

CHAPTER 218—S. F. No. 906

An act relating to inheritance and transfer taxes; amending Minnesota Statutes 1961, Section 291.01, Subdivision 3.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1961, Section 291.01, Subdivision 3, is amended to read:

Subd. 3. **Inheritance taxes; powers of appointment.** When any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and when any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. *A taxable transfer under the provisions of this chapter shall be deemed to have been made:*

(1) *To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such transfer would be taxable under the provisions of this chapter. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power. For the purposes of this subparagraph (1), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.*

(2) *To the extent of any property with respect to which the*

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decedent by will, or by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such transfer would be taxable under the provisions of this chapter, exercises a power of appointment by creating another power of appointment which can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(3) *The term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that*

(a) *A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.*

(b) *In the case of a power of appointment which is exercisable by the decedent only in conjunction with another person*

(A) *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.*

(B) *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.*

(C) *If (after the application of clauses (A) and (B) 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.*

(D) *For purposes of clauses (B) and (C), 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.*

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(4) *The lapse of a power of appointment during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:*

(a) *\$5,000, or*

(b) *five percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.*

Approved April 10, 1963.

CHAPTER 219—S. F. No. 954

[Not Coded]

An act relating to conservation; authorizing the commissioner of conservation to construct a water control structure upon lateral no. 4 of judicial ditch no. 7, Cass and Wadena counties, at the outlet of Dry Sand lake; and repealing Laws 1961, Chapter 396.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Dry Sand lake; water level. The commissioner of conservation upon approval of the district court as hereinafter provided, and any law to the contrary notwithstanding, is hereby authorized to construct and maintain a water control structure upon lateral no. 4 of judicial ditch no. 7 downstream from the outlet of Dry Sand lake in Cass and Wadena counties, of a size to impound water in said lake not to exceed a surface area of 400 acres, for use by the public for boating, hunting and other recreational purposes.

Sec. 2. Before the commissioner shall construct such control structure he shall first obtain flowage easements from all of the owners of all of the land to be flooded thereby, and obtain easements and rights of way necessary for public access to Dry Sand lake.

Sec. 3. Said control structure shall be constructed and maintained so as to not impair the efficiency of lateral no. 4 of judicial ditch no. 7, Cass and Wadena counties, downstream from such control structure or upstream from the water impounded

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