

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1383
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Short Title: Inheritance Tax Settlements.

(Public)

Sponsors: Representatives R. Hunter; Redwine, Hall, Payne, Stam, and Bowman.

Referred to: Judiciary.

April 26, 1989

A BILL TO BE ENTITLED

AN ACT TO RECOGNIZE BONA FIDE ESTATE SETTLEMENTS FOR
INHERITANCE TAX PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2(a) reads as rewritten:

"(a) A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

(1) When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of the State, ~~or~~ when the transfer is made pursuant to a final judgment entered in a proceeding to caveat a will executed by any person dying seized of the property while a resident of this State, State, or when the transfer from any person dying seized or possessed of the property while a resident of this State is made pursuant to a settlement agreement in accordance with a good faith, arm's length compromise between heirs, beneficiaries, or personal representatives, the primary purpose of which is not the avoidance of inheritance tax.

(2) When the transfer is by will or intestate laws of this or any other state of real property or goods, wares, and merchandise within this State, or of any property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has a taxing

1 jurisdiction, including State and municipal bonds, and the decedent
2 was a resident of the State at the time of death; when the transfer is
3 of real property or tangible personal property within the State, or
4 intangible personal property that has acquired a situs in this State,
5 and the decedent was a nonresident of the State at the time of death.

6 (3) When the transfer of property made by a resident, or
7 nonresident, is of real property within this State, or of goods, wares
8 and merchandise within this State, or of any other property, real,
9 personal, or mixed, tangible or intangible, over which the State of
10 North Carolina has taxing jurisdiction, including State and municipal
11 bonds, by deed, grant, bargain, sale, or gift made in contemplation of
12 the death of the grantor, vendor, or donor, or intended to take effect
13 in possession or enjoyment at or after such death, including a
14 transfer under which the transferor has retained for his life or any
15 period not ending before his death (i) the possession or enjoyment
16 of, or the income from, the property or (ii) the right to designate the
17 persons who shall possess or enjoy the property or the income
18 therefrom. The aggregate value exceeding ten thousand dollars
19 (\$10,000) of transfers to any one donee within a tax year by deed,
20 grant, bargain, sale, gift, or combination thereof, made within three
21 years prior to the death of the grantor, vendor, or donor, without an
22 adequate valuable consideration, shall be presumed, subject to
23 rebuttal, to have been made in contemplation of death within the
24 meaning of this section; the first ten thousand dollars (\$10,000) in
25 value shall be deemed not made in contemplation of death.

26 (4) When any person or corporation comes into possession or
27 enjoyment, by a transfer from a resident, or from a nonresident
28 decedent when such nonresident decedent's property consists of real
29 property within this State or tangible personal property within the
30 State, or intangible personal property that has acquired a situs in this
31 State, of an estate in expectancy of any kind or character which is
32 contingent or defeasible, transferred by any instrument taking effect
33 after March 24, 1939.

34 (5) a. For purposes of this Article, the term 'general
35 power of appointment' means a power which is exercisable in
36 favor of the decedent, his estate, his creditors, or the creditors
37 of his estate; except that:

38 1. A power to consume, invade or appropriate
39 property for the benefit of the decedent which is
40 limited by an ascertainable standard relating to the
41 health, education, support or maintenance of the
42 decedent shall not be deemed a general power of
43 appointment.

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2. A power of appointment which is exercisable by the decedent only in conjunction with another person:
- I. If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment.
- II. If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.
- III. If (after the application of clauses I and II) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.
- IV. For purposes of clauses II and III, a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.
- b. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall, for the purposes of this Article, be deemed the owner of such interest and accordingly:
1. If in connection with any transfer of property taxable under this Article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor

1 shall be deemed to have given such interest in such
2 property to such person.

3 2. If any person holding a general power of
4 appointment with respect to any interest in property
5 shall exercise such power in favor of any other person
6 or persons, either by will or by an appointment made
7 in contemplation of the death of such person, or by an
8 appointment intended to take effect in possession or
9 enjoyment at or after such death, he shall be deemed to
10 have made a transfer of such interest to such person or
11 persons.

12 3. If any person holding a general power of
13 appointment with respect to any interest in property
14 shall relinquish such power by any action taken in
15 contemplation of death or intended to take effect at or
16 after his death, or shall die without fully exercising
17 such power, he shall be deemed, to the extent of such
18 relinquishment or nonexercise, to have made a transfer
19 of such interest to the person or persons who shall
20 benefit thereby.

21 (6) Neither the exercise nor the relinquishment of a special
22 power of appointment (which shall mean any power other than a
23 general power) with respect to an interest in property shall be
24 deemed to constitute a transfer of such interest within the meaning of
25 this Article. If in connection with any transfer taxable under this
26 Article the transferor shall give to any person a special power of
27 appointment with respect to any interest in property, he shall be
28 deemed, for the purpose of computing the tax applicable thereto, to
29 have given such interest in equal shares to those persons, not more
30 than two, among the possible appointees and takers in default of
31 appointment whom the transferor's executor or administrator may
32 designate as transferees in the inheritance tax return, except that:

33 a. If a gift tax return is filed with respect to such
34 transfer, the persons designated therein shall also be
35 designated in the inheritance tax return, and

36 b. The tax shall be computed according to the
37 relationship of the donee of the power to the persons
38 designated if the possible appointees and takers in default of
39 appointment include any persons more closely related to the
40 donee of the power than to the donor, and if such computation
41 would produce a higher tax.

42 (7),(7a) Repealed by Session Laws, 1985, c. 656, s. 1, effective
43 August 1, 1985.

1 (8) Where the proceeds of life insurance policies are payable as
2 provided in G.S. 105-13.

3 (9) Whenever any person or corporation comes into possession
4 or enjoyment of any real or personal property, including bonds of
5 the United States and bonds of a state or subdivision or agency
6 thereof, at or after the death of an individual and by reason of said
7 individual's having entered into a contract or other arrangement with
8 the United States, a state or any person or corporation to pay,
9 transfer or deliver said real or personal property, including bonds of
10 the United States and bonds of a state, to the person or corporation
11 receiving the same, whether said person or corporation is named in
12 the contract or other arrangement or not: Provided, that no tax shall
13 be due or collected on that portion of the real or personal property
14 received under the conditions outlined herein which the person or
15 corporation receiving the same purchased or otherwise acquired by
16 funds or property of the person or corporation receiving the same, or
17 had acquired by a completed inter vivos gift.

18 Nothing in subdivision (9) shall apply to the proceeds of life insurance policies.

19 However, nothing in this Article shall be construed as imposing a tax upon any
20 transfer of intangibles not having a commercial or business situs in this State, by a
21 person, or by reason of the death of a person, who was not a resident of this State at the
22 time of his death, and, if held or transferred in trust, such intangibles shall not be
23 deemed to have a commercial or business situs in this State merely because the trustee
24 is a resident or, if a corporation, is doing business in this State, unless the same be
25 employed in or held or used in connection with some business carried on in whole or in
26 part in this State."

27 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
28 decedents dying on or after that date.