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Short Title: Inheritance Tax Settlements.

(Public)

Sponsors:

Referred to:

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.~~ from a person who dies seized of the property while a resident of the State and it is made:

- a. By will or by intestacy;
- b. Pursuant to a final judgment entered in a proceeding to caveat a will; or
- c. Pursuant to a settlement agreement, to which the personal representative is a party, that, in the determination of the Secretary of Revenue in his sole discretion based on evidence presented by the personal representative, reflects the good faith,

1 arm's-length compromise of an actual dispute between
2 beneficiaries, heirs, or personal representatives and does not
3 have the primary purpose of avoiding inheritance tax.

4 (2) When the transfer is by will or intestate laws of this or any other state
5 of real property or goods, wares, and merchandise within this State, or
6 of any property, real, personal, or mixed, tangible or intangible, over
7 which the State of North Carolina has a taxing jurisdiction, including
8 State and municipal bonds, and the decedent was a resident of the State
9 at the time of death; when the transfer is of real property or tangible
10 personal property within the State, or intangible personal property that
11 has acquired a situs in this State, and the decedent was a nonresident of
12 the State at the time of death.

13 (3) When the transfer of property made by a resident, or
14 nonresident, is of real property within this State, or of goods, wares
15 and merchandise within this State, or of any other property, real,
16 personal, or mixed, tangible or intangible, over which the State of
17 North Carolina has taxing jurisdiction, including State and municipal
18 bonds, by deed, grant, bargain, sale, or gift made in contemplation of
19 the death of the grantor, vendor, or donor, or intended to take effect
20 in possession or enjoyment at or after such death, including a
21 transfer under which the transferor has retained for his life or any
22 period not ending before his death (i) the possession or enjoyment
23 of, or the income from, the property or (ii) the right to designate the
24 persons who shall possess or enjoy the property or the income
25 therefrom. The aggregate value exceeding ten thousand dollars
26 (\$10,000) of transfers to any one donee within a tax year by deed,
27 grant, bargain, sale, gift, or combination thereof, made within three
28 years prior to the death of the grantor, vendor, or donor, without an
29 adequate valuable consideration, shall be presumed, subject to
30 rebuttal, to have been made in contemplation of death within the
31 meaning of this section; the first ten thousand dollars (\$10,000) in
32 value shall be deemed not made in contemplation of death.

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

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

1 1. A power to consume, invade or appropriate
2 property for the benefit of the decedent which is
3 limited by an ascertainable standard relating to the
4 health, education, support or maintenance of the
5 decedent shall not be deemed a general power of
6 appointment.

7 2. A power of appointment which is exercisable
8 by the decedent only in conjunction with another
9 person:

10 I. If the power is not exercisable by the decedent
11 except in conjunction with the creator of the
12 power, such power shall not be deemed a general
13 power of appointment.

14 II. If the power is not exercisable by the decedent
15 except in conjunction with a person having a
16 substantial interest in the property, subject to the
17 power, which is adverse to exercise of the power
18 in favor of the decedent, such power shall not be
19 deemed a general power of appointment. For the
20 purposes of this clause a person who, after the
21 death of the decedent, may be possessed of a
22 power of appointment (with respect to the
23 property subject to the decedent's power) which
24 he may exercise in his own favor shall be deemed
25 as having an interest in the property and such
26 interest shall be deemed adverse to such exercise
27 of the decedent's power.

28 III. If (after the application of clauses I and II) the
29 power is a general power of appointment and is
30 exercisable in favor of such other person, such
31 power shall be deemed a general power of
32 appointment only in respect of a fractional part of
33 the property subject to such power, such part to be
34 determined by dividing the value of such property
35 by the number of such persons (including the
36 decedent) in favor of whom such power is
37 exercisable.

38 IV. For purposes of clauses II and III, a power shall
39 be deemed to be exercisable in favor of a person if
40 it is exercisable in favor of such person, his estate,
41 his creditors, or the creditors of his estate.

42 b. Whenever any person shall have a general power of
43 appointment with respect to any interest in property, such

1 person shall, for the purposes of this Article, be deemed the
2 owner of such interest and accordingly:

3 1. If in connection with any transfer of property
4 taxable under this Article the transferor shall give to
5 any person a general power of appointment with
6 respect to any interest in such property, the transferor
7 shall be deemed to have given such interest in such
8 property to such person.

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

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

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

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

42 b. The tax shall be computed according to the
43 relationship of the donee of the power to the persons
44 designated if the possible appointees and takers in default of

1 appointment include any persons more closely related to the
2 donee of the power than to the donor, and if such computation
3 would produce a higher tax.

4 (7),(7a) Repealed by Session Laws, 1985, c. 656, s. 1, effective
5 August 1, 1985.

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

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

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

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

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