

7/17/97

# 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 § 93.81

(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 decision and order received from the Commonwealth Court in In Re Estate of Bernecker, 654 A.2d 246 (Pa. Cmwith. 1995), the Department is revising its policy on the effectiveness of disclaimers of nonprobate taxable assets for Pennsylvania inheritance tax purposes.

Subsection (b) of § 93.81 sets forth specific conditions which the Department will utilize in determining whether a disclaimer executed in regard to nonprobate taxable assets and nontrust assets of resident decedents is valid for Pennsylvania inheritance tax purposes when 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.

(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).

### Regulatory Analysis Form

(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 Pennsylvania 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.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Chamber of Business and Industry. The regulation was listed in the Department's Agenda of Regulations published at 27 Pa.B. 630 (February 1, 1997) 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>	N/A					
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>	N/A					
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government	Nominal Loss					
<b>Total Revenue Losses</b>						

(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 is exercising 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 will provide 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 will be presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. The Committees may hold public hearings or informational meetings to consider the regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committee. The Commission may hold informational meetings to consider the regulation. The date, time and location of such meetings can be ascertained by contacting the Commission.

At the same time the regulation is presented to the Committees and the Commission, the regulation will be published in the Pennsylvania Bulletin and the public will be invited to comment.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT LEGISLATIVE  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

7/17/97

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 a true and correct copy  
of a document issued, prescribed or promulgated by:

Department of Revenue

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-390

DATE OF OPTION: \_\_\_\_\_

BY:   
Robert A. Judge, Sr.

TITLE: Secretary of Revenue  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to  
form and legality. Executive or Independ-  
ent Agency

7/29/97  
DATE OF APPROVAL

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

Check if applicable: No Attorney Gen-  
eral approval or objection within 30  
days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code § 93.81

Inheritance Tax

Disclaimers of Nonprobate Taxable Assets



## PREAMBLE

Notice is hereby given that the Department of Revenue, under authority contained in section 2103 of the TRC (72 P.S. § 9103), proposes amendments to 61 Pa. Code by amending Chapter 93. Inheritance Tax Division, by adding section 93.81 (relating to disclaimers of nonprobate taxable assets), as set forth in Annex A.

Section 2103(a) provides that the Department may adopt and enforce rules and regulations for the just administration of Article XXI. Inheritance Tax.

### Purpose of Regulation

Based on the decision and order received 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 Pennsylvania inheritance tax purposes.

### Explanation of Regulatory Requirements

Subsection (b) of § 93.81 sets forth specific conditions which the Department will utilize in determining whether a disclaimer executed in regard to nonprobate taxable assets and nontrust assets of resident decedents is valid for Pennsylvania inheritance tax purposes when 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.

### Fiscal Impact

The Department of Revenue has determined that the revenue impact of the proposed 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 proposed 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

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. § 745.1-745.15), the agency submitted <sup>September 3, 1997,</sup> a copy of this proposed regulation on to the Independent Regulatory Review Commission and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the agency by 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the agency, the General Assembly and the Governor.

02/28/97

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 (i.e., 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:

(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;  
and

(ii) The applicable conditions in subsections (b)(3) through (b)(7) have been met.

(2) The same rule applies to non-resident decedents with nonprobate taxable assets subject to Pennsylvania inheritance tax.

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

(4) The disclaimer shall be signed and dated within nine 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 or her 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.A. § 6202 must be filed with the applicable county orphans' court within nine 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:

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

(ii) A copy of the probated last will and testament is attached to the inheritance tax return filed with the Department of Revenue; and

(iii) The disclaimer is signed and dated within nine months of the date of death of the decedent as provided in 72 P.S. § 9116 (c) and subparagraph (b)(4) above.

(8) Notice of the filing of an estate's first and final account and of its call for audit or confirmation must include notice of the disclaimer of the decedent's devolved interest, including the written disclaimer of any nonprobate taxable assets of the decedent, pursuant to 72 P.S. § 9116(c). Such notice shall be given to:

Office of Chief Counsel  
Pa. Dept. of Revenue  
Dept. 281061  
Harrisburg, PA 17128-1061

04/14/97

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-390

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SUBJECT: Inheritance Tax - Disclaimers of Nonprobate Taxable Assets

LAW  
REVIEW COMMISSION

AGENCY: Department of Revenue

TYPE OF REGULATION

X Proposed Regulation

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

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

9/3/97

*Kristen Meyer*

HOUSE COMMITTEE ON FINANCE

9/03/97

*Patricia A. Carnathan*

SENATE COMMITTEE ON FINANCE

9/3/97

*J. Belmont*

INDEPENDENT REGULATORY  
REVIEW COMMISSION

ATTORNEY GENERAL

9/3/97

*Cynthia Lee*

LEGISLATIVE REFERENCE  
BUREAU

August 19, 1997