will or codicil that provides for a disposition of property containing a formula provision as described in proposed subsection (c), provided that the disposition occurs as a result of the death of another individual, who dies after December 31, 2009, and before the earlier of the following: January 1, 2011 or the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax. Provides that there is an exception if the terms of the will or codicil clearly manifest an intent that a rule of construction contrary to the provisions of subsection (c) applies.

Clarifies that the rule of construction applies to a will or a codicil (was, will).

*Trusts.* Amends proposed GS 36C-1-113 to clarify that the statute applies to a trust instrument or an amendment (was, trust) that was executed by a settlor before December 31, 2009; and contains a formula provision as described in subsection (c) of the proposed statute.

Also provides that upon the death of a settlor before December 31, 2009, the statute applies to the terms of a trust instrument or an amendment to a trust instrument that provides for a disposition of property containing a formula provision as described in proposed subsection (c), providing that the disposition occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of the following: January 1, 2011 or the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax. Provides that there is an exception if the terms of the instrument or amendment clearly manifest an intent that a rule of construction contrary to the provisions of subsection (c) applies.

Clarifies that the rule of construction applies to a trust instrument or an amendment to a trust instrument (was, trust).

Makes additional conforming changes.

July 28, 2010

**SL 2010-126 (S 1176). CONSTRUCTION OF WILLS AND TRUSTS. AN ACT TO CONSTRUE CERTAIN FORMULA CLAUSES THAT REFER TO FEDERAL ESTATE AND GENERATION-SKIPPING TRANSFER TAX LAWS.** Summarized in *Daily Bulletin* 5/17/10, 6/10/10, and 6/29/10. Enacted July 21, 2010. Effective July 21, 2010.