

8/17/99

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Harbison

IRRC Number: 1887

(1) Agency

Revenue

(2) I.D. Number (Governor's Office Use)

15-390

(3) Short Title

Disclaimers of Nonprobate Taxable Assets

(4) PA Code Cite

61 Pa. Code §§ 93.141 and 94.1

(5) Agency Contacts & Telephone Numbers

Primary Contact: Anita M. Doucette (717) 787-1382

Secondary Contact: Douglas A. Berguson (717) 787-1382

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Based on the opinion and order issued from the Commonwealth Court in In Re Estate of Bernecker, 654 A.2d 246 (Pa. Cmwlth. 1995), the Department is revising its policy on the effectiveness of disclaimers of nonprobate taxable assets for Inheritance Tax purposes. Section 93.141(a) sets forth the scope and application of the regulation. Subsection (b) defines "disclaimer," "disclaimant" and "nonprobate taxable assets." Subsection (c) sets forth specific conditions the Department will utilize to determine whether a disclaimer executed in regard to nonprobate taxable assets and nontrust assets of a decedent is valid for Inheritance Tax purposes, when made by the disclaiming party, or the personal representative of a deceased individual, or the guardian or attorney-in-fact of an incapacitated person or minor to whom the interest would have devolved, absent the disclaimer. Filing requirements are set forth in subsection (d) and notice requirements are set forth in subsection (e).

With the adoption of § 93.141, the Department is deleting the statement of policy set forth at § 94.1. The statement of policy provided the public with an explanation of the Department's policy on the effectiveness of disclaimers of nonprobate taxable assets for Inheritance Tax purposes pending the adoption of § 93.141.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Statutory authority for the regulation is contained in section 2103 of the TRC (72 P.S. § 9103). The relevant state court decision is In Re Estate of Bernecker, 654 A.2d 246 (Pa. Commonwealth 1995).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation is necessary to inform taxpayers and tax practitioners of the change in the Department's policy on the effectiveness of disclaimers of nonprobate taxable assets for Inheritance Tax purposes.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Taxpayers and tax practitioners will benefit from the Department setting forth its policy regarding disclaimers of nonprobate taxable assets in a regulation.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Any beneficiary of a deceased person who seeks to disclaim the interest the beneficiary will receive must comply for the disclaimer to be valid under the Inheritance and Estate Tax Act.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was published in the Pennsylvania Bulletin and the public was invited to comment. No public comments were received. The Department did not receive comments from the House and Senate Finance Committees. The Department did receive comments from the Independent Regulatory Review Commission. The Department considered the comments in preparing the final form regulation. In addition, a copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Chamber of Business and Industry and all parties who commented on the proposal. The regulation was listed in the Department's Agenda of Regulations published at 29 Pa.B. 3443 (July 3, 1999) and was forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The procedure set forth is consistent with the requirements of the Probate, Estates and Fiduciaries Code and will not impose additional costs.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting or consultant procedures are required by the regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government	Nominal Loss					
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

In most cases, disclaimers are used to improve the beneficiary's tax position in regard to Federal Estate Tax liabilities, rather than Pennsylvania Inheritance Tax. Use of disclaimers would most likely consist of beneficiaries whose rate or level of taxation would exceed that of parties receiving assets through probate. It is believed that disclaimers from lower rates of tax to higher rates of tax through the estate would be rare.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department exercised its nonregulatory alternative with the use of a pronouncement to set forth its interpretation of disclaimers of nonprobate taxable assets in addition to promulgating a proposed rulemaking. The pronouncement provided guidance to taxpayers pending the final adoption of the proposed rulemaking.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See response in (22) above.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The procedure is not addressed by Federal regulations since state law controls the validity of disclaimers.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The use of disclaimers for Pennsylvania inheritance tax purposes has no impact on Pennsylvania's competitiveness with other states. It affords taxpayers a planning opportunity that was not clearly understood.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation was presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. At the same time the regulation was presented to the Committees and the Commission, the regulation was published in the Pennsylvania Bulletin and the public was invited to comment.

The Committees and the Commission may hold hearings or meetings to consider the final-form regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committees and Commission. Notice of the Commission's public meeting to formally consider the final-form regulation will be published in the Pennsylvania Bulletin prior to the meeting date.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No paperwork, record keeping or reporting requirements are affected by the regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

DDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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8/17/99

1887

Copy below is hereby approved as to form and legality. Attorney General

by: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue

(Agency)

Document/Fiscal Note No. 15-390

Date of Adoption: _____

By: Robert A. Judge, Sr.
Robert A. Judge, Sr.
Secretary of Revenue

Title: _____
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

By: P. Grimaldi

9/15/99
Date of Approval

(Deputy General Counsel)
~~(Chief Counsel, Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

Inheritance Tax

61 Pa. Code §§ 93.141 and 94.1

Disclaimers of Nonprobate Taxable Assets

PREAMBLE

The Department of Revenue (Department), under the authority contained in section 2103 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 9103), by this order adopts amendments to 61 Pa. Code by amending Chapter 93. Inheritance Tax Division, by adding section 93.141 (relating to disclaimers of nonprobate taxable assets) and amending Chapter 94. Inheritance Tax Pronouncements - Statements of Policy, by deleting section 94.1 (relating to disclaimers of nonprobate taxable assets) to read as set forth in Annex A.

Purpose of Regulation

Based on the opinion and order issued from the Commonwealth Court in In Re Estate of Bernecker, 654 A.2d 246 (Pa. Cmwlth. 1995), the Department is revising its policy on the effectiveness of disclaimers of nonprobate taxable assets for Inheritance Tax purposes.

Explanation of Regulatory Requirements

Section 93.141(a) sets forth the scope and application of the regulation. Subsection (b) defines "disclaimer," "disclaimant" and "nonprobate taxable assets." Subsection (c) sets forth specific conditions the Department will utilize to determine whether a disclaimer executed in regard to nonprobate taxable assets and nontrust assets of a decedent is valid for Inheritance Tax purposes, when made by the disclaiming party, or the personal representative of a deceased individual, or the guardian or attorney-in-fact of an incapacitated person or minor to whom the interest would have devolved, absent the disclaimer. Filing requirements are set forth in subsection (d) and notice requirements are set forth in subsection (e).

With the adoption of § 93.141, the Department is deleting the statement of policy set forth at § 94.1. The statement of policy provided the public with an explanation of the Department's policy on the effectiveness of disclaimers of nonprobate taxable assets for Inheritance Tax purposes pending the adoption of § 93.141.

Affected Parties

All resident and nonresident decedent estates containing nonprobate taxable assets subject to Pennsylvania Inheritance Tax may be affected by this regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 27 Pa.B. 4750 (September 13, 1997). This regulation is being adopted with changes to the proposed rulemaking.

The Department did not receive any comments during the public comment period. No comments were received from the House Finance Committee or the Senate Finance Committee. Comments were received from the Independent Regulatory Review Commission (IRRC).

To adequately address the comments raised by IRRC and to provide a clear statement of the Department's policy relating to disclaimers of nonprobate taxable assets, the Department found it necessary to delete the proposed text of § 93.81 and adopt new language in a new Subchapter F, Disclaimer of Nonprobate Taxable Assets, § 93.141, as set forth in the attached Annex A.

In response to IRRC's comments, the following revisions have been made to the regulation:

(1) IRRC's first comment concerned proposed subsection (a) of § 93.81. The subsection explained that the Department was revising its policy regarding disclaimers of nonprobate taxable assets to reflect the Commonwealth Court decision in Bernecker. IRRC indicated that the text should be set forth in the preamble and deleted from the regulation. In addition, the citation to Bernecker should be referenced in the notes of decision section in the Pennsylvania Code. The Department agrees with IRRC's comment and has deleted the language from the regulation and placed it in the preamble. The Department will suggest that the Bernecker citation be incorporated in the notes of decisions section when the regulation is codified in the Pennsylvania Code.

(2) Proposed subsection 93.81(b)(2) provided, "The same rule applies to nonresident decedents with nonprobate taxable assets subject to Pennsylvania Inheritance Tax." IRRC's comment regarding this paragraph was that the provision was ambiguous and its location could be confusing. IRRC recommended that the Department move the provision to subsection (a) of the rulemaking and reword the provision to more clearly provide, "This regulation is applicable to all resident and nonresident decedents with nonprobate taxable assets subject to Pennsylvania Inheritance Tax." The Department agrees that the provision was not properly placed; however, instead of moving the provision to subsection (a), the Department has placed the language in the preamble.

(3) Proposed paragraph (3) under § 93.81(b) provided that the disclaimer shall be in writing and satisfy the requirements of 20 Pa.C.S. Chapter 62 (relating to disclaimers) in effect at the time

the disclaimer is made. IRRC suggested that the phrase "in effect at the time the disclaimer is made" was unnecessary and should be deleted because disclaimers must satisfy the statutory requirements in effect at the time the disclaimer is executed. The Department agrees with IRRC's suggestion and has deleted the phrase from the final-form regulation (§ 93.141(c)(2)).

(4) In its comments, IRRC indicated that within proposed subsection (b), paragraphs (1)(i), (5) and (6) of § 93.81 do not use consistent terminology when referring to an individual who may be making a disclaimer. For clarity purposes, IRRC suggested that the Department use a uniform description when referring to individuals who may disclaim. The Department agrees with the suggestion and has completely reworded the provision in the final-form regulation (§ 93.141(c)).

(5) IRRC also commented on the citations to various county court of common pleas orphans' court division decisions set forth in the regulation. Their first concern was that the Department was applying county or local court holdings on a statewide basis. Secondly, though the citations clarify the Probate, Estates and Fiduciary Code provisions regarding disclaimers and the TRC regarding disclaimers or renunciation for Inheritance Tax purposes, the subject regulation was promulgated pursuant to the Department's authority under the TRC. The subject regulation sets forth the treatment of disclaimers for Inheritance Tax purposes, not for probate purposes.

IRRC suggested that the Department delete the citations from the regulation. In addition, if the Department believes the cases will provide assistance to individuals and practitioners, the Department should explain the cases in the preamble and reference them in the notes of decisions section contained in the Pennsylvania Code.

The Department understands IRRC's concerns and has deleted the citations from the body of the regulation. The Department will suggest that the citations be incorporated in the notes of decisions section when the regulation is codified in the Pennsylvania Code.

(6) With regard to proposed § 93.81(b)(7), IRRC stated that the paragraph was ambiguous because it appears to require subparagraphs (i) - (iii) to occur in order to allow a personal representative to make a disclaimer on behalf of a decedent without court authorization. However, section 6202 of the Probate, Estates and Fiduciary Code (20 Pa.C.S. § 6202) allows a disclaimer to be made without court authorization only when the will of the decedent so authorizes. To resolve this issue, IRRC proposed language to restructure the paragraph. The Department agrees that the proposed

language could be confusing and has restructured the provision in the final-form regulation (§ 93.141(d)).

(7) IRRC's final comment related to the deletion of the Department's statement of policy relating to disclaimers of nonprobate taxable assets that appears at § 94.1. IRRC notes that the preamble for the proposed rulemaking did not mention the statement of policy, nor did it indicate that the statement of policy would be deleted upon adoption of § 93.81; therefore, IRRC suggested that the statement of policy be deleted upon adoption of § 93.81.

It was the Department's intention to delete § 94.1 with the adoption of the regulation; however, reference in the proposal was not possible because the statement of policy was not codified when the proposed regulation began the review process. Consistent with IRRC's comment and the Department's intent, language has been added to the regulation which deletes § 94.1 upon the adoption of § 93.141.

Fiscal Impact

The Department has determined that the revenue impact of the regulation may be a nominal loss to the Commonwealth. In most cases, disclaimers are used to reduce the beneficiary's Federal Estate Tax, rather than Pennsylvania Inheritance Tax. Use of disclaimers would most likely be by beneficiaries whose rate or level of taxation would exceed that of parties receiving assets through probate. It is believed that disclaimers from lower rates of tax to higher rates of tax through the estate would be rare.

Paperwork

The regulation will not generate significant additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the regulation is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 3, 1997, the Department submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 4750, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were (deemed) approved by the Committees on _____ and were (deemed) approved by IRRC on _____, in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745a(e)).

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by adding § 93.141 to read as set forth in Annex A and by deleting § 94.1.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

ROBERT A. JUDGE, SR.
SECRETARY OF REVENUE

07/08/99

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue. Subpart B.
General Fund Revenues, Article IV. County Collections, Chapter 93.
Inheritance Tax Division.

~~Subchapter B. Entry into Safe Deposit Box~~

~~Penalties~~

~~§ 93.81. Disclaimers of nonprobate taxable assets.~~

~~(a) General. The Department is revising its policy on the
validity of disclaimers of nonprobate taxable assets for
Pennsylvania Inheritance Tax purposes to reflect the decision and
order received from the Commonwealth Court in In Re Estate of
Bernecker, 654 A.2d 246 (Pa. Cmwlth. 1995).~~

~~(b) Scope.~~

~~(1) Disclaimers executed with regard to nonprobate
taxable assets of resident decedents, including rights of
survivorship interests in multiple-party accounts, titled tangible
personal property or real estate, beneficial interests in third-
party beneficiary contracts (that is, retirement benefit plans,
annuity contracts, individual retirement accounts, Keogh plan
proceeds, matured endowment insurance policies and certain out-of-
State government lottery contracts) and inter vivos gifts are valid
for Pennsylvania inheritance tax purposes if the following apply:~~

~~(i) They are made either by the disclaiming party
or the personal representative of the deceased individual or the~~

~~guardian or attorney-in-fact of the incapacitated person or minor to whom the interest, absent the disclaimer, would have devolved.~~

~~(ii) The applicable conditions in paragraphs (3) - (7) have been met.~~

~~(2) The same rule applies to nonresident decedents with nonprobate taxable assets subject to Pennsylvania Inheritance Tax.~~

~~(3) The disclaimer shall be in writing and shall satisfy the requirements of 20 Pa.C.S. Chapter 62 (relating to disclaimers) in effect at the time the disclaimer is made.~~

~~(4) The disclaimer shall be signed and dated within 9 months of the date of death of the decedent whose interest is being disclaimed. (See In Re Pomerantz' Estate, 28 D. & C.3d 521 (Montg. 1983)).~~

~~(5) The disclaimer shall be signed and dated by the individual, his personal representative if the individual seeking to disclaim has died, or the guardian or attorney-in-fact of an incapacitated individual or minor.~~

~~(6) If the disclaimer is made by the personal representative, the guardian of an incapacitated or minor person, or the attorney-in-fact of the person whose interest is being disclaimed, the petition required by 20 Pa.C.S. § 6202 (relating to disclaimers by fiduciaries or attorneys-in-fact) shall be filed with the applicable county orphans' court within 9 months of the date of death of the decedent whose interest, absent the disclaimer, would have devolved. (See, McGrady Estate, 42 D. &~~

~~C.2d 519, 17 Fiduc. Rep. 408 (O.C. Phila. 1967) and In Re Pomerantz' Estate, 28 D. & C.3d 521 (O.C. Montg. 1983)).~~

~~(7) A personal representative may make a disclaimer on behalf of a decedent without court authorization if the following apply:~~

~~(i) The will of the decedent authorizes the personal representative to do so (See 20 Pa.C.S. § 6202).~~

~~(ii) A copy of the probated last will and testament is attached to the Inheritance Tax return filed with the Department.~~

~~(iii) The disclaimer is signed and dated within 9 months of the date of death of the decedent as provided in section 2116(e) of the TRC (72 P.S. § 9116 (e)) and paragraph (4).~~

~~(8) Notice of the filing of an estate's first and final account and of its call for audit or confirmation shall include notice of the disclaimer of the decedent's devolved interest, including the written disclaimer of any nonprobate taxable assets of the decedent, under section 2116(e) of the TRC. The notice shall be given to Office of Chief Counsel, Pa. Dept. of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.~~

SUBCHAPTER F. DISCLAIMERS OF NONPROBATE TAXABLE ASSETS

§ 93.141. DISCLAIMERS OF NONPROBATE TAXABLE ASSETS.

(A) SCOPE AND APPLICATION. SUBSECTION (C) SETS FORTH SPECIFIC CRITERIA THE DEPARTMENT WILL UTILIZE TO DETERMINE WHETHER A DISCLAIMER EXECUTED IN REGARD TO EITHER NONPROBATE TAXABLE ASSETS OR NONTRUST ASSETS OF A DECEDENT IS VALID FOR

INHERITANCE TAX PURPOSES, WHEN THE DISCLAIMER IS MADE BY THE DISCLAIMING PARTY, OR THE PERSONAL REPRESENTATIVE OF A DECEASED INDIVIDUAL, OR THE GUARDIAN OR ATTORNEY-IN-FACT OF AN INCAPACITATED PERSON OR MINOR TO WHOM THE INTEREST WOULD DEVOLVE, ABSENT A DISCLAIMER.

(B) DEFINITIONS. THE FOLLOWING WORDS AND TERMS, WHEN USED IN THIS SECTION, HAVE THE FOLLOWING MEANINGS, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

DISCLAIMER - A SIGNED RENUNCIATION OR REFUSAL TO ACCEPT AN INTEREST IN PROPERTY THAT DESCRIBES THE INTEREST DISCLAIMED. THE DISCLAIMER MAY DISCLAIM, IN WHOLE OR IN PART, ANY PRESENT OR FUTURE INTEREST, VESTED OR CONTINGENT, INCLUDING A POSSIBLE FUTURE RIGHT TO TAKE AS AN APPOINTEE UNDER AN UNEXERCISED POWER OF APPOINTMENT OR UNDER A DISCRETIONARY POWER TO DISTRIBUTE INCOME OR PRINCIPAL.

DISCLAIMANT - ANY PARTY IN AN INDIVIDUAL CAPACITY, OR A PERSONAL REPRESENTATIVE ON BEHALF OF A DECEASED INDIVIDUAL, OR A GUARDIAN OR ATTORNEY-IN-FACT ON BEHALF OF AN INCAPACITATED PERSON OR A MINOR WHO RENOUNCES OR REFUSES TO ACCEPT A TRANSFER OF PROPERTY.

NONPROBATE TAXABLE ASSET - PROPERTY TRANSFERRED UPON A DECEDENT'S DEATH THAT IS SUBJECT TO INHERITANCE TAX BUT IS NOT SUBJECT TO ADMINISTRATION BY THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE.

(C) CONDITIONS. DISCLAIMERS OF NONPROBATE TAXABLE ASSETS, INCLUDING RIGHTS OF SURVIVORSHIP INTERESTS IN MULTIPLE-PARTY

ACCOUNTS, TITLED TANGIBLE PERSONAL PROPERTY OR REAL ESTATE, BENEFICIAL INTERESTS IN THIRD-PARTY BENEFICIARY CONTRACTS (THAT IS, RETIREMENT BENEFIT PLANS, ANNUITY CONTRACTS, INDIVIDUAL RETIREMENT ACCOUNTS, KEOGH PLAN PROCEEDS, MATURED ENDOWMENT INSURANCE POLICIES AND CERTAIN OUT-OF-STATE GOVERNMENT LOTTERY CONTRACTS) AND INTERVIVOS GIFTS ARE VALID FOR INHERITANCE TAX PURPOSES IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(1) THE DISCLAIMER IS MADE BY A DISCLAIMANT.

(2) THE DISCLAIMER IS IN WRITING AND SATISFIES THE REQUIREMENTS OF 20 PA.C.S.A., CHAPTER 62.

(3) THE DISCLAIMER IS SIGNED AND DATED BY THE DISCLAIMANT.

(D) FILING.

(1) WHEN THE WILL OF THE DECEDENT AUTHORIZES THE PERSONAL REPRESENTATIVE TO MAKE A DISCLAIMER ON BEHALF OF A DECEDENT WITHOUT COURT AUTHORIZATION, OR WHEN A DISCLAIMANT ACTS IN HIS INDIVIDUAL CAPACITY, THE PERSONAL REPRESENTATIVE OR THE INDIVIDUAL SHALL SIGN AND DATE THE DISCLAIMER WITHIN NINE MONTHS OF THE DATE OF DEATH OF THE DECEDENT AS PROVIDED IN SECTION 2116(C) OF THE TRC (72 P.S. § 9116(C)), ATTACH A COPY OF THE PROBATED LAST WILL AND TESTAMENT TO THE INHERITANCE TAX RETURN AND FILE THE ABOVE-REFERENCED DOCUMENTS WITH THE DEPARTMENT.

(2) WHEN THE DISCLAIMER IS MADE BY THE PERSONAL REPRESENTATIVE OF A DECEASED INDIVIDUAL, OR THE GUARDIAN OR ATTORNEY-IN-FACT, IN ACCORDANCE WITH 20 PA.C.S.A. § 6202, A PETITION, MOTION OR OTHER SUCH PLEADING AS MAY BE REQUIRED BY

LOCAL RULE SHALL BE FILED WITH THE APPLICABLE COUNTY ORPHANS' COURT AND, WITHIN NINE MONTHS OF THE DATE OF DEATH OF THE DECEDENT, THE PERSONAL REPRESENTATIVE OF A DECEASED INDIVIDUAL, OR THE GUARDIAN OR ATTORNEY-IN-FACT, SHALL ATTACH A COPY OF THE PROBATED LAST WILL AND TESTAMENT TO THE INHERITANCE TAX RETURN AND FILE THE ABOVE-REFERENCED DOCUMENTS WITH THE DEPARTMENT. FILING THE DISCLAIMER WITH THE APPLICABLE COUNTY ORPHANS' COURT WITHIN NINE MONTHS OF THE DATE OF DEATH OF THE DECEDENT SATISFIES THE FILING REQUIREMENT. HOWEVER, THE DISCLAIMER IS NOT VALID UNTIL SUCH TIME AS THE COURT AUTHORIZES THE DISCLAIMER.

(E) NOTICE. NOTICE OF THE FILING OF AN ESTATE'S ACCOUNT AND OF ITS CALL FOR AUDIT OR CONFIRMATION SHALL INCLUDE NOTICE OF THE DISCLAIMER UNDER SECTION 2116(C) OF THE TRC. THIS NOTICE SHALL BE GIVEN TO THE PENNSYLVANIA DEPARTMENT OF REVENUE, BUREAU OF INDIVIDUAL TAXES, INHERITANCE TAX DIVISION, DEPARTMENT 280601, HARRISBURG, PA 17128-0601.

CHAPTER 94. INHERITANCE TAX PRONOUNCEMENTS - STATEMENTS OF POLICY.

§ 94.1. RESERVED.

07/08/99

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-390
SUBJECT: Disclaimers of Nonprobate Taxable Assets
AGENCY: DEPARTMENT OF REVENUE

1999 SEP 24 AM 11:01
INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/24/99	<i>Patty Macart</i>	HOUSE COMMITTEE ON FINANCE
9/24/99	<i>Heather J. Ney</i>	SENATE COMMITTEE ON FINANCE
9/24/99	<i>Kevin C. Garner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

September 15, 1999