

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 942
SENATE BILL 213

1 AN ACT TO DETERMINE THE APPLICATION OF GIFT TAXES TO THE CREATION,
2 EXERCISE AND RELINQUISHMENT OF POWERS OF APPOINTMENT.

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4 The General Assembly of North Carolina do enact:

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6 **Section 1.** Article 6 of Subchapter I of Chapter 105 of the General Statutes of North
7 Carolina, entitled "Schedule G. Gift Taxes", is hereby amended by inserting therein
8 immediately after G.S. 105-188 a new Section to be designated as G.S. 105-188.1 to read as
9 follows:

10 **"§ 105-188.1. Powers of Appointment.** (a) The term 'general power of appointment' as used
11 in this Article means any power of appointment exercisable in favor of the person possessing
12 the power, his estate, his creditors, or the creditors of his estate, except that a power to
13 consume, invade or appropriate property for the benefit of the possessor which is limited by an
14 ascertainable standard relating to the health, education, support, or maintenance of the
15 possessor shall not be deemed a general power of appointment. The term 'special power of
16 appointment' shall mean any other power of appointment.

17 (b) Any person having a general power of appointment with respect to any interest in
18 property shall for gift tax purposes be deemed to be the owner of such interest, and
19 accordingly:

20 (1) If in connection with any gift of property the donor shall give to any person
21 a general power of appointment with respect to any interest in such property,
22 the donor shall be deemed to have given such person such interest in such
23 property.

24 (2) If any person holding a general power of appointment with respect to any
25 interest in property shall exercise such power in favor of any other person or
26 persons, he shall be deemed to have made a gift of such interest to such
27 person or persons.

28 (3) If any person holding a general power of appointment with respect to any
29 interest in property shall relinquish such power, he shall be deemed to have
30 made a gift of such interest to the person or persons who shall benefit by
31 such relinquishment.

32 (c) Neither the exercise nor the relinquishment of a special power of appointment with
33 respect to an interest in property shall be deemed to constitute a gift of such interest in such
34 property.

35 (d) If in connection with any gift of property the donor shall give to any person a
36 special power of appointment with respect to any interest in such property, the donor shall be
37 deemed for gift tax purposes to have given such interest in equal shares to those persons, not
38 more than two (2), among the possible appointees and takers in default of appointment whom
39 the donor or his executor or administrator may designate in the gift tax return filed with respect
40 to such gift. But the tax shall be computed according to the relationship of the donee of the
41 power to the person designated if:

42 (1) The possible appointees and takers in default of appointment include any
43 persons more closely related to the donee of the power than to the donor, and

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(2) Such computation would produce a higher tax."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect on and after July 1, 1963.

In the General Assembly read three times and ratified, this the 18th day of June,

1963.