

7/30/07

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2503

(1) Agency

Revenue

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

15-429

(3) Short Title

Realty Transfer Tax Amendments

(4) PA Code Cite

61 Pa. Code - Chapter 91

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary R. Sprunk (717) 783-7524

Secondary Contact: Douglas A. Berguson (717) 346-4633

(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.

The amendments to Chapter 91. Realty Transfer Tax (RTT), are made to address numerous legislative changes and to bring the regulatory provisions into conformity with Departmental policy. Reference should be made to the preamble for detail regarding specific amendments.

(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 1107-C of the TRC (72 P.S. § 8107-C).

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 amendments to Chapter 91 are made to address numerous legislative changes and to bring the regulatory provisions into conformity with Departmental policy.

(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.)

Any entity transferring an interest in real property as well as tax practitioners will benefit from having the Department's Realty Transfer Tax regulations consistent with the governing statute.

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 entity transferring an interest in real property will be required to comply with the regulation. The approximate number of people is indeterminable.

(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, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry as well as numerous stakeholders throughout the Commonwealth. The regulation was listed in the Department's Agenda of Regulations published at 33 Pa.B. 3186 (July 5, 2003), 34 Pa.B. 786 (February 7, 2004), 34 Pa.B. 3489 (July 3, 2004), 35 Pa.B. 833 (February 5, 2005), 36 Pa.B. 3376 (July 1, 2006). The proposed regulation was published at 35 Pa.B. 6096 (November 5, 2005). Public comments were received from Skarlatos & Zonarich LLP, Pennsylvania Institute of Certified Public Accountants (PICPA), Pennsylvania State University, Blank Rome LLP, Temple University and the Philadelphia Bar Association-Tax Section. (See Comment & Response document for summary of comments and the Department's response.)

(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.

Compliance with the regulation could result in a savings to the regulated community by reducing the possibility of assessment of penalty and interest. No legal, accounting or consulting procedures are required by the regulation.

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(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						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

The current regulation requires "immediate" severance of the standing timber if it is to be excludible. The proposed regulation requires *relatively* immediate severance. This provision will remove some of the problems of the previous language. Under the previous regulation, it was not necessarily plausible to insist upon an "ascertainable date" depending on the size of the property as indicated in the regulation. However, with the new language, a reasonable amount of time could be established using industry standards on a case-by-case basis. If the agreement does not have a definite time for removal or the amount of time allowed for removal is unreasonable, then the timber will be considered part of the realty. The amendment of this section may cause a positive impact on RTT revenues from certain transactions. However, since the provision only requires relatively immediate severance, there also might be some transactions that would be excluded that were not previously.

An additional section that would have an impact on RTT revenues is the provision in § 91.165 involving the Table I used to calculate the taxable amount of RTT in the case of reservation or conveyance of life estates. Instead of the table, the Department is proposing to update the life estate and remainder factors by published notice in the Pennsylvania Bulletin. Due to the infrequency of the affected transactions as well as the relatively small changes in the life estate factors, any negative revenue impact as the result of this provision would be minimal.

Finally, the impact of the holding of the United States Bankruptcy Court regarding Baltimore County v. Hechinger Liquidation Trust (in re Hechinger Inv. Co. of Del., Inc.), 335 F.3d 243 (3d Cir. Del. 2003) results in a stricter standard than the Department was using. However, the number of affected cases is believed to be minimal. There is no reason to believe that any substantial revenue impact would result from this change. In the past, the Department would allow the transfer to be exempt from the RTT as long as the parties involved in the transfer showed at the time of the transfer that a plan was agreed upon under Chapter 7 and 13 bankruptcies. However, the Hechinger decision held that the bankruptcies under Chapter 7 and 13 be confirmed prior to changing the deed in order to be exempt from the realty transfer tax.

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.

There are no nonregulatory alternatives associated with the regulation.

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

There are no alternative regulatory schemes associated with the regulation.

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.

This regulation relates to realty transfer tax, there currently is no comparative Federal tax.

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

The provisions contained in the regulation are generally comparable to those of other states. The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(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 agency.

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

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

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.

The regulation does not change existing reporting, record keeping or other paperwork requirements.

(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 the 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.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

7/30/07

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INDEPENDENT REGULATORY
REVIEW COMMISSION
DO NOT WRITE IN THIS SPACE

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. 15-429

DATE OF ADOPTION _____

BY Thomas W. Wolf

TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

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

BY Andrew C. Clark

SEP 21 2007

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

61 Pa. Code, Chapter 91

Realty Transfer Tax

Realty Transfer Tax Amendments

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code Chapter 91

Realty Transfer Tax Amendments

The Department of Revenue received requests for a copy of the final-form regulation from the following:

George E. Moore, Esq.
University Counsel for Temple University
400 Carnell Hall (040-07)
1803 N. Broad Street
Philadelphia, PA 19122

David M. Weixel, Esq.
General Counsel for Pennsylvania State
University
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

PREAMBLE

The Department of Revenue (Department), under authority contained in section 1107-C of the Tax Reform Code of 1971 (TRC) (72 P.S. § 8107-C), proposes amendments to 61 Pa. Code, Chapter 91 (relating to realty transfer tax) to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

The regulation contains comprehensive amendments to Chapter 91 to address numerous legislative changes and to bring the regulatory provisions into conformity with Departmental policy.

Explanation of Regulatory Requirements

Section 91.101 (relating to definitions) is amended by updating and adding several definitions in accordance with various legislative changes and court decisions. A summary of the amendments is as follows:

"Association" - The definition is amended to address a 1994 statutory amendment to Title 1 (1 P.S. § 1991) and a 1997 statutory amendment to Title 72 (72 P.S. § 8101-C).

"Child" - The definition is added to address an issue raised in Steidle v. Commonwealth, 717 A.2d 1084 (Pa. Cmwlth. 1998).

"Conservancy" - The definition is added to address a 1989 statutory amendment to 72 P.S. § 8102-C.3 (18).

"Conversion" - The definition is added in the final rulemaking for clarity.

"Corporation" - The definition is added to address the 1994 statutory amendment in Title 15 (15 P.S. § 8925).

"Debt" - The definition is added for use in the regulation.

"Entity" - The definition is added in the final rulemaking for clarity.

"Financing transaction" - The definition is added for use in the regulation.

"Living trust" - The definition is added to address the 1997 statutory amendment to 72 P.S. § 8101-C; and for further clarification, examples are added in the final rulemaking.

"Ordinary trust" - The definition is added to address the 1997 statutory amendment to 72 P.S. § 8101-C. Clarification language has been added in the final rulemaking.

"Settlor" - The definition is added for use in the regulation.

"Testamentary trust" - The definition is added for use in the regulation.

The Department is proposing numerous revisions to improve the clarity of various regulatory provisions including §§ 91.132, 91.135, 91.155, 91.162, 91.166 and 91.202.

Section 91.113(b) (relating to imposition of tax on declarations of acquisition) is amended to address the family farm partnership language set forth in 72 P.S. § 8102-C.5 (b.1).

A new § 91.115 (relating to publication of common level ratio factors) is added to codify the Department's existing practice of annually publishing applicable common level ratio factors for each fiscal year.

Section 91.132 (relating to bona fide sale transactions) is subdivided and amended by adding subsection (c) to address the court decision in Allebach v. Commonwealth, 546 Pa. 146, 683 A.2d 625 (1996). Three examples have been added to this section in the final rulemaking.

Section 91.136 (relating to appraisal) is subdivided and amended by adding paragraph (1) to incorporate the court decision in Kennedy Boulevard Associates I, Limited Partnership v. Tax Review Board of Philadelphia, 751 A.2d 719 (Pa. Cmwlth. 2000).

Additional guidance with regard to confirmatory deeds utilized in business mergers, consolidations and business form changes has been added to § 91.152 (relating to confirmatory deed). Clarifying language has been added to this section in the final rulemaking.

Section 91.153 (relating to principal and agent) is amended in the final rulemaking to add subsection (d) Like-kind exchanges.

Language clarifying the taxation regarding conveyances of real estate between entities and their owners is added to § 91.154 (relating to documents involving corporations, partnerships, limited partnerships and other associations).

Enhancements have been made to section 91.155 (relating to timber and crops) to include complete timber removal and products of the soil. In the final rulemaking, clarifying language has been added and the heading of the section has been corrected.

Section 91.156 (relating to trusts) is substantially revised to address the trust provisions in 72 P.S. §§ 8101-C and 8102-C and the Pennsylvania Supreme Court holdings in Leigh v. Commonwealth, 541 Pa. 187, 661 A.2d 1374 (1995) and Holmes v. Commonwealth, 539 Pa. 477, 653 A.2d 615 (1995). In the final rulemaking, subsections (c) and (e) have been amended with clarification language for living trusts.

Since its original adoption in 1988, Table I set forth in § 91.165 (relating to reservations or conveyances of life estates) has remained unchanged. In this final-form regulation, as recommended by the Independent Regulatory Review Commission (IRRC), the Department is removing Table I from the regulations. The Department is proposing at § 91.165(d) to update the life estate and remainder factors by published notice in the Pennsylvania Bulletin. In addition, an Example 4 to this section has been added in the final rulemaking.

Section 91.168 (relating to sale and leaseback transactions) has been amended in the final rulemaking with clarifying language.

A new § 91.170 (relating to the rule in Baehr Bros. v. Commonwealth, 487 Pa. 233, 409 A.2d 326 (1979))

sets forth rules to determine whether a document is excludible or subject to tax. In the final rulemaking, the citation to this case law has been corrected. In addition, this section was redrafted for clarity in the final rulemaking. A new § 91.171 (relating to transfers by operation of law) describes when a transfer by operation of law is and is not subject to tax.

Numerous revisions are proposed to § 91.193 (relating to excluded transactions) to bring the section into conformity with statutory changes from 1989 - 1997 to 72 P.S. § 8102-C.3, as well as to clarify areas that have been the subject of taxpayer inquiry and to reflect the United States Bankruptcy Court holding in Baltimore County v. Hechinger Liquidation Trust (In re Hechinger Inv. Co. of Del., Inc.), 335 F.3d 243 (3d Cir. Del. 2003). The Hechinger decision stands for the proposition that real estate transactions consummated prior to a Chapter 11 plan confirmation are not eligible to claim a realty transfer tax exemption under 11 U.S.C. § 1146(c). A new subsection (c) is added to promulgate the Department's policy that the list of excluded transactions in subsection (b) does not apply to acquisitions of real estate companies. In the final rulemaking, clarification language has been added throughout this section, as well as updated citations to statutes in paragraph (12).

A new § 91.195 (relating to state-related universities and public charities) is added to explain the taxability of transfers

involving state-related universities and public charities. In the final rulemaking, this section has been modified to recognize certain transactions with state-related universities as excluded transactions.

Section 91.211 (relating to family farm corporation) is amended and §§ 91.221 - 91.223 (relating to family farm partnership, acquired family farm partnership and declaration of acquisition) are added to address statutory changes set forth in 72 P.S. §§ 8101-C, 8102-C.3 and 8102-C.5 (b.1) regarding family farm partnerships. In the final rulemaking, the order of paragraphs (1) and (2) in § 91.221 has been reversed to mirror the order of the language in the statute, as well as the requirements set forth in § 91.211. Finally, the language at § 91.211(a)(1) has been amended to mirror the corresponding language at § 91.221(a)(1), as requested by two commentators.

Affected Parties

Any person or entity transferring an interest in real property could be affected by the regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 35 Pa. B. 6096 (November 5, 2005). This proposal is being adopted with changes to read as set forth in Annex A.

The Department has prepared a comment and response document that is available to interested parties by contacting

Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue,
P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061.

In its evaluation of Annex A, during the proposal stage, the Department received numerous comments from the Independent Regulatory Review Commission (IRRC) and various comments from the public. No comments were received from either the House Finance Committee or the Senate Finance Committee. The following is a summary of the Department's response to the key issues referenced in the comments:

For purposes of clarity, new definitions have been added to § 91.101 for "conversion" and "entity." The Department added or revised numerous examples to illustrate substantive provisions of the regulation (see definition of "living trust" and §§ 91.152(b), 91.154, 91.165 and 91.170). In order to clarify the exclusion for documents that merely confirm the conversion of entities, the Department redrafted § 91.152(b). New provisions were added to § 91.153 in order to explain the tax treatment of IRC § 1031 Like-kind exchanges. Also, the Department reworded §§ 91.154 and 91.170 for clarity. To address the treatment of living trust transfers in which the property is transferred to the trust by someone other than the settlor, the Department amended § 91.156. At IRRC's suggestion, the table contained in § 91.165 has been removed in favor of language to provide future changes to life estate and remainder factors by published notices in the

Pennsylvania Bulletin. In addition, the Department has amended § 91.195 to recognize certain state-related universities as exempt parties.

Fiscal Impact

The Department has determined that the proposed amendment will have no significant fiscal impact on the Commonwealth. A relatively small revenue loss could result from the updating of the table concerning the reservations or conveyances of life estates in § 91.165. Conversely, a positive revenue gain may result from the change regarding the treatment of timber in § 91.155. However, there also might be some transactions that will be excluded that were not previously. Finally, the impact of the United States Bankruptcy Court holding of Baltimore County v. Hechinger Liquidation Trust (In re Hechinger Inv. Co. of Del., Inc.), results in a more strict standard than the Department was currently using; however, there is no reason to believe that any substantial revenue impact would result from this change.

Paperwork

The proposed amendments will not create 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 amendments is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 21, 2005 the Department submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6096 (November 5, 2005) to the Independent Regulatory Review Commission (IRRC), 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 and the public.

These final-form regulations were (deemed) approved by the Committees on _____ and were approved by IRRC on _____, in accordance with section 5.1 (e) of the Regulatory Review Act (71 P.S. § 745.5(a) (e)).

Findings

The Department of Revenue 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 under 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 Chapter 91 (relating to realty transfer tax) to read as set forth in Annex A.

(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.

THOMAS W. WOLF
SECRETARY OF REVENUE

06/01/07

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
91. Realty Transfer Tax.

Subchapter E. GENERAL

§ 91.101. Definitions.

The following words and terms, when used in this chapter,
have the following meanings:

Association -

(i) An unincorporated enterprise owned or conducted by two
or more persons, including, but not limited to, a partnership,
limited partnership, limited liability partnership, restricted
professional company that is deemed to be a limited partnership
under 15 Pa.C.S. § 8997 (relating to taxation of restricted
professional companies) or joint venture.

(ii) The term does not include an ordinary or living
trust, limited liability company, decedent's estate, tenancy in
common, tenancy by the entireties or joint tenancy.

Child - A son or daughter by either natural birth or
adoption. The term shall not include:

(i) A stepson or stepdaughter.

(ii) A son or daughter of an individual whose parental rights have been terminated.

Conservancy - An entity which possesses a tax exempt status under section 501(c) (3) of the Internal Revenue Code (26 U.S.C.A. § 501(c) (3)) and which has as its primary purpose, THE preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

CONVERSION - A CHANGE OF AN ENTITY'S:

- (i) FORM OF ORGANIZATION.
- (ii) PLACE OF ORGANIZATION.
- (iii) NAME OR IDENTITY.

Corporation - A corporation, joint-stock association, limited liability company, business trust or banking institution which is organized under the laws of the Commonwealth, the United States or any other state, territory or foreign country or dependency.

Debt - A legally enforceable obligation arising out of a genuine debtor-creditor relationship to pay a fixed or determinable sum of money at a future date.

* * * * *

ENTITY - AN ASSOCIATION OR CORPORATION.

* * * * *

Financing transaction - An arrangement in which the following apply:

* * * * *

(iii) The debtor retains possession and beneficial ownership of the [realty] real estate transferred before default.

(iv) The transferee obtains title or ownership to the real estate only so far as is necessary to render the instrument of transfer effective as security for the debt.

(v) The transferee or the transferee's successor is obligated to return the transferred real estate at no or only nominal consideration to the debtor upon payment of the debt before default.

Living trust - An ordinary trust:

(i) Which, throughout the settlor's lifetime, is WHOLLY revocable by the settler SETTLOR without the consent of an adverse party.

(ii) Which vests no present interest in any of the trust assets CORPUS OR INCOME in any person other than the settlor or trustee until the settlor dies.

(iii) All the corpus and income of which can be reached or materially affected by the settlor without revocation of the trust or the consent of an adverse party.

(iv) From which no transfer of ~~property or money~~ CORPUS OR INCOME may be made by the trustee, at any time prior to the

death of the settlor, to any person in the capacity of a beneficiary other than the settlor.

(v) UNDER WHICH THE TRUSTEE EXERCISES NO DISCRETION AS TO THE DISPOSITION OF THE TRUST CORPUS OR INCOME DURING THE SETTLOR'S LIFETIME TO ANY PERSON OTHER THAN THE SETTLOR WITHOUT THE EXPRESS DIRECTION OF THE SETTLOR TO MAKE THE SPECIFIC DISPOSITION.

(vi) Which the trustee or, if the settlor was the trustee, the successor trustee is required under the governing instrument to distribute the corpus and retained income upon the death of the settlor.

EXAMPLE 1. IF A TRUST AGREEMENT PROVIDES THAT THE INCOME OF THE TRUST IS DISTRIBUTABLE ONE-HALF TO THE SETTLOR AND ONE-HALF TO ANOTHER PERSON, AT LEAST ANNUALLY, THE TRUST IS NOT A LIVING TRUST BECAUSE INCOME OF THE TRUST IS REQUIRED TO BE TRANSFERRED TO SOMEONE OTHER THAN THE SETTLOR IN THE CAPACITY AS A BENEFICIARY DURING THE SETTLOR'S LIFETIME.

EXAMPLE 2. IF A TRUST AGREEMENT PROVIDES THAT DURING THE SETTLOR'S LIFETIME, THE TRUSTEE MAY IN THE TRUSTEE'S SOLE AND ABSOLUTE DISCRETION, MAKE DISTRIBUTIONS TO MEMBERS OF THE SETTLOR'S FAMILY (OR OTHER PERSONS), THE TRUST DOES NOT QUALIFY AS A LIVING TRUST BECAUSE SOMEONE OTHER THAN THE SETTLOR CAN RECEIVE TRUST CORPUS OR INCOME WITHOUT THE SETTLOR'S CONSENT PRIOR TO THE SETTLOR'S DEATH.

EXAMPLE 3. IF A TRUST AGREEMENT PROVIDES THAT DURING THE SETTLOR'S LIFETIME, THE TRUSTEE, SOLELY AT THE DIRECTION OF THE SETTLOR, MAY TRANSFER TRUST CORPUS OR INCOME TO A PERSON OTHER THAN THE SETTLOR, SUCH PROVISION WILL NOT IN ITSELF DISQUALIFY THE TRUST AS A LIVING TRUST. BECAUSE THE TRUSTEE HAS THE AUTHORITY TO DISTRIBUTE TRUST CORPUS OR INCOME TO SOMEONE OTHER THAN THE SETTLOR ONLY AT THE SETTLOR'S DIRECTION, EFFECTIVELY THE SETTLOR IS MAKING THE TRANSFER. THUS, THE SETTLOR IS THE PARTY WHO IS REACHING AND MATERIALLY AFFECTING THE TRUST CORPUS OR INCOME. FURTHER, THE TRANSFER IS NOT MADE TO THE OTHER PERSON IN THE CAPACITY AS A TRUST BENEFICIARY.

Ordinary trust -

(i) A private trust which takes effect during the lifetime of the settlor of the trust and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving trust assets, under the ordinary rules applied in the orphan's court division of the court of common pleas or in other chancery or probate courts, until distribution to the beneficiaries of the trust.

(ii) The term does not include:

(A) ~~Business trusts organized under 15 Pa.C.S. (relating to Associations Code), Massachusetts business trusts or associations using the forms and methods of an ordinary trust which have either of the following features:~~ BUSINESS TRUSTS

ORGANIZED UNDER PENNSYLVANIA LAW OR THE LAW OF ANY STATE OR FOREIGN JURISDICTION, OR ANY FORM OF TRUST THAT HAS EITHER OF THE FOLLOWING FEATURES:

(I) The treatment of beneficiaries as associates.

(II) Beneficial interests in the trust estate or profits that are evidenced by transferable shares, similar to corporate shares, or are otherwise treated as personal property.

(B) Minors' estates.

(C) Incompetents' estates.

(D) A resulting or constructive trust created by operation of law.

(E) A testamentary trust.

Settlor - One who creates and furnishes the consideration for the creation of a trust by the transfer of property to the trust.

Testamentary trust - A private trust that is established by will or takes effect only at or after the death of the settlor.

Subchapter F. IMPOSITION OF TAX

§ 91.113. Imposition of tax on declarations of acquisition.

* * * * *

(b) A family farm corporation or family farm partnership is subject to pay a State tax at the rate of 1% of the value of the family farm [realty] real estate held by the family farm

corporation or the family farm partnership when it becomes an acquired company under §§ 91.212 and 91.222 (relating to acquired family farm corporations; and acquired family farm partnership). The tax shall be paid within 30 days after the family farm corporation or the family farm partnership becomes acquired.

§ 91.115. Publication of common level ratio factors.

The Department will publish the applicable common level ratio factors for each fiscal year beginning July 1 and ending June 30 and during the fiscal year, any changes thereto, in the Pennsylvania Bulletin.

Subchapter G. VALUATION

§ 91.132. Bona fide sale transactions.

(a) In a bona fide sale of [realty] real estate, the value of the [realty] real estate is the total agreed consideration for the sale which is paid or to be paid.

(b) ~~This~~ THE value includes liens existing before the transfer and not removed thereby—whether or not the underlying indebtedness is assumed—or a commensurate part of the liens, if they also encumber other [realty] real estate.

(c) ~~This~~ THE value FOR WHICH A SELLER WILL BE LIABLE FOR THE PAYMENT OF TAX does not include the value of consideration paid by a buyer's assignee, or a subsequent assignee thereof, for the right to have the seller convey the real estate to the

assignee or subsequent assignee unless the seller OR THE SELLER'S AFFILIATE is a party to the assignment and receives part or all of the consideration paid for the assignment. If the seller OR THE SELLER'S AFFILIATE is a party to the assignment and receives part or all of the consideration paid for the assignment, the value shall include the value of the consideration that the seller AND ITS AFFILIATE receives. FOR PURPOSES OF THIS SECTION, THE TERM SELLER'S AFFILIATE HAS THE SAME MEANING AS THE TERM GRANTOR'S AFFILIATE IN SECTION 91.131 (RELATING TO DEFINITIONS).

EXAMPLE 1. X ENTERS INTO AN AGREEMENT OF SALE WITH Y FOR THE CONVEYANCE OF REAL ESTATE FOR \$100,000. Y SUBSEQUENTLY ASSIGNS THE SALES AGREEMENT TO Z FOR \$1 MILLION. X EXECUTES A DEED FOR THE CONVEYANCE OF THE REAL ESTATE TO Z AND RECEIVES \$100,000. Y RECEIVES \$1 MILLION FROM Z FOR THE ASSIGNMENT. THE TAXABLE VALUE OF THE DEED FROM X TO Z FOR WHICH X IS LIABLE IS \$100,000.

EXAMPLE 2. X ENTERS INTO AN AGREEMENT OF SALE WITH Y FOR THE CONVEYANCE OF REAL ESTATE FOR \$100,000, PLUS 20 PERCENT OF THE VALUE OF ANY CONSIDERATION THAT Y RECEIVES FOR AN ASSIGNMENT OF THE AGREEMENT OF SALE. Y SUBSEQUENTLY ASSIGNS THE SALES AGREEMENT TO Z FOR \$1 MILLION. X EXECUTES A DEED FOR THE CONVEYANCE OF THE REAL ESTATE TO Z AND RECEIVES \$100,000, PLUS 20 PERCENT OF THE ASSIGNMENT PRICE OF \$1 MILLION (\$200,000).

THE TAXABLE VALUE OF THE DEED FROM X TO Z FOR WHICH X IS LIABLE IS \$300,000.

EXAMPLE 3. X ENTERS INTO AN AGREEMENT OF SALE WITH Y, X'S WHOLLY-OWNED ENTITY, FOR THE CONVEYANCE OF REAL ESTATE FOR \$100,000. Y SUBSEQUENTLY ASSIGNS THE SALES AGREEMENT TO Z FOR \$500,000. X EXECUTES A DEED FOR THE CONVEYANCE OF THE REAL ESTATE TO Z. X RECEIVES \$100,000 FROM Y AND Y RECEIVES \$500,000 FROM Z FOR THE CONVEYANCE. THE TAXABLE VALUE OF THE DEED FROM X TO Z FOR WHICH X IS LIABLE IS \$600,000.

* * * * *

§ 91.135. Judicial sales and other transactions.

The value of [realty] real estate is its computed value where the [realty] real estate is transferred through any of the following:

(1) By execution upon a judgment or upon foreclosure of a mortgage or under a judicial sale or tax sale or a transfer to a transferee or assignee of a bid or other rights of a purchaser under a judicial or tax sale.

* * * * *

§ 91.136. Appraisal.

The value of [realty] real estate shall be determined by appraisal only when [the realty] one of the following occurs:

(1) The real estate was transferred in lieu of foreclosure.

(2) The real estate is not the subject of a bona fide sale, cannot be valued under § 91.133 (relating to leases) and is not separately assessed for local real estate tax purposes.

Subchapter H. SPECIAL SITUATIONS

§ 91.152. Confirmatory deed.

(a) A deed made without consideration for the sole purpose of confirming TITLE TO REAL ESTATE UNDER a prior recorded document, including a deed that only asserts A TRANSFER OF TITLE TO REAL ESTATE BY OPERATION OF LAW AS A RESULT OF an existing survivorship interest, is not taxable. This [exclusion] subsection only applies if the following apply:

* * * * *

(3) The grantor of the deed of confirmation has no interest in the ~~property~~ REAL ESTATE conveyed or ~~held void or voidable interest in the property conveyed~~ THE GRANTOR RECEIVED HIS INTEREST BY A DOCUMENT THAT WAS VOID FROM INCEPTION.

(b) A deed made without consideration for the sole purpose of confirming AN ENTITY'S EXISTING real estate ownership following a merger, consolidation or change in the form or identity of a corporation or an association CONVERSION OF THE ENTITY IS NOT TAXABLE. This subsection only applies if all of the following occur:

(1) Record title to the subject real estate is in the entity as opposed to its owners. THE ENTITY HOLDS TITLE TO THE

REAL ESTATE AT THE TIME OF THE CONVERSION AS OPPOSED TO ITS OWNERS. AN ENTITY DOES NOT HOLD TITLE TO REAL ESTATE IF THE ENTITY'S OWNERS HAVE MERELY MADE A CAPITAL CONTRIBUTION OF THE REAL ESTATE TO THE ENTITY WITHOUT THE CONVEYANCE OF TITLE TO THE REAL ESTATE.

(2) Without the making of any document:

(i) The resultant entity is vested with all the SAME property, real, personal and mixed, and franchises of, and the debts due, the original association or, in the case of a merger or consolidation, each party thereto BEFORE AND AFTER THE CONVERSION.

(ii) The resultant entity is subject to all the SAME obligations of the original association or, in the case of a merger or consolidation, the parties thereto BEFORE AND AFTER THE CONVERSION.

(iii) Liens upon the property of the original association or, in the case of a merger or consolidation, any party thereto, ENTITY BEFORE THE CONVERSION are not impaired by the change in form CONVERSION.

(iv) Any claim existing or action or proceeding pending by or against the original association or, in the case of a merger or consolidation, any party thereto, ENTITY BEFORE THE CONVERSION may be prosecuted to judgment against the resultant entity AFTER THE CONVERSION.

(3) The original entity or, in the case of a merger or consolidation, any party thereto, ENTITY is not required to wind up its affairs or pay its liabilities and distribute its assets either because there is no break in the continuity of its existence or because its separate existence ceases with the reformation CONVERSION.

(4) Considering all the ownership interests in the original entity or, in the case of a merger or consolidation, any party thereto, there is no change in proportionate ownership interests resulting from the change in form. ENTITY PRIOR TO THE CONVERSION, THERE IS NO CHANGE IN PROPORTIONATE OWNERSHIP INTERESTS RESULTING FROM THE CONVERSION. NOTWITHSTANDING THE PROVISIONS OF § 91.154 (RELATING TO DOCUMENTS INVOLVING CORPORATIONS, PARTNERSHIPS, LIMITED PARTNERSHIPS AND OTHER ASSOCIATIONS), WHEN DETERMINING IF THERE IS A CHANGE IN PROPORTIONATE OWNERSHIP INTERESTS, ENTITIES WILL NOT BE CONSIDERED TO BE ENTITIES SEPARATE FROM THEIR MEMBERS, PARTNERS, STOCKHOLDERS OR SHAREHOLDERS; AND WHEN DETERMINING IF THERE IS A CHANGE IN PROPORTIONATE OWNERSHIP INTERESTS RESULTING FROM THE CHANGE TO A LIMITED PARTNERSHIP, THE INTERESTS OF THE LIMITED PARTNERS AND GENERAL PARTNERS WILL BOTH BE CONSIDERED.

(5) Title to real estate would not revert or be in any way impaired by reason of the merger, consolidation or change CONVERSION.

Example 1. A and B are equal partners in a general partnership known as AB, general partnership. One of the assets of the partnership is real estate THAT A AND B CONTRIBUTED TO THE PARTNERSHIP BUT OWN IN THEIR INDIVIDUAL NAMES. The real estate is titled in the names of A and B, individually, as co-tenants. A and B want to convert their general partnership to a limited partnership known as AB, LP. A and B set up an A LIMITED LIABILITY COMPANY (LLC) to be the 1% general partner in the limited partnership. A and B will have a 99% limited partnership interest in the limited partnership (that is, A and B each have a 49.5% limited partnership interest). In order to effectuate the conversion, A and B merge the partnership into the limited partnership AB INTO AB, LP. The limited partnership is the surviving entity of the merger. The general partnership ceases to exist as a result of the conversion. MERGER.

BY WAY OF THE MERGER, AB HAS CHANGED ITS BUSINESS ORGANIZATION FORM, OR CONVERTED, FROM A GENERAL PARTNERSHIP TO A LIMITED PARTNERSHIP. AB, LP CONTINUES THE SAME BUSINESS AS AB AND HAS ALL THE SAME ASSETS AND LIABILITIES AS AB. FURTHER, OWNERSHIP OF THE BUSINESS HAS NOT CHANGED. A AND B WERE EQUAL OWNERS OF AB AND ARE EQUAL OWNERS OF AB, LP THROUGH THEIR EQUAL OWNERSHIP OF THE LLC AND THEIR EQUAL LIMITED PARTNERSHIP INTERESTS IN AB, LP.

After the conversion, A and B prepare a deed for the partnership real estate to confirm the partnership's change of form to the limited partnership FOR THE REAL ESTATE FROM A AND B, INDIVIDUALLY, AND AB, GENERAL PARTNERSHIP, AS GRANTORS TO AB, LP AS GRANTEE. The deed is taxable because legal title to the real estate was in the name of A and B individually. Legal title was never transferred to the general partnership. THEREFORE, THE DEED EFFECTUATES A TRANSFER OF TITLE IN THE REAL ESTATE FROM A AND B, INDIVIDUALLY, TO AB, LP. AB, GENERAL PARTNERSHIP IS MERELY JOINING IN THE DEED. A DOCUMENT THAT TRANSFERS TITLE TO REAL ESTATE FROM INDIVIDUALS TO AN ENTITY IS TAXABLE.

Example 2. Assume the same facts as IN Example 1 except that general partnership AB purchased the real estate with partnership funds and titled the real estate in the name of the partnership AB. A and B have merely converted their form of organization from that of a general partnership to a limited partnership. It continues its same business and has all the same assets and liabilities as the general partnership. Further, ownership has not changed. A and B were equal partners in the general partnership and are equal general partners (through their equal ownership of the LLC) and limited partners. Because the general partnership held the real estate of record and there has only been a change in form of the business, the deed is not

taxable. BECAUSE THE GENERAL PARTNERSHIP HOLDS TITLE TO THE REAL ESTATE AND BECAUSE THE DEED MERELY CONFIRMS AB'S EXISTING OWNERSHIP OF THE REAL ESTATE FOLLOWING ITS CONVERSION TO AB, LP, THE DEED IS NOT TAXABLE.

Example 3. Assume the same facts as IN Example 2, except that INSTEAD OF SETTING UP A LIMITED LIABILITY COMPANY (LLC) TO BE THE GENERAL PARTNER OF AB, LP, A becomes the general partner and B becomes the limited partner. Each holds a 50% interest in the partnership's income. Although A and B each have an equal income interest, A now has sole control over the partnership as the general partner LIMITED PARTNERSHIP AS ITS GENERAL PARTNER and B has only an income interest as a limited partner. In the general partnership, A and B had equal management and income interests. Because there is a change in ownership interests, AB, LP IS A DIFFERENT ENTITY THAN AB. THEREFORE, the deed is taxable.

EXAMPLE 4. X, Y AND Z ARE EQUAL CO-PARTNERS IN XYZ GENERAL PARTNERSHIP. XYZ GENERAL PARTNERSHIP OWNS PENNSYLVANIA REAL ESTATE. X, Y AND Z DESIRE TO CHANGE THE FORM OF THE GENERAL PARTNERSHIP TO A LIMITED LIABILITY COMPANY (LLC). X, Y AND Z SET UP AN LLC TO TAKE THE PLACE OF THE GENERAL PARTNERSHIP. X, Y AND Z ARE EQUAL MEMBERS IN THE LLC. IN ORDER TO EFFECTUATE THE CONVERSION, X, Y AND Z TRANSFER THEIR PARTNERSHIP INTERESTS TO THE LLC. AS A RESULT, THE LLC BECOMES THE SOLE PARTNER OF

THE PARTNERSHIP. BY LAW, THE PARTNERSHIP MUST DISSOLVE. AS PART OF THE DISSOLUTION, THE PARTNERSHIP CONVEYS ALL ITS ASSETS, INCLUDING REAL ESTATE, AND ASSIGNS ITS LIABILITIES TO THE LLC, THE SOLE PARTNER. BECAUSE OF THE DISSOLUTION, THE GENERAL PARTNERSHIP CEASES TO EXIST AND THE LLC SURVIVES WITH THE SAME OWNERS, ASSETS AND LIABILITIES AS THE GENERAL PARTNERSHIP. BECAUSE OF THE DISSOLUTION, THERE HAS BEEN A BREAK IN THE CONTINUITY OF THE GENERAL PARTNERSHIP. CONSEQUENTLY, THE EXCLUSION UNDER THIS SUBSECTION DOES NOT APPLY. FURTHER, THE DOCUMENT THAT CONVEYED THE REAL ESTATE FROM THE GENERAL PARTNERSHIP TO THE LLC EFFECTUATED A DIRECT TRANSFER OF REAL ESTATE FROM THE GENERAL PARTNERSHIP TO THE LLC WHILE THEY BOTH EXISTED. BECAUSE THE TRANSFER WAS FROM AN ENTITY, XYZ GENERAL PARTNERSHIP, TO ITS SOLE MEMBER, THE LLC, THE DOCUMENT IS SUBJECT TO TAX PURSUANT TO § 91.154(a) (RELATING TO DOCUMENTS INVOLVING CORPORATIONS, PARTNERSHIPS, LIMITED PARTNERSHIPS AND OTHER ASSOCIATIONS), AND THE EXCLUSION UNDER § 91.193(13) (RELATING TO EXCLUDED TRANSACTIONS) DOES NOT EXCLUDE THE DOCUMENT FROM TAX BECAUSE THE LLC HAS NOT OWNED ITS INTEREST IN THE GENERAL PARTNERSHIP FOR MORE THAN 2 YEARS.

~~(c) A deed made without consideration for the sole purpose of confirming a change in place of organization.~~

~~(d) Notwithstanding the provisions of § 91.154 (relating to documents involving corporations, partnerships, limited~~

~~partnerships and other associations), when determining if there is a change in proportionate ownership interests, corporations and associations will not be considered to be entities separate from their members, partners, stockholders or shareholders; and when determining if there is a change in proportionate ownership interests resulting from the change to a limited partnership, the interests of the limited partners and general partners will both be considered.~~

~~(e) A deed made without consideration for the sole purpose of confirming that a prior recorded document was void ab initio and revesting record title in the grantor is not taxable.~~

§ 91.153. Principal and agent.

* * * * *

(d) LIKE-KIND EXCHANGES. FOR PURPOSES OF THIS SECTION AND § 91.193(b) (11) (RELATING TO EXCLUDED TRANSACTIONS), AN AGENT OR STRAW PARTY SHALL NOT INCLUDE:

(1) A QUALIFIED INTERMEDIARY AS DEFINED UNDER FEDERAL TREASURY REGULATION IN 26 CFR § 1.1031(k)-1(g)(4) (RELATING TO TREATMENT OF DEFERRED EXCHANGES) IN AN INTERNAL REVENUE CODE § 1031 EXCHANGE.

(2) AN EXCHANGE ACCOMMODATION TITLEHOLDER OR ANY OTHER ACCOMMODATION PARTY UTILIZED IN A PARKING TRANSACTION AS DEFINED UNDER FEDERAL REVENUE PROCEDURE 2000-37 (REV. PROC.

2000-37, 2000-2 C.B. 308) IN AN INTERNAL REVENUE CODE § 1031 EXCHANGE.

§ 91.154. Documents involving corporations, partnerships, limited partnerships and other associations.

(a) ~~Corporations, joint stock associations, business trusts, banking institutions, partnerships, limited partnerships, joint ventures and associations~~ ENTITIES are entities separate from their stockholders, shareholders, partners and members. Transfers OF TITLE TO REAL ESTATE between these entities and their stockholders, shareholders, partners and members, including transfers between a subsidiary and a parent corporation and transfers in consideration of the issuance or cancellation of stock, are fully taxable, unless the ~~transaction is excluded under § 91.193(b) (12) or (13) (relating to excluded transactions) or subsection (b) or (c)~~ OTHERWISE EXCLUDED.

(b) There is no tax upon the conversion of real estate from the separate property of a stockholder, shareholder, partner or member to the property of a corporation, joint stock association, business trust, banking institution, partnership, limited partnership, joint venture or association, provided the conversion is neither effectuated by deed nor memorialized by a writing satisfying the requirements of the Statute of Frauds. However, any writing confirming such a conversion will not be

~~excludible under either §§ 91.151 or 91.152 (relating to correctional deeds, and confirmatory deeds).~~ IF A PERSON DEDICATES AND SETS ASIDE REAL ESTATE FOR AN ENTITY'S USE THROUGH A WRITING WITHOUT CONVEYING TITLE TO THE REAL ESTATE TO THE ENTITY, THEN THE WRITING IS NOT SUBJECT TO TAX.

~~(c) There is no tax upon the conversion of real estate from the property of a corporation, joint stock association, business trust, banking institution, partnership, limited partnership, joint venture or association to the separate property of a stockholder, shareholder, partner or member, provided the conversion is neither effectuated by deed nor memorialized by a writing satisfying the requirements of the Statute of Frauds. However, any writing confirming such a conversion will not be excludible under either §§ 91.151 or 91.152.~~ IF A PERSON DEDICATES AND SETS ASIDE REAL ESTATE FOR AN ENTITY'S USE THROUGH A WRITING AND THE WRITING DOES NOT RESULT IN A CONVEYANCE OF TITLE TO THE REAL ESTATE TO THE ENTITY, THEN THERE IS NO TAX IMPOSED WHEN AN ENTITY RELINQUISHES ITS CONTROL OVER THE REAL ESTATE BACK TO THE PERSON THROUGH A WRITING.

~~(d) Examples are as follows:~~

~~Example 1. A transfers real estate to A, B and C trading as XYZ Partnership or A, B and C, co partners. The deed from A is fully taxable. Partnerships are separate entities from their partners.~~ X OWNS TITLE TO REAL ESTATE. X TRANSFERS TITLE TO THE

REAL ESTATE TO X, Y, Z TRADING AS XYZ PARTNERSHIP OR X, Y AND Z, CO-PARTNERS. THE DEED OF TRANSFER FROM X IS FULLY TAXABLE. PARTNERSHIPS ARE SEPARATE ENTITIES FROM THEIR PARTNERS.

Example 2. Assume the same facts as Example 1, except that A merely converts the real estate to the partnership's use by oral agreement. There is no deed or other writing that satisfies the requirements of the Statute of Frauds. Because record title remains with A, no tax is due.

Example 3. D, E and F are partners in both TUV and QRS partnerships. D, E and F, trading as TUV Partnership, transfer real estate to D, E and F trading as QRS Partnership. The deed is fully taxable because TUV Partnership and QRS Partnership are separate entities even though each has the same partners.

EXAMPLE 3. ASSUME THE SAME FACTS AS IN EXAMPLE 1, EXCEPT THAT X DEDICATES AND SETS THE REAL ESTATE ASIDE FOR THE PARTNERSHIP'S USE UNDER THE PARTNERSHIP AGREEMENT WITHOUT CONVEYING TITLE TO THE REAL ESTATE TO THE PARTNERSHIP. BECAUSE TITLE REMAINS WITH X, NO TAX IS DUE.

EXAMPLE 4. ASSUME THE SAME FACTS AS IN EXAMPLE 3. SUBSEQUENT TO X'S DEDICATION OF THE REAL ESTATE TO THE PARTNERSHIP'S USE, X DECIDES TO WITHDRAW FROM THE PARTNERSHIP. WHEN X WITHDRAWS FROM THE PARTNERSHIP, THE PARTNERSHIP RELINQUISHES ITS CONTROL OVER THE REAL ESTATE AS PART OF THE PARTNERSHIP'S PURCHASE OF X'S INTEREST IN THE PARTNERSHIP. THE

RELINQUISHMENT IS MADE IN WRITING. BECAUSE X HAS ALWAYS HELD TITLE TO THE REAL ESTATE, THERE IS NO TAX LIABILITY WHEN THE PARTNERSHIP RELINQUISHES ITS CONTROL TO THE REAL ESTATE.

§ 91.155. Timber ~~{and}~~ crops and natural resources.

(a) Except as provided in subsections (b) AND (c), a ~~document~~ WRITING transferring interests in standing timber and crops is A taxable DOCUMENT under this chapter.

(b) Standing timber [and crops are] is considered nontaxable personal property if the ~~instrument~~ WRITING provides for severance and complete removal [within an immediate ascertainable date] at once or as soon as it can be reasonably done. A transfer—of WRITING THAT CONVEYS AN INTEREST IN standing timber is A taxable DOCUMENT if ANY OF THE FOLLOWING ARE APPLICABLE:

(1) The transferee has discretion as to the time of removal.

(2) The ~~instrument~~ WRITING is indefinite as to the time for removal.

(3) ~~or~~ The ~~instrument~~ WRITING provides more time for the removal than is reasonably necessary considering the nature and extent of the land and the number of feet of merchantable timber to be removed.

(4) EVEN IF THE WRITING PROVIDES A REASONABLE TIME FOR THE SEVERANCE AND COMPLETE REMOVAL OF THE TIMBER, THE

TRANSFEROR CONCURRENTLY CONVEYS TITLE TO THE UNDERLYING REAL ESTATE TO THE TRANSFEREE, OR GIVES THE TRANSFEREE THE RIGHT OR OPTION TO PURCHASE THE UNDERLYING REAL ESTATE WITHIN THE PERIOD FOR SEVERANCE OF THE TIMBER.

(c) Products of the soil are considered nontaxable personal property if one of the following apply APPLIES:

(1) The products are planted annually and gathered during a single, annual season.

(2) The products are propagated for the purpose of being transplanted or grafted.

(3) The products require annual pruning, spraying or cultivation.

(4) The products are the annual products of shrubs, trees or annual or perennial plants.

§ 91.156. Trusts.

(a) Transfers to ordinary trusts. A transfer OF REAL ESTATE FOR NO OR NOMINAL CONSIDERATION to an ordinary trust is fully taxable, [except if] unless the transfer of the same property REAL ESTATE would be wholly exempt EXCLUDED if the transfer were WAS made directly from the grantor to all of the possible beneficiaries who have a remainder interest or who are otherwise entitled to receive the property REAL ESTATE or the proceeds from the sale of the property REAL ESTATE as a

beneficiary under the terms of the trust, whether or not the beneficiaries are contingent or specifically named.

Example: G transfers ~~property~~ REAL ESTATE to a trust without consideration for the use of B, G's spouse, for life. Under the trust, the remainder interest is vested in G's church. As a direct transfer to the religious organization would be taxable, the transfer to the trust is fully taxable.

(b) Contingent beneficiaries. A trust provision which identifies a contingent beneficiary by reference to the heirs of the trust settlor as determined by the laws of intestate succession will by itself neither qualify nor disqualify a transfer from the exemption provided by subsection (a).

(c) Transfers to living trusts.

(1) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust is ~~exempt~~ EXCLUDED FROM TAX.

(2) A TRANSFER FOR NO OR NOMINAL ACTUAL CONSIDERATION TO A TRUSTEE OF A LIVING TRUST FROM A GRANTOR OTHER THAN THE SETTLOR IS FULLY TAXABLE UNLESS THE TRANSFER OF THE REAL ESTATE WOULD BE WHOLLY EXCLUDED IF THE TRANSFER WAS MADE DIRECTLY FROM THE GRANTOR TO THE SETTLOR.

(d) Transfers from ordinary trusts. A transfer from [a] an ordinary trust is fully taxable except for a transfer for no or nominal actual consideration from the trustee to [a

beneficiary specified in the original recorded trust agreement under which the property was initially conveyed into the trust] the person who has the vested remainder interest or who is otherwise entitled to receive the ~~property~~ REAL ESTATE or the proceeds from the sale of the ~~property~~ REAL ESTATE as a beneficiary under the terms of the trust.

(e) Inter vivos transfers from living trusts.

(1) A transfer ~~for no or nominal consideration~~ from the trustee of a living trust during the settlor's lifetime to a grantee other than the settlor will be treated as if the transfer were made directly from the settlor to the grantee.

(2) A transfer from the trustee of a living trust to its settlor is ~~exempt if the settlor conveyed the property to the trust~~ EXCLUDED FROM TAX, IRRESPECTIVE OF WHO CONVEYED THE REAL ESTATE TO THE TRUSTEE. HOWEVER, IF THE GRANTOR WHO CONVEYED THE REAL ESTATE TO THE TRUSTEE IS THE SETTLOR'S FAMILY MEMBER AS DEFINED IN § 91.193 (b) (6) (RELATING TO EXCLUDED TRANSACTIONS), THEN THE PROVISIONS OF § 91.193 (b) (6) (ii) APPLY TO A SUBSEQUENT TRANSFER.

(f) Transfers from testamentary trusts and living trusts after the death of the settlor. A transfer of real estate from THE TRUSTEE OF a testamentary trust or ~~from~~ a living trust after the death of its settlor is exempt from tax only if the transfer is made for no or nominal actual consideration and to the person

who, under the governing instrument of the trust, has the vested remainder interest or who is otherwise entitled to receive the property REAL ESTATE or the proceeds from the sale of the property REAL ESTATE as a beneficiary under the terms of the trust.

(g) Requirement for exemption. An exemption will not be granted under this section unless the recorder of deeds is presented with a copy of the trust agreement.

§ 91.162. Turnkey projects.

A transfer of [realty] real estate to a developer or contractor who is required by contract to reconvey the [realty] real estate to the grantor after making contracted-for improvements to the [realty] real estate is not taxable if no beneficial interest in the real estate is transferred to the developer or contractor. The reconveyance to the grantor is also not taxable.

§ 91.165. Reservations or conveyances of life estates.

(a) [Table I is used in computing the tax base of a life estate or remainder interest in realty. If the transferor has conveyed only a life estate in realty, while reserving the remainder to himself, the transaction is taxable. The tax base is computed by multiplying the value of the realty as determined under § 91.135 (relating to judicial sales and other

transactions) by the life estate factor, based on the age of the life tenant, taken from Table I.

Example 1: L conveys a life estate to T in realty that is valued under § 91.135 at \$100,000. T is 50 years old. Life estate factor is+ .84743; Value = \$100,000 x .84743 = \$84,743.

(b) If the transferor of realty has reserved to himself a life estate, while conveying the remainder, the transaction is taxable. The tax base shall be computed by multiplying the value of the realty as determined under § 91.135 by the remainder factor, based on the age of the life tenant, taken from Table I.

Example 2: L conveys to T realty that is valued under § 91.135 at \$100,000 but reserves a life estate for himself. L is 50 years old. Remainder factor is .15257; Value = \$100,000 x .15257 = \$15,257.

TABLE I

1 Age	2 Life Estate	3 Remainder	1 Age	2 Life Estate	3 Remainder
0	0.97188	0.02812	51	0.83874	0.16126
1	0.98988	0.01012	52	0.82969	0.17031
2	0.99017	0.00983	53	0.82028	0.17972
3	0.99008	0.00992	54	0.81054	0.18946
4	0.98981	0.01019	55	0.80046	0.19954
5	0.98938	0.01062	56	0.79006	0.20994
6	0.98884	0.01116	57	0.77931	0.22069
7	0.98822	0.01178	58	0.76822	0.23178
8	0.98748	0.01252	59	0.75675	0.24325
9	0.98663	0.01337	60	0.74491	0.25509
10	0.98565	0.01435	61	0.73267	0.26733
11	0.98453	0.01547	62	0.72002	0.27998

12	0.98329	0.01671	63	0.70696	0.29304
13	0.98198	0.01802	64	0.69352	0.30648
14	0.98066	0.01934	65	0.67970	0.32030
15	0.97937	0.02063	66	0.66551	0.33449
16	0.97815	0.02185	67	0.65098	0.34902
17	0.97700	0.02300	68	0.63610	0.36390
18	0.97590	0.02410	69	0.62086	0.37914
19	0.97480	0.02520	70	0.60522	0.39478
20	0.97365	0.02635	71	0.58914	0.41086
21	0.97245	0.02755	72	0.57261	0.42739
22	0.97120	0.02880	73	0.55571	0.44429
23	0.96986	0.03014	74	0.53862	0.46138
24	0.96841	0.03159	75	0.52149	0.47851
25	0.96678	0.03322	76	0.50441	0.49559
1	2	3	1	2	3
Age	Life Estate	Remainder	Age	Life Estate	Remainder
26	0.96495	0.03505	77	0.48742	0.51258
27	0.96290	0.03710	78	0.47049	0.52951
28	0.96062	0.03938	79	0.45357	0.54643
29	0.95813	0.04187	80	0.43659	0.56341
30	0.95543	0.04457	81	0.41967	0.58033
31	0.95254	0.04746	82	0.40295	0.59705
32	0.94942	0.05058	83	0.38642	0.61358
33	0.94608	0.05392	84	0.36998	0.63002
34	0.94250	0.05750	85	0.35359	0.64641
35	0.93868	0.06132	86	0.33764	0.66236
36	0.93460	0.06540	87	0.32262	0.67738
37	0.93026	0.06974	88	0.30859	0.69141
38	0.92567	0.07433	89	0.29526	0.70474
39	0.92083	0.07917	90	0.28221	0.71779
40	0.91571	0.08429	91	0.26955	0.73045
41	0.91030	0.08970	92	0.25771	0.74229
42	0.90457	0.09543	93	0.24692	0.75308
43	0.89855	0.10145	94	0.23728	0.76272
44	0.89221	0.10779	95	0.22887	0.77113
45	0.88558	0.11442	96	0.22181	0.77819
46	0.87863	0.12137	97	0.21550	0.78450
47	0.87137	0.12863	98	0.21000	0.79000
48	0.86374	0.13626	99	0.20486	0.79514
49	0.85578	0.14422	100	0.19975	0.80025]
50	0.84743	0.15257			

The value of a life estate or remainder interest in real estate will be the consideration paid or to be paid for the life estate

or remainder interest EXCEPT AS PROVIDED FOR IN SUBSECTION (b)
OR (c).

(b) When no or nominal consideration or consideration less than actual monetary worth is paid for a life estate or remainder interest in real estate, the factors in Table I LIFE ESTATE AND REMAINDER FACTORS AS PROVIDED IN SUBSECTION (d) ARE shall be multiplied by the real estate's computed value IN ORDER to calculate the value of a life estate or remainder interest.

(c) WHEN CONSIDERATION THAT IS PAID OR TO BE PAID FOR THE CONVEYANCE OF REAL ESTATE OR THE COMPUTED VALUE OF REAL ESTATE MUST BE APPORTIONED TO CALCULATE THE TAXABLE VALUE OF A LIFE ESTATE OR REMAINDER INTEREST THAT IS PART OF THE CONVEYANCE, THE LIFE ESTATE AND REMAINDER FACTORS AS PROVIDED IN SUBSECTION (d) ARE MULTIPLIED BY THE CONSIDERATION PAID OR TO BE PAID FOR THE CONVEYANCE OF THE REAL ESTATE OR THE COMPUTED VALUE IN ORDER TO CALCULATE THE VALUE OF THE LIFE ESTATE OR REMAINDER INTEREST.

(d) THE DEPARTMENT WILL PUBLISH BY NOTICE IN THE PENNSYLVANIA BULLETIN LIFE ESTATE AND REMAINDER FACTORS AND THEIR EFFECTIVE DATE TO BE USED FOR THE CALCULATION OF THE TAXABLE VALUE OF A LIFE ESTATE AND REMAINDER INTEREST IN REAL ESTATE.

(1) FORMULA. THE FACTORS WILL BE BASED UPON TABLES PUBLISHED BY THE INTERNAL REVENUE SERVICE FOR CALCULATING THE PRESENT WORTH OF A LIFE ESTATE AND REMAINDER INTEREST. THE

DEPARTMENT WILL USE THE FACTORS CONTAINED IN THE INTERNAL REVENUE SERVICE TABLE USING AN INTEREST RATE EQUAL TO THE AVERAGE INTEREST RATE FOR THE 36 CONSECUTIVE MONTHS PRIOR TO THE PUBLICATION OF THE FACTORS IN THE PENNSYLVANIA BULLETIN.

(2) UPDATES. THE DEPARTMENT WILL UPDATE THE FACTORS PERIODICALLY AS NEEDED TO ACCOUNT FOR CHANGES IN MORTALITY AND INTEREST RATES.

Example 1: In an arm's length transaction for actual monetary worth, L conveys a life estate interest (or remainder interest, as the case may be) in real estate to T for \$50,000. The taxable value of the life estate is the consideration paid, that is \$50,000.

Example 2: L conveys a life estate interest in real estate to T for less than actual monetary worth. L reserves the remainder interest for himself. The computed value of the entire real estate is \$100,000. T is 50 years old. The life estate factor for T's life is .84743. Therefore, the THE taxable value of T's life estate interest is the computed value of the entire real estate multiplied by T's THE life estate factor BASED UPON T'S AGE $(\$100,000 \times .84743)$, or \$84,743.

Example 3: L conveys a remainder interest in real estate to T for less than actual monetary worth. L retains a life estate interest in the real estate. The computed value of the entire real estate is \$100,000. L is 50 years old. The life

estate factor for L's life is .84743. The remainder factor for T's remainder interest is .15257. Therefore, the THE taxable value of T's remainder interest is the computed value of the entire real estate multiplied T's BY THE remainder factor BASED UPON L'S AGE $(\$100,000 \times .15257)$, or \$15,257.

EXAMPLE 4: X SELLS REAL ESTATE TO X'S FRIENDS Y AND Z. THE SALE CONSISTS OF A LIFE ESTATE TO Y AND THE REMAINDER TO Z. Y IS 60 YEARS OLD, AND Z IS 45 YEARS OLD. X SELLS THE REAL ESTATE TO Y AND Z FOR A TOTAL, ARM'S LENGTH PURCHASE PRICE OF \$100,000, BUT THE AGREEMENT OF SALE DOES NOT APPORTION THE PURCHASE PRICE BETWEEN THE PRICE TO BE PAID FOR THE LIFE ESTATE AND THE REMAINDER INTEREST. IN ORDER TO CALCULATE THE TAXABLE VALUE OF THE LIFE ESTATE AND REMAINDER INTEREST, THE LIFE ESTATE AND REMAINDER FACTORS BASED UPON Y'S AGE ARE MULTIPLIED BY THE TOTAL PURCHASE PRICE.

Table I*

Age	Life Estate Factor	Remainder Factor	Age	Life Estate Factor	Remainder Factor
0	0.95309	0.04691	55	0.65587	0.34413
1	0.995997	0.04003	56	0.64383	0.35617
2	0.95868	0.04132	57	0.63156	0.36844
3	0.95709	0.04291	58	0.61911	0.38089
4	0.95531	0.04469	59	0.60650	0.39350
5	0.95338	0.04662	60	0.59376	0.40624
6	0.95131	0.04869	61	0.58086	0.41914
7	0.94911	0.05089	62	0.56777	0.43223
8	0.94679	0.05321	63	0.55450	0.44550
9	0.94433	0.05567	64	0.54105	0.45895
10	0.94171	0.05829	65	0.52745	0.47255
11	0.93896	0.06104	66	0.51366	0.48634
Age	Life Estate	Remainder	Age	Life Estate	Remainder

	Factor	Factor		Factor	Factor
12	0.93606	0.06394	67	0.49966	0.50034
13	0.93307	0.06693	68	0.48548	0.51452
14	0.93003	0.06997	69	0.47115	0.52885
15	0.92697	0.07303	70	0.45675	0.54325
16	0.92392	0.07608	71	0.44233	0.55767
17	0.92084	0.07916	72	0.42794	0.57206
18	0.91773	0.08227	73	0.41360	0.58640
19	0.91452	0.08548	74	0.39927	0.60073
20	0.91119	0.08881	75	0.38490	0.61510
21	0.90772	0.09228	76	0.37046	0.62954
22	0.90412	0.09588	77	0.35596	0.64404
23	0.90036	0.09964	78	0.34142	0.65858
24	0.89643	0.10357	79	0.32692	0.67308
25	0.89232	0.10768	80	0.31260	0.68740
26	0.88801	0.11199	81	0.29853	0.70147
27	0.88348	0.11652	82	0.28478	0.71522
28	0.87876	0.12124	83	0.27136	0.72864
29	0.87383	0.12617	84	0.25817	0.74183
30	0.86871	0.13129	85	0.24513	0.75487
31	0.86339	0.13661	86	0.23236	0.76764
32	0.85786	0.14214	87	0.22002	0.77998
33	0.85210	0.14790	88	0.20812	0.79188
34	0.84612	0.15388	89	0.19665	0.80335
35	0.83989	0.16011	90	0.18563	0.81437
36	0.83342	0.16658	91	0.17521	0.82479
37	0.82669	0.17331	92	0.16559	0.83441
38	0.81969	0.18031	93	0.15674	0.84326
39	0.81241	0.18759	94	0.14851	0.85149
40	0.80484	0.19516	95	0.14072	0.85928
41	0.79695	0.20305	96	0.13341	0.86659
42	0.78875	0.21125	97	0.12665	0.87335
43	0.78023	0.21977	98	0.12032	0.87968
44	0.77140	0.22860	99	0.11415	0.88585
45	0.76228	0.23772	100	0.10817	0.89183
46	0.75286	0.24714	101	0.10228	0.89772
47	0.74318	0.25682	102	0.09650	0.90350
48	0.73322	0.26678	103	0.09078	0.90922
49	0.72298	0.27702	104	0.08468	0.91532
50	0.71244	0.28756	105	0.07873	0.92127
51	0.70162	0.29838	106	0.07111	0.92889
52	0.69054	0.30946	107	0.06192	0.93808
53	0.67922	0.32078	108	0.04776	0.95224
54	0.66766	0.33234	109	0.02381	0.97619

~~*Factors in Table I are based on the 2000 Federal census for a single life tenant, computed at 5% interest.~~

~~(c) The Department will update Table I at least once every 5 years by published notice in the Pennsylvania Bulletin.~~

§ 91.166. Life maintenance.

[Conveyance] A transfer of [realty in] real estate as consideration [of] for life maintenance is a taxable transaction. [Tax shall] The tax base will be computed based on the value of the [interest in realty conveyed] real estate as determined under § 91.135 (relating to judicial sales and other transactions).

§ 91.168. Sale and leaseback transactions.

~~If realty is transferred on condition that it be leased back to the transferor:~~

~~(1) The document of transfer is taxable, unless the transaction is an excludable transaction under § 91.193 (relating to excluded transactions). See, for example, § 91.193(b)(23).~~

~~(2) The leaseback to the transferor is excludable from tax.~~

IF TITLE TO REAL ESTATE IS CONVEYED ON THE CONDITION THAT THE REAL ESTATE BE LEASED BACK TO THE GRANTOR THE DOCUMENT OF CONVEYANCE IS TAXABLE AND THE LEASE IS TAXABLE IF IT IS FOR A TERM OF 30 YEARS OR MORE, UNLESS THE CONVEYANCE AND LEASE ARE

EXECUTED TOGETHER AS PART OF AN EXCLUDED FINANCING TRANSACTION
UNDER § 91.193(b) (23) (RELATING TO EXCLUDED TRANSACTIONS).

§ 91.170. The rule in *Baehr Bros. v. Commonwealth*, 493 Pa. 417,
426 A.2d 1086 (1981) 487 PA. 233, 409 A.2D 326 (1979).

(a) GENERAL RULES.

(1) A document will be excludible from tax if each of
the following requirements is satisfied:

~~(1)~~(i) The document stands in the place of two
or more other writings.

~~(2)~~(ii) Each of the writings for which the
document stands would be excludible from tax under this article
and effective notwithstanding the insolvency, bankruptcy or
other legal disability of the signatories thereto.

~~(3)~~(iii) Title to the affected real estate
would not revert or be in any way impaired or encumbered by
reason of the recordation of the writings described in
SUBparagraphs ~~(1)~~ (i) and ~~(2)~~ (ii).

~~(b)~~(2) Separate transfers of a greater estate and a
lesser estate in real property will be taxed as a single
transfer of both estates if the transactions are entered into in
contemplation of a merger thereof.

~~(e)~~(3) Separate transfers of an interest in timber,
coal, oil, gas, or other appurtenance to real estate and the
real estate to which the interest is appurtenant will be taxed

as a single transfer of both interests if the transactions are entered into in contemplation of their coinciding and meeting in the same person.

(b) COMBINING TRANSACTIONS. WHEN A SINGLE DOCUMENT REPRESENTS, IN SUBSTANCE, TWO OR MORE TRANSFERS OF TITLE TO REAL ESTATE, THE DOCUMENT WILL BE VIEWED AS A SERIES OF SEPARATE TRANSFERS AND DOCUMENTS.

(1) THE TAX DUE ON THE SINGLE DOCUMENT WILL BE THE SAME AS THE SUM OF TAX THAT WOULD BE DUE HAD EACH TRANSFER BEEN EFFECTUATED BY A DOCUMENT. THE TAX LIABILITY FOR THE SINGLE DOCUMENT WILL BE ALLOCATED AMONG THE PARTIES AS IF EACH TRANSFER HAD BEEN EFFECTUATED BY A DOCUMENT.

(2) IF EACH SEPARATE TRANSFER IN THE SERIES IS EXCLUDED FROM TAX, THEN THE SINGLE DOCUMENT IS EXCLUDED FROM TAX. THIS RULE ONLY APPLIES IF:

(i) EACH TRANSFER AND DOCUMENT IN THE SERIES COULD HAVE BEEN ACCOMPLISHED AND EXECUTED INDIVIDUALLY UNDER THE LAWS OF THE COMMONWEALTH OR THE UNITED STATES.

(ii) COMPLETING THE SERIES OF TRANSFERS AND DOCUMENTS WOULD RESULT IN THE SAME TRANSFER ACCOMPLISHED BY THE SINGLE DOCUMENT.

(iii) THE SERIES OF TRANSFERS AND DOCUMENTS HAVE NOT BEEN REDUCED TO ONE TRANSFER AND DOCUMENT IN ORDER TO AVOID

A LEGAL, CONTRACTUAL, ECONOMIC OR PERSONAL DETRIMENT ASSOCIATED WITH COMPLETING THE SERIES OF TRANSFERS AND DOCUMENTS.

(iv) THE SERIES OF TRANSFERS AND DOCUMENTS WOULD HAVE BEEN COMPLETED WITHOUT THE BENEFIT OF THIS RULE.

(v) THE APPLICATION OF § 91.193(b)(6)(ii) (RELATING TO EXCLUDED TRANSACTIONS) WILL NOT BE AVOIDED BY THE APPLICATION OF THIS RULE.

EXAMPLE 1. X ENTERS INTO AN AGREEMENT OF SALE WITH Y FOR THE CONVEYANCE OF REAL ESTATE FOR \$100,000. Y SUBSEQUENTLY ASSIGNS THE SALES AGREEMENT TO Z FOR \$1 MILLION. X EXECUTES A DEED FOR THE CONVEYANCE OF THE REAL ESTATE TO Z AND RECEIVES \$100,000. Y RECEIVES \$1 MILLION FROM Z FOR THE ASSIGNMENT. THE TAXABLE VALUE OF THE DEED FROM X TO Z IS \$1,100,000. X AND Y ARE JOINTLY AND SEVERALLY LIABLE FOR THE TAX ON \$100,000 (SEE § 91.132(c)). Y AND Z ARE LIABLE FOR THE REMAINING TAX ON \$1 MILLION.

EXAMPLE 2. D DIES LEAVING A WILL THAT DEVISES REAL ESTATE TO D'S TWO SONS, X AND Y. D IS ALSO SURVIVED BY ANOTHER SON, Z. Z WANTS THE REAL ESTATE. X AND Y DO NOT WANT THE REAL ESTATE. X AND Y AGREE TO SELL THE REAL ESTATE TO Z. D'S ESTATE COULD EXECUTE A DEED FOR THE REAL ESTATE TO X AND Y AS TENANTS IN COMMON WITHOUT THE IMPOSITION OF TAX. SEE § 91.193(b)(7). X AND Y COULD THEN SELL AND TRANSFER THEIR INTERESTS IN THE REAL ESTATE TO Z WITHOUT THE IMPOSITION OF TAX. SEE

§ 91.193(b)(6)(i)(C). THEREFORE, ASSUMING THE CRITERIA IN SUBPARAGRAPHS (i) - (iv) OF SUBSECTION (b) ABOVE ARE MET, D'S ESTATE COULD SELL AND TRANSFER THE REAL ESTATE TO Z WITHOUT THE IMPOSITION OF TAX ON THE DEED OF TRANSFER EVEN THOUGH THE DEED FROM D'S ESTATE TO Z WOULD OTHERWISE BE TAXABLE.

EXAMPLE 3. X AND Y ARE SIBLINGS. X HAS A CHILD, Z (Y'S NIECE/NEPHEW). Y CONVEYS TITLE TO REAL ESTATE TO Z BY A DOCUMENT. DOCUMENTS THAT CONVEY TITLE TO REAL ESTATE FROM A PERSON'S SIBLING TO THE PERSON'S CHILD ARE SUBJECT TO TAX. THEREFORE, THE DOCUMENT FROM Y TO Z IS TAXABLE. THE ABOVE RULE DOES NOT PROHIBIT THE IMPOSITION OF TAX. ALTHOUGH Y COULD HAVE TRANSFERRED THE REAL ESTATE TO X BY A DOCUMENT WITHOUT THE IMPOSITION OF TAX, SEE § 91.193(b)(6)(i)(C), AND X COULD THEN, BY A SEPARATE DOCUMENT, HAVE TRANSFERRED THE SAME REAL ESTATE TO Z WITHOUT TAX, SEE § 91.193(b)(6)(i)(B). THE DOCUMENT FROM Y TO Z IS STILL SUBJECT TO TAX BECAUSE THE TWO-STEP TRANSACTION WOULD VIOLATE THE RULE UNDER § 91.193(b)(6)(ii) REGARDING FAMILY TRANSFERS MADE WITHIN ONE YEAR.

EXAMPLE 4. X CONVEYS TITLE TO REAL ESTATE TO AN INDUSTRIAL DEVELOPMENT AUTHORITY (IDA) AS SECURITY FOR A LOAN OF \$1 MILLION IN A FINANCING TRANSACTION IN WHICH THE IDA IS THE LENDER. IN TURN, THE IDA ENTERS INTO AN INSTALLMENT LAND CONTRACT WITH X FOR THE REAL ESTATE. THE TOTAL INSTALLMENT PAYMENTS SERVE AS THE DEBT SERVICE ON THE LOAN. DURING THE TERM OF THE

INSTALLMENT LAND CONTRACT, X ENTERS INTO AN AGREEMENT OF SALE WITH Y FOR THE REAL ESTATE. THE PURCHASE PRICE FOR THE REAL ESTATE IS \$5 MILLION. AT THE END OF THE INSTALLMENT SALES CONTRACT, X DIRECTS THE IDA TO CONVEY THE REAL ESTATE DIRECTLY TO Y. IN THIS CASE, THE DEED FROM THE IDA TO Y WILL BE VIEWED AS TWO TRANSFERS AND DOCUMENTS: A TRANSFER FROM THE IDA TO X IN SATISFACTION FOR THE REPAYMENT OF THE \$1 MILLION LOAN AND A SUBSEQUENT DEED FOR THE SALE OF THE REAL ESTATE FROM X TO Y FOR \$5 MILLION. THE TAXABLE VALUE OF THE DEED FROM THE IDA TO Y IS \$5 MILLION. THE TAXABLE VALUE IS CALCULATED BY ADDING THE TAXABLE VALUE OF THE TRANSFER FROM THE IDA TO X AND THE TRANSFER FROM X TO Y AS IF EACH TRANSFER HAD BEEN EFFECTUATED BY A DOCUMENT. THE TRANSFER FROM THE IDA TO X IS EXCLUDED AS THE SECOND LEG IN A FINANCING TRANSACTION. SEE § 91.193(b)(23) (RELATING TO EXCLUDED TRANSACTIONS). NEITHER THE IDA OR X ARE LIABLE FOR TAX ON THIS TRANSACTION. THE TRANSFER FROM X TO Y IS TAXABLE ON THE SALE VALUE OF \$5 MILLION. X AND Y ARE JOINTLY AND SEVERALLY LIABLE FOR THE TAX ON THE \$5 MILLION SALE VALUE.

EXAMPLE 5. SAME FACTS AS IN EXAMPLE 4 EXCEPT THAT THERE IS NO SALE BETWEEN X AND Y. RATHER, X IS THE SOLE OWNER OF A SUBSIDIARY BUSINESS ENTITY. AT THE END OF THE INSTALLMENT SALE TERM BETWEEN THE IDA AND X, X DIRECTS THE IDA TO CONVEY THE REAL ESTATE TO THE SUBSIDIARY BUSINESS ENTITY. THE CONVEYANCE IS FOR

NO OR NOMINAL CONSIDERATION. UNDER THIS SET OF FACTS, THE DEED TO THE SUBSIDIARY WILL ALSO BE SEEN AS A TWO STEP TRANSACTION. AS IN EXAMPLE 4, THE FIRST STEP OF THE TRANSACTION WILL BE THE TRANSFER OF THE REAL ESTATE FROM THE IDA TO X. THAT TRANSACTION IS EXCLUDED FROM TAX. THE IDA AND X HAVE NO LIABILITY FOR THAT TRANSACTION. THE SECOND STEP OF THE TRANSACTION IS THE TRANSFER FROM X TO ITS SUBSIDIARY BUSINESS ENTITY. THE SECOND STEP IS TAXABLE; AND BECAUSE THE TRANSACTION IS FOR NO OR NOMINAL CONSIDERATION, THE TAXABLE VALUE IS THE COMPUTED VALUE OF THE REAL ESTATE. X AND THE SUBSIDIARY BUSINESS ENTITY ARE JOINTLY AND SEVERALLY LIABLE FOR THE TAX ON THAT TRANSFER.

(c) SPLITTING TRANSACTIONS. IF A SERIES OF TWO OR MORE TRANSACTIONS AND ASSOCIATED WRITINGS, ONE OR MORE OF WHICH WOULD NOT BE SUBJECT TO TAX IF CONSIDERED SEPARATELY, ARE COMPLETED INSTEAD OF A SINGLE TRANSACTION AND TAXABLE DOCUMENT, THE SERIES OF TRANSACTIONS AND WRITINGS WILL BE CONSIDERED AS IF COMPLETED BY THE SINGLE TRANSACTION AND DOCUMENT. THEREFORE, EACH INDIVIDUAL WRITING IN THE SERIES OF TRANSACTIONS AND WRITINGS WILL BE SUBJECT TO TAX UPON A PORTION OF THE VALUE OF THE TITLE TO REAL ESTATE CONVEYED IN RESPECT OF THE TRANSACTIONS AND WRITINGS. IF IT IS NOT POSSIBLE TO DETERMINE HOW TO APPORTION ALL OR PART OF THE TAXABLE VALUE BETWEEN TWO OR MORE OF THE WRITINGS, THEN THE VALUE FOR WHICH APPORTIONMENT CANNOT BE

DETERMINED SHALL BE DIVIDED EQUALLY AMONG ALL WRITINGS THAT DO NOT HAVE AN APPORTIONED VALUE. THIS RULE ONLY APPLIES IF:

(1) THE PARTIES TO THE SINGLE TRANSACTION AND DOCUMENT ARE IDENTICAL TO THE PARTIES TO THE SERIES OF TRANSACTIONS AND WRITINGS. FOR PURPOSES OF THIS SECTION, PARTIES ARE IDENTICAL IF THEY ARE THE SAME PERSON OR THE PERSON'S AFFILIATE. THE TERM "AFFILIATE" IN THIS SECTION HAS THE SAME MEANING AS THE TERM "GRANTOR'S AFFILIATE" IN § 91.131 (RELATING TO DEFINITIONS).

(2) COMPLETING THE SERIES OF TRANSACTIONS AND WRITINGS RESULTS IN THE SAME OUTCOME THAT WOULD HAVE RESULTED FROM COMPLETING THE SINGLE TRANSACTION AND DOCUMENT.

(3) THE PRIMARY PURPOSE FOR COMPLETING THE SERIES OF TRANSACTIONS AND WRITINGS RATHER THAN COMPLETING THE SINGLE TRANSACTION AND DOCUMENT IS THE AVOIDANCE OF TAX.

EXAMPLE 1. X AGREES TO SELL AND CONVEY REAL ESTATE TO Z FOR \$2 MILLION. THE CONVEYANCE CAN BE ACCOMPLISHED BY ONE, TAXABLE DOCUMENT BASED UPON THE SALE PRICE OF \$2 MILLION. IN ORDER TO AVOID PAYING TAX ON THE FULL SALE PRICE OF THE TRANSFER, X AND Z AGREE TO DIVIDE THE CONVEYANCE INTO FOUR SEPARATE TRANSACTIONS: D, E, F AND G. TRANSACTION D INVOLVES A DEED OF CONVEYANCE FOR A PORTION OF THE VALUE OF THE REAL ESTATE. Z PAYS \$100,000 FOR THE DEED. TRANSACTIONS E, F AND G ARE EFFECTUATED BY SEPARATE WRITINGS THAT EACH, BY APPEARANCE,

IS NON-TAXABLE. Z PAYS \$400,000 FOR TRANSACTION E AND ITS RESPECTIVE WRITING AND A TOTAL OF \$1.5 MILLION FOR TRANSACTIONS F AND G AND THEIR RESPECTIVE WRITINGS. THE FOUR TRANSACTIONS AND WRITINGS EFFECTUATE THE SAME OUTCOME AS WOULD HAVE BEEN ACCOMPLISHED BY THE SINGLE TRANSACTION AND DOCUMENT. THEREFORE, ALL FOUR TRANSACTIONS ARE CONSIDERED AS ACCOMPLISHED BY THE SINGLE TRANSACTION AND DOCUMENT, AND EACH WRITING IS TAXABLE UPON THE PORTION OF THE VALUE OF THE REAL ESTATE THAT IT REPRESENTS. THE DEED OF CONVEYANCE FOR TRANSACTION D REPRESENTS THE CONVEYANCE OF A PORTION OF THE REAL ESTATE. Z PAID \$100,000 FOR THE DEED. THEREFORE, ITS TAXABLE VALUE IS \$100,000. TRANSACTIONS E, F AND G AND THE ASSOCIATED WRITINGS EFFECTUATED THE TRANSFER OF THE REMAINING PORTION OF THE REAL ESTATE. BECAUSE Z PAID \$400,000 FOR THE WRITING UNDER TRANSACTION E, THE TAXABLE VALUE OF THE WRITING IS \$400,000. THERE WAS NO ALLOCATION OF THE PURCHASE PRICE FOR TRANSACTIONS F AND G AND THE ASSOCIATED WRITINGS. THEREFORE, THE REMAINING PORTION OF THE REAL ESTATE VALUE THAT HAS NOT BEEN ALLOCATED, THAT IS \$1.5 MILLION, IS DIVIDED EQUALLY, \$750,000 EACH, BETWEEN THE WRITINGS FOR TRANSACTIONS F AND G.

EXAMPLE 2. X IS A LAND DEVELOPER AND IS THE SOLE OWNER OF BUSINESS ENTITY 1 AND 2.

X HAS BUSINESS ENTITY 1 PURCHASE VACANT REAL ESTATE. REALTY TRANSFER TAX IS PAID ON THE DOCUMENT OF TRANSFER FOR THE

REAL ESTATE. X THEN HAS BUSINESS ENTITY 1 LEASE THE REAL ESTATE UNDER A SHORT TERM LEASE (LESS THAN 30 YEARS) TO BUSINESS ENTITY 2. BUSINESS ENTITY 2 MAKES \$10 MILLION WORTH OF IMPROVEMENTS TO THE REAL ESTATE. BUSINESS ENTITY 1 REMAINS THE OWNER OF THE UNDERLYING REAL ESTATE AND BUSINESS ENTITY 2 REMAINS THE OWNER OF THE IMPROVEMENTS.

X THEN ENTERS INTO AN AGREEMENT WITH Y FOR THE SALE OF THE REAL ESTATE AND IMPROVEMENTS FOR \$15 MILLION. THE AGREEMENT PROVIDES THAT X WILL HAVE BUSINESS ENTITY 1 CONVEY ITS OWNERSHIP IN THE UNDERLYING REAL ESTATE TO Y FOR A SALE PRICE OF \$2 MILLION. BUSINESS ENTITY 1 AND Y EFFECTUATE THE TRANSFER OF THE UNDERLYING REAL ESTATE AND PAY REALTY TRANSFER TAX ON THE DEED OF CONVEYANCE BASED UPON THE \$2 MILLION SALE VALUE.

THE AGREEMENT ALSO PROVIDES THAT X WILL HAVE BUSINESS ENTITY 2 ASSIGN ITS LESSEE INTEREST IN THE SHORT TERM LEASE TO Y FOR THE REMAINING \$13 MILLION SALE PRICE. NO TAX IS PAID ON THE ASSIGNMENT OF THE LESSEE INTEREST. Y THEN TERMINATES THE LEASE RESULTING IN A MERGER OF THE REAL ESTATE AND IMPROVEMENTS IN Y.

Y HAS, IN SUBSTANCE, PURCHASED BOTH THE UNDERLYING REAL ESTATE AND IMPROVEMENTS. BY BREAKING THE SIMPLE SALE OF THE UNDERLYING REAL ESTATE AND IMPROVEMENTS INTO MULTIPLE TRANSACTIONS, X AND Y HAVE ATTEMPTED TO AVOID PAYING TAX ON THE FULL SALE PRICE OF \$15 MILLION. IN THIS CASE, THE MULTIPLE TRANSACTIONS WILL BE VIEWED AS A SINGLE TRANSACTION. THEREFORE,

THE TOTAL TAXABLE VALUE OF THE SINGLE TRANSACTION IS THE \$15 MILLION SALE PRICE.

§ 91.171. Transfers by operation of law.

Except as provided in § 91.152(a) (RELATING TO CONFIRMATORY DEED) AND § 91.193(b)(1)(i), (7), (12) and (13) (relating to excluded transactions), any writing that satisfies the requirements of the Statute of Frauds and confirms or evidences a transfer OF TITLE TO REAL ESTATE that is accomplished by operation of law is taxable on the same basis as a document that effectuates a conveyance or transfer or vests title to real estate.

Subchapter I. EXCLUDED PARTIES AND TRANSACTIONS

§ 91.193. Excluded transactions.

* * * * *

(b) Additional exclusions. Other transactions which are excluded from tax include:

(1) A transfer to the United States or the Commonwealth or to an instrumentality, agency or governmental body of either if the transfer is:

(i) In lieu or confirmation of a taking by eminent domain. To qualify for the exclusion, the deed shall be made under a prior statute, ordinance, resolution, plan or order for the condemnation, appropriation or acquisition of the real estate transferred by condemnation or [by condemnation or

purchase] in lieu thereof. The statement of value accompanying a document that effectuates such a transfer shall contain a specific reference to the ordinance, resolution or other official action by which the grantee was authorized to file a declaration of taking of the transferred real estate.

* * * * *

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States, including:

(i) A transfer under a bankruptcy plan confirmed under section 1129 of the act of November 6, 1978 (Pub. L. 95-598) (92 Stat. 2549), known as the Federal Bankruptcy Act (Bankruptcy Act) (11 U.S.C. § 1129) and exempt under section 1146(c) of [that act] the Bankruptcy Act (11 U.S.C. § 1146(c)). To claim this exclusion, a copy of the order [directing the transfer] and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1129 only when the transfer is authorized by the specific terms of a previously confirmed Chapter 11 plan.

(ii) [A transfer under section 1153(a) (1) of the Northeast Rail Service Act of 1981 (45 U.S.C.A. § 1106(a) (1)).] A transfer under a bankruptcy plan confirmed under section 1225 of the Bankruptcy Act (11 U.S.C. § 1225) and exempt under section 1231(c) of the Bankruptcy Act (11 U.S.C. § 1231(c)). To claim this exclusion, a copy of the order and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1225 of the Bankruptcy Act only when the transfer is authorized by the specific terms of A previously confirmed Chapter 12 plan.

(iii) Transfers made under the authority of sections 363 or 365 of the Bankruptcy Act (11 U.S.C. §§ 363 or 365) and occurring before the confirmation of a plan will not qualify for exemption under this elause PARAGRAPH. HOWEVER, TRANSFERS PURSUANT TO SALES AUTHORIZED UNDER THESE SECTIONS OF THE BANKRUPTCY ACT MAY QUALIFY FOR OTHER EXCLUSIONS. SEE § 91.193(b) (16).

* * * * *

(6) Transfers between certain family members:

* * * * *

(iii) The estate of a deceased family member is not a family member for purposes of claiming the familial exemption under this paragraph.

* * * * *

(8) A transfer ~~for no or nominal consideration~~ to a trustee of an ordinary trust where ~~the transfer of the same property would be wholly excluded if the transfer were made directly by the grantor to all the possible beneficiaries who have remainder interests or are entitled to receive the property or the proceeds from the sale of the property as beneficiaries under the terms of the trust,~~ whether or not the beneficiaries are ~~contingent or specifically named.~~ See AS PROVIDED IN § 91.156(a) (relating to trusts).

(9) A transfer ~~for no or nominal actual consideration~~ from a trustee [to a beneficiary to an ordinary trust] of an ordinary trust to a person who has the vested remainder interest or who is otherwise entitled to receive the property or the proceeds from the sale of the property as a beneficiary under the terms of the trust. See AS PROVIDED IN § 91.156(d).

* * * * *

(12) A transfer under the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation if:

(i) The document merely confirms that an interest in real estate passed by operation of law to a nonprofit corporation under a statutory division of a nonprofit corporation. See 15 Pa.C.S. ~~§ 7946(b)~~ § 5957(b) (relating to effect of division).

(ii) The document merely reflects that the corporation changed from a business corporation to a nonprofit corporation, or vice versa. See 15 Pa.C.S. ~~§ 7956~~ § 5966 (relating to effect of conversion).

(iii) The document merely confirms that an interest in real estate passed by operation of law to a new or surviving corporation under a statutory merger or consolidation, unless the primary intent for the merger or consolidation is avoidance of the realty transfer tax. See ~~sections 907 and 1009 of the Business Corporation Law (15 P.S. §§ 1907 and 2009)~~ 15 Pa.C.S. §§ 1929 and 4127 (relating to effect of merger or consolidation and merger or consolidation of foreign business corporation) and 15 Pa.C.S. ~~7929(b)~~ 5929(b) (relating to effect of merger or consolidation). In determining whether a merger or reorganization is undertaken to avoid tax, the Department will consider the following factors:

* * * * *

(18) [A transfer to a conservancy which possesses a tax exempt status under section 501(c) (3) of the Internal

Revenue Code (26 U.S.C.A. § 501(c) (3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.] A transfer to a conservancy, a transfer from a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions, or a transfer from a conservancy if the real estate is encumbered by a perpetual agricultural conservation easement as defined by the Agricultural Area Security Law (3 P.S. §§ 901-915) and the conservancy has owned the real estate for at least 2 years immediately prior to the transfer.

* * * * *

(23) A financing transaction evidenced by a deed of trust, defeasible deed or other instrument of like character given as a security for a debt, a lease to the debtor or a deed of release.

Example+. ~~In a sale leaseback transaction,~~ A transfers title to ~~realty~~ REAL ESTATE to B in exchange for a cash payment. As part of the same transaction, B immediately leases back the ~~property~~ REAL ESTATE to A for 25 30 OR MORE years. A's rental payments under the lease are sufficient to allow B to recoup his entire cash payment to A plus interest on the cash payment. A has the right to repurchase the ~~realty~~ REAL ESTATE from B for a

nominal amount at the end of the lease term. NEITHER THE SALE NOR THE LEASE IS SUBJECT TO TAX.

* * * * *

(26) The rescission, cancellation or abandonment of an existing lease or contract for a deed IF THE RESCISSION, CANCELLATION OR ABANDONMENT IS for no or nominal consideration OR THE REMAINING TERM OF THE LEASE OR CONTRACT IS LESS THAN 30 YEARS. THE REMAINING TERM OF THE LEASE OR CONTRACT SHALL BE DETERMINED UNDER SECTION 91.193(b)(24)(v) (RELATING TO EXCLUDED TRANSACTIONS).

* * * * *

(32) Transfers for no or nominal actual consideration to the trustee of a living trust from the settlor of the living trust AS PROVIDED IN § 91.156(c).

(33) Transfers for no or nominal actual consideration from the trustee of a living trust during the settlor's lifetime to the settlor of property conveyed to the trust by the settlor AS PROVIDED IN § 91.156(e).

(34) Transfers for no or nominal actual consideration from the trustee of a testamentary trust or living trust after the death of the settlor to a person who has the vested remainder interest or who is otherwise entitled to receive the property or the proceeds from the sale of the property as a

beneficiary under the terms of the trust AS PROVIDED IN § 91.156(f).

(c) Documents that convey or evidence the transfer of real estate between the parties involved in the transactions enumerated in subsection (b) are excluded from tax. Subsection (b) has no application to acquisitions of real estate companies as provided in § 91.202 (relating to acquired real estate company).

§ 91.195. State-related universities and public charities.

(a) For purposes of §§ 91.192 and 91.193(a) (relating to excluded parties; and excluded transactions), institutions that are part of the State System of Higher Education AND THE FOLLOWING STATE-RELATED UNIVERSITIES constitute excluded parties:

(1) LINCOLN UNIVERSITY.

(2) THE PENNSYLVANIA STATE UNIVERSITY AND ITS AFFILIATE, THE PENNSYLVANIA COLLEGE OF TECHNOLOGY.

(3) TEMPLE UNIVERSITY AND ITS SUBSIDIARIES, TEMPLE UNIVERSITY HOSPITAL, INC. AND TEMPLE UNIVERSITY CHILDREN'S MEDICAL CENTER.

(4) THE UNIVERSITY OF PITTSBURGH.

(b) Transfers to these THE institutions ENUMERATED IN SUBSECTION (a) by gift or dedication are excluded transactions. Other State related universities, such as Lincoln University,

~~the Pennsylvania State University and its affiliate, the Pennsylvania College of Technology, Temple University and its subsidiaries, Temple University Hospital, Inc., and Temple University Children's Medical Center, and the University of Pittsburgh do not constitute excluded parties.~~

(c) Transfers of property REAL ESTATE to an institution ENUMERATED IN SUBSECTION (a) other than BY gift or dedication and all transfers by those institutions are taxable upon the same basis as other transfers to or from excluded parties.

(d) Transfers by gift, dedication or otherwise to or from Lincoln University, the Pennsylvania State University or its affiliate, the Pennsylvania College of Technology, Temple University or its subsidiaries, Temple University Hospital, Inc., and Temple University Children's Hospital, Inc., the University of Pittsburgh or public charities are taxable upon the same basis as transfers between private parties.

Subchapter J. REAL ESTATE COMPANY

§ 91.202. Acquired real estate company.

* * * * *

(c) A transfer of ownership interest between members of the same family is not considered a change in ownership interest.

Example: C and D each own [50 shares or 50%] all of the stock of a corporation in equal shares. C and D transfer their

stock to E, C's son, over a 3-year period. As C and E are members of the same family, the transfer between C and E is not a change in ownership interest. Thus, the stock transfers have the effect of transferring only 50% of the total ownership interest in the corporation and the corporation is not acquired.

* * * * *

Subchapter K. FAMILY FARM CORPORATION
AND FAMILY FARM PARTNERSHIP

CORPORATIONS

§ 91.211. Family farm corporation.

(a) A corporation shall meet the following requirements to constitute a family farm corporation:

(1) ~~At least 75% of the corporation's assets are devoted to the business of agriculture.~~ IN THE AGGREGATE, THE BOOK VALUE OF THE CORPORATION'S ASSETS THAT ARE PRIMARILY DEVOTED TO THE BUSINESS OF AGRICULTURE CONTINUOUSLY COMPRISE AT LEAST 75% OF THE BOOK VALUE OF ALL OF THE CORPORATION'S ASSETS.

* * * * *

(b) To qualify as an asset devoted to the business of agriculture for the purpose of subsection (a), the assets shall be:

(1) Owned and either used directly by the corporation claiming the exemption or leased to, and used directly by, a

member of the same family that owns at least 75% of each class of stock of the corporation claiming the exemption.

(2) Principally devoted by the corporation to the business of agriculture or used by the member for agricultural purposes.

(3) Property of the sort commonly used in the business of agriculture principally for agricultural purposes.

(4) [Set] Used by the member principally for agricultural purposes or set apart and directly used by the corporation primarily for commercial:

* * * * *

(e) For the purposes of this section, the business of agriculture includes a leasing of property to a member of the family having the ownership of a least 75% of each class of its stock if the property is used by the member directly and principally for an agricultural purpose.

PARTNERSHIP

§ 91.221. Family farm partnership.

(a) An entity constitutes a family farm partnership only for so long as the following requirements are satisfied:

Editor's note: The order of Paragraphs (1) and (2) is being reversed in the final rulemaking.

(1) At least 75% of the shares of the profits and surplus of the partnership are continuously owned by members of the same family.

(2) In the aggregate, the book value of the partnership's assets that are primarily devoted to the business of agriculture continuously comprise at least 75% of the book value of all of the partnership's assets.

(2) AT LEAST 75% OF THE SHARES OF THE PROFITS AND SURPLUS OF THE PARTNERSHIP ARE CONTINUOUSLY OWNED BY MEMBERS OF THE SAME FAMILY.

(3) The entity is a general or common law partnership.

(b) Whether an asset is devoted to the business of agriculture shall be determined using the same rules as apply to the assets of family farm corporations. See § 91.211(b) (relating to family farm corporation).

§ 91.222. Acquired family farm partnership.

A family farm partnership becomes an acquired family farm when one of the following occurS:

(1) Because of the acquisition or disposition of a partnership asset (including a transfer to a family member), the book value of the partnership's assets that are primarily devoted to the business of agriculture becomes less than 75% of the book value of all of the partnership's assets.

(2) Because of the assignment of an interest in profits or surplus or the death, retirement, bankruptcy, expulsion or addition of a partner, less than 75% of the shares of the profits and surplus of the entity is continuously owned by members of the same family.

(3) The partnership is voluntarily or involuntarily dissolved or otherwise ceases to operate in the form of a general partnership or common law partnership.

§ 91.223. Declaration of acquisition.

A declaration of acquisition shall be filed in accordance with § 91.302 (relating to declaration of acquisition) with respect to family farm real estate held on the date the family farm partnership became acquired.

06/01/07

REALTY TRANSFER TAX
REALTY TRANSFER TAX AMENDMENTS
61 PA CODE CHAPTER 91

DEPARTMENT OF REVENUE REGULATION
15-429

COMMENT AND RESPONSE DOCUMENT

Department of Revenue Regulation # 15-429
REALTY TRANSFER TAX
REALTY TRANSFER TAX AMENDMENTS
61 PA CODE CHAPTER 91

This is a list of organizations and interested parties from whom the Department of Revenue has received comments regarding the above-referenced regulation.

<u>ID #</u>	<u>Name/Address</u>
(1)	Kim Kaufman, Executive Director Independent Regulatory Review Commission 14 th Floor 333 Market Street Harrisburg, PA 17101
(2)	Anna Marie Sossong, Esq. Skarlatos & Zonarich LLP Skarlatos & Zonarich Building 17 South Second Street, 6 th Floor Harrisburg, PA 17101
(3)	Timothy D. Billow, CPA Chair, Subcommittee on Regulations Pennsylvania Institute of Certified Public Accountants (PICPA) 100 Pine Street Suite 275 Harrisburg, PA 17101-1206
(4)	David M. Weixel, Esq. General Counsel for Pennsylvania State University McQuaide Blasko 811 University Drive State College, PA 16801-6699
(5)	Harris Ominsky, Esq. Blank Rome LLP One Logan Square 18 th & Cherry Streets Philadelphia, PA 19103-6998

- (6) George E. Moore, Esq.
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Department of Revenue Regulation # 15-429
Chapter 91 - Realty Transfer Tax
Realty Transfer Tax Amendments

COMMENTS AND RESPONSES

Section 91.101. Definitions.

1. Comment - Association:

"Does the characterization of a restricted professional company depend on how many members it has?" (1)

Also regarding the definition of "Association," another commentator responded: "[W]e believe that all RPCs [Restricted Professional Companies] are properly treated as limited partnerships and see no reason to distinguish between single member RPCs and multi-member RPCs for RTT purposes. . . . We suggest that all RPCs, single or multimember, be treated as associations and that the following words be deleted, 'that is deemed to be a limited partnership.'" (7)

Response:

It is the Department's belief that 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies) provides that a Restricted Professional Company (RPC) is to be treated as a limited partnership for Commonwealth tax purposes. However, § 8997(b) provides an exception to that rule. In certain circumstances, a RPC is taxable as a corporation. This includes situations in which a RPC has one member. The regulation as drafted provides for the possibility that a RPC can be considered a corporation for tax purposes rather than as an association. Consequently, no change to the final regulation is necessary.

This response also addresses the concerns from commentator (7).

2. Comment:

Commentator suggested that the Department should add a definition for each of the following terms to help clarify the Department's regulation regarding the confirmatory deed exclusion for entity conversions found at § 91.152(b): original entity, ownership interest, reformed entity and resultant entity. The commentator also provided definitions for those terms. (7)

Response:

The Department agrees that additional definitions are needed and has added "Entity" and "Conversion" to Annex A. In addition, the Department has made additional changes to § 91.152(b) (relating to confirmatory deed) for clarification.

3. Comment - Financing transaction:

"We would like the Department to further evaluate whether the choice of the term 'beneficial ownership' appropriately depicts the debtor's rights or should the term be replaced or supplemented by the term 'equitable title'. In addition, in subparagraph (iv), the word 'title' should be preceded by the word 'legal.'" (3)

Response:

The commentator is suggesting a change to existing regulatory language codified in subparagraph (iii) of the definition of "Financing transaction." The Department has not experienced difficulties administering the regulation as codified and sees no reason to change the existing language.

In subparagraph (iv), the term "title" is synonymous with the term "ownership," both legal and equitable. It is intended to encompass both legal and equitable title. Since it is generally accepted that the term "title" encompasses both legal and equitable title, no change is necessary.

4. **Comment - Living trust and ordinary trust:**

"These definitions differ from the statutory definitions found at 72 P.S. § 8101-C. Why do these definitions differ? We recommend that the statutory and regulatory definitions be verbatim or, in the alternative, that the regulatory definitions cross reference the statutory definitions." (1)

Another commentator suggested that the Proposed Regulations should clarify that the exemptions for an "Ordinary Trust" (OT) also should apply to a "Living Trust" (LT). The commentator also believes that the Department's proposed definition of a Living Trust is more restrictive than the statutory definition of a Living Trust. (7)

Response:

In response to IRRC's comments, the definitions of living and ordinary trusts at § 91.101 are designed to clarify the scope of the statutory definitions. It would be redundant and unnecessary to merely insert a statutory definition, verbatim, into the regulation. The Department does not believe that the difference between the regulatory definitions and the statutory definitions effectuates a change in Legislative intent.

In response to commentator (7), the Department believes that subparagraph (i) of the Department's definition of a Living Trust requires such trusts to be revocable. Although the statutory definition does not use the term "revocable," it does state that a living trust is a "will substitute." The Legislature did not define what it means to be a "will substitute." Therefore, the Department and the public are without adequate guidance. The Department believes the Legislative intent is that a Living Trust must act and function like a "will" in order to be a "will substitute." It is a well-accepted principle of trust and estate law that a "will" must be freely revocable during the testator's lifetime. Because a "will" must be freely revocable during a testator's lifetime, a Living Trust that is designed to be a "will substitute," must also act like a "will" and be freely revocable by the settlor during the settlor's lifetime.

4. Response (cont'd):

In addition, subparagraphs (ii) - (iv) of the definition "living trust" are also necessary to effectuate Legislative intent because they enumerate generally accepted characteristics of a "will" - no current transfer of an interest in testator's property during the testator's lifetime, free access on the part of the testator's property upon death. The Department believes that a living trust must have such characteristics in order to qualify as a "will substitute."

Nevertheless, the Department does recognize the utility of the examples suggested by commentator (7) and has incorporated the examples and further clarifications into the final rulemaking.

Commentator (7) expressed concern that the proposed regulations do not clearly provide that the ordinary trust exclusion applies to living trusts. This concern is unwarranted. Nothing in the regulation indicates that the ordinary trust exclusion does not apply to living trusts. The Department defines a living trust as "an ordinary trust" with certain additional characteristics. Therefore, every living trust is also an ordinary trust, and the ordinary trust provisions apply to living trusts. If a trust has the additional characteristics of a living trust, then it is also eligible for the additional statutory provisions applicable to living trusts.

5. Comment - Ordinary trust:

IRRC and commentator (7) expressed concerns about the proposed language contained at § 91.101, subparagraph (ii) (A), regarding the definition of "ordinary trust." (1)(7)

Response:

The Department agrees with IRRC and has revised the final rulemaking in subparagraph (ii) (A), using language similar to that suggested by commentator (7), as follows: "Business trusts organized under Pennsylvania law or the law of any state or foreign jurisdiction, or any form of trust that has either of the following features:"

6. **Comment - Settlor:**

"The definition of settlor in the Proposed Regulations is too limited in that it restricts the definition to the creator of the trust. . . . The definition of settlor should include any contributor of property to a trust if such person is a member of the same family . . ." (7)

Response:

The definition of a settlor is intentionally restricted to the creator of the trust or the person providing consideration to create the trust. It does not include other contributors to the trust because certain statutory exemptions are limited to transfers from a settlor. This is not to suggest that someone other than the settlor cannot make a conveyance to the trustee of a trust. This is reflected in § 91.156 (relating to trusts), in which the term "grantor" is used in certain circumstances to reference a person who makes a conveyance to the trustee of a trust. Consequently, the Department has not changed the definition in the final rulemaking.

7. **Comment - Testamentary trust:**

"This definition includes the phrase 'private trust.' What is a 'private trust'? Does the term include 'living trusts' and 'ordinary trusts'? The Department should add a definition of this term."
(1)

Another commentator stated, "The new definition of testamentary trust is incomplete. It should include an OT or LT that becomes effective upon the death of [the] either the settlor or the income beneficiary."
(7)

Response:

The Department disagrees with IRRC's comment and believes that the term "private trust" is used according to its common, understood usage; that is, a trust established or created for the benefit of a certain designated individual or individuals as defined in the trust instrument as distinguished from

7. Response (cont'd):

a public or charitable trust. (See *Black's Law Dictionary* (6th Ed.), 1512.)

In further response to commentator (7), a "testamentary trust" is intentionally excluded from the definitions of both an ordinary trust and a living trust. Consequently, the Department has not added a definition for a private trust or revised the definition of a testamentary trust in the final rulemaking.

Section 91.132. Bona fide sale transactions.

8. Comment:

"Has the Department considered including more detailed language in this provision? . . . This section has been amended to address the Pennsylvania Supreme Court decision in *Allebach v. Commonwealth*, 546 Pa. 146, 683 A.2d 625 (1996)." The commentator requested the regulation be revised to include the value amounts received by a seller's affiliate for an assignment of a contract. (1)

A second commentator believes that subsection (c) "ratifies the ruling in Allebach v. Commonwealth of Pennsylvania, 546 Pa. 146, 683 A.2d 625 (1996) and the Department is correct to adopt this rule." The commentator suggests, "that to prevent abuse, the Department should revise the rule to include in value amounts received by a seller's affiliate for an assignment of a contract." (7)

Response:

The Department agrees with the commentators and has made the suggested revisions to § 91.132 in the final rulemaking, as well as added examples for clarity.

Section 91.152. Confirmatory deed.

9. Comment:

Commentator (7) submitted numerous comments regarding § 91.152, which it believes contains errors in interpreting the Realty Transfer Tax and case law,

9. Comment (cont'd):

specifically *Exton Plaza Associates v. Commonwealth*, 763 A.2d 521 (Pa. Cmwlth. 2000). (7)

IRRC has requested that the Department carefully consider and respond to the comments made by commentator (7). (1)

Response:

Commentator (7) correctly interpreted that § 91.152 is being revised to provide regulatory guidance related to the Department's implementation of the Commonwealth Court's decision in *Exton Plaza*.

The Department's position on confirmatory deeds, executed to confirm the change in form or "conversion" of an entity, is well documented in its letter rulings following the *Exton Plaza* case. This regulation merely codifies the rules as outlined in the Department's letter rulings. The Department and practitioners have been following those rules since *Exton Plaza* was decided.

The *Exton Plaza* decision provided that a document that merely confirms an entity's ownership of real estate following a change in the entity's form is not taxable. The Court used the term "conversion" to mean a change in form. However, the term "conversion" is not a legal term of art or a statutorily prescribed term under Pennsylvania law, and the Court failed to provide guidance as to how a non-taxable conversion is to be accomplished. The Department's regulation provides such guidance.

The *Exton Plaza* decision did not exclude from tax all documents executed as part of an entity's change in form. It only excluded documents that "memorialized" the change in form. It did not exclude documents that actually convey title to real estate as part of a change in form. Consequently, the tax implications associated with a document executed as being in conjunction with an entity's change in form is dependent upon the manner in which a conversion is effectuated.

9. Response (cont'd):

For example, owners of an entity can change the form of the entity by winding up its affairs, paying the debts of the entity, transferring the assets to owners, establishing a new entity in a new entity form and transferring the assets from the old entity to the new entity. The owners could also set up a new entity and transfer the assets from the old entity to the new entity and then dissolve the old entity. In either case, the owners intend merely to change the entity's form and to operate the same entity with the same assets. However, in effectuating the change in the entity's form, the owners are executing deeds of transfer from the old entity to themselves and then to the new entity or from the old entity directly to the new entity. Those documents that directly transfer the interest in the real estate do not "memorialize" the change in the entity's form. They actually transfer title from the old entity to the owners or the new entity. The realty transfer tax law contains specific tax provisions related to documents that directly convey title to real estate between entities and owners or other entities. (See 72 P.S. § 8102-C.3 (12) and 8102-C.4.) *Exton Plaza* did not exclude such documents from the imposition of tax.

Compare the above scenario to a case in which an entity that owns Pennsylvania real estate changes its form by filing a document of conversion with its Department of State as authorized under that State's law, which filing effectuates the change in the entity's form, merely by the filing of the document. The new entity then files a document with the recorder of deeds where the real estate is located, to confirm or memorialize the change in the entity's form. In that case, there is no direct transfer of real estate. The document is filed merely to confirm that the owner of the real estate has changed its form. These are the types of documents that *Exton Plaza* addressed.

The Department's regulations are drafted with the specific intent of providing rules to allow the exclusion for documents that merely memorialize a

9. **Response (cont'd):**

conversion, as opposed to documents that effectuate the transfer of title to real estate in conjunction with a conversion.

The Department believes that commentator (7)'s comments and proposed amendments are drafted without an understanding of the above distinction and are therefore contrary to the holding in *Exton Plaza*.

However, in an attempt to further clarify the rules related to conversions, the Department has revised the final rulemaking at § 91.152 and included examples. In addition, a definition of conversion has been added at § 91.101.

Subsection 91.152 (b) (1). Record title held by owners.

10. **Comment:**

"The effect of this sentence is to impose tax upon a confirmatory deed if record title to property is held by the owners of the Original Entity, rather than in the name of the Original Entity, prior to the Conversion. The sentence incorrectly ignores general principal-agency principles. If property is titled in the names of A, B and C, but it is clear from the date on which the property was first acquired that A, B and C held the property as partnership property for ABC partnership and not in their own capacities, the subsequent transfer from A, B and C to ABC partnership should be excluded from tax as a transfer between a principal and agent under RTT Regulation § 91.193 (b) (11)." (7)

Response:

The Department did not intend § 91.152(b) (1) to be interpreted as commentator (7) suggests. The Department agrees that if owners purchase real estate on behalf of or for the benefit of an entity, such as in an agent/principal relationship, then the entity owns the real estate even if legal title is in the name of the individual owners.

However, the Department frequently sees instances in which individual owners purchase real estate in their individual capacity and then contribute the property

10. Response (cont'd):

to an entity's use without actually transferring the ownership of the real estate to the entity. The mere fact that individual owners purchase real estate for the purpose of contributing it to an entity, does not equate the purchase by the individuals to a purchase by the entity. This often happens with general partnerships. Under Pennsylvania partnership law, a general partnership or its individual partners can own partnership real estate. If the individual partners own the partnership real estate and then transfer ownership to the partnership, tax is due on the document of transfer. 72 P.S. § 8102-C.4.

The requirement in 91.152(b) (1) is designed to prevent taxpayers from converting an entity and trying to claim the confirmatory deed exclusion when they transfer ownership of real estate to the entity under the auspices that the entity owns the real estate, when the individual owners, in fact, own the real estate and only contributed the real estate to the entity for its use. Therefore, the provisions of § 91.152 (b) (1) are necessary. However, in recognition that clarification is necessary, the Department has revised § 91.152(b) (1) and also the examples under § 91.152 in the final rulemaking.

Subsections 91.152 (b) (2) to (b) (5).

11. Comment:

"Substitute the defined terms Original Entity, Reformed Entity, and Resultant Entity where appropriate." (7)

Response:

The Department has declined to add the definitions proposed by commentator (7); however, other appropriate changes have been made to the regulatory section 91.152 in the final rulemaking. See responses to comments 2 and 9.

Subsection 91.152 (b) (4). Change in proportionate ownership interests.

12. Comment:

"A change in proportionate ownership interests in connection with a Conversion should be largely irrelevant." (7)

Response:

The Department disagrees with commentator (7). The principle behind the confirmatory deed exclusion for entity conversions is that the document for which the exclusion applies is only memorializing a change in the entity's form, place of organization, or name or identity. Otherwise, the entity remains unchanged.

If the entity's ownership interest changes, then the entity has changed, and the confirmatory deed exclusion is not applicable. The congruency of ownership before and after the conversion was one of the pivotal elements for the Court in *Exton Plaza*.

Subsection 91.152 (b). Example 2.

13. Comment:

Commentator requested the deletion of:

"Further, ownership has not changed. A and B were equal partners in the general partnership and are equal general partners (through their ownership of the LLC) and limited partners."

"The acquired company rules currently set forth in [current] RTT Regulations § 91.202 make clear that an ownership interest includes only an economic interest. The quality of the interest as a general or limited partner interest or economic or managerial interest is irrelevant." (7)

Response:

The Department has removed the language as requested by the commentator and reworded Example 2 in the final rulemaking.

Subsection 91.152 (b) (5). Example 3.

14. Comment:

The commentator suggests that Example 3 should be deleted for the reasons discussed in comment 13 above. (7)

Response:

The Department disagrees that Example 3 should be deleted, but has made minor revisions to Example 3 for clarification in the final rulemaking. Further, the rules related to real estate company acquisitions are not relevant to the confirmatory deed exclusion.

Section 91.154. Documents involving corporations, partnerships, limited partnerships and other associations.

15. Comment:

"New language has been added to this section that clarifies the taxation regarding conversion of real estate between certain types of businesses and their owners. We have three recommendations. First, the Department should explain the need for the exclusions created by the new language. . . . Second, Subsections (b), (c) and (d) should include a citation to the 'Statute of Frauds.' This citation should also be included in § 91.171. Third, the term 'writings,' should be defined." (1)

Another commentator stated, "The issue of transfer tax assessed against the transfer of real estate from an individual to an entity wholly owned and controlled by the same individual or real estate transferred from one form of an entity to another with identical ownership interests has always been problematic." (relating to the commentator's practice.)

The same commentator also stated, "While it may appear that section 91.154(b) provides a mechanism whereby transfer tax can be avoided, compliance with the exemption requirements returns the business community to the days prior to an organized courthouse recording system when trafficking in actual deeds of title was the preferred method of

15. Comment (cont'd):

establishing ownership. Institution section 91.154(b) and (c) will, over time, create an underground of unrecorded title documents that would provide no one with the necessary notice or access to information that is the basis of the Statute of Frauds and recording process.

Further, the existence of section 91.154(b) and (c), . . . will create significant estate tax issues when property that has been, 'by oral agreement', contributed to a partnership which is controlled by a partnership agreement is also arguably part of a decedent's estate because the title to the property has remained with the deceased partner. The issues involving appropriate distribution, credit for value and impact on the partnership agreements can only be guessed at now, but will certainly become issues immediately. . . . The transfer of real estate back and forth between an individual owner (or owners) and an entity controlled by that owner should be a non-taxable event.

Most of these transfers are being done for asset protection for liability concerns, estate planning, and financing. There is no value being created and there is no actual new owner. To endorse and institutionalize a system of secret land transfers is unfathomable." (2)

Another commentator stated, "Under the RTT, transfers between owners and their entities are subject to tax unless an explicit exemption applies such as a proportional distribution by an entity of real estate to owners that have held their interests in the entity for more than two years. See RTT § § 8102-C.4 and 8102-C.3 (13). The Proposed Regulations at § 91.154(a) adopt these statutory rules. However, Proposed Regulations § § 91.154 (b) and (c) create exclusions for circumstances that we believe cannot occur or that are not supported by the RTT Law. . . .

The RTT is imposed upon the making, executing, delivering, accepting, or presenting for recording of a document. RTT Law § 8102-C. A document, with certain exclusions, is any deed, instrument or writing which conveys, transfers, devises, vests,

15. Comment (cont'd):

confirms, or evidences any transfer or devise of title to real estate. RTT Law § 8101-C 'Document.' We believe that the document that must be filed with the Secretary of State to dissolve an entity is a document under the RTT [1] Law. If this is not the case, then RTT would not apply to transfers by operation of law and it is quite clear that RTT does apply to transfers by operation of law." (7)

Response:

In response to commentators (1), (2) and (7), the Department is not endorsing a "system of secret land transfers" or trying to provide a method by which practitioners can avoid paying realty transfer tax. Under the Realty Transfer Tax law, documents that convey title to real estate are taxable whether or not they are filed. Therefore, the Department is not suggesting that tax can be avoided by not filing documents of transfer and clarifications have been made in the final rulemaking.

The Department is amending Section 91.154 to codify the obvious rule that tax cannot be imposed if there is no taxable document. Realty Transfer Tax is a document tax. Consequently, for the imposition of the tax, it is essential to have a taxable document.

The amendments to § 91.154 recognize the rule under Pennsylvania law, that partnerships may own partnership real estate in the name of the partnership, or the individual partners may contribute real estate to a partnership for the partnership's use while maintaining ownership of the real estate. (15 Pa.C.S. §§ 8313 and 8322). The regulation recognizes the legal fact that real estate can be appropriated to an entity's use without the passage of real estate ownership to the partnership. The Department prefers that all appropriations of real estate to entities be made in the form of an actual conveyance of ownership, but the Department cannot require the transfer of ownership when it is not legally required.

Section 91.154 explains how RTT applies to situations in which title to real estate can be held either by the partners or by the partnership. Consequently,

15. Response (cont'd):

the Department believes that § 91.154 does not need to be changed.

However, given the comments, it is clear to the Department that the proposed amendments to § 91.154 needed to be redrafted for clarification. The Annex of the final rulemaking contains the revisions to the amendments, to clarify the Department's intent and address the commentators' questions and concerns. In addition, to address the second and third comments of IRRC: The Department has deleted the reference to the Statute of Frauds in the final rulemaking. The term "writings" is used in its dictionary meaning and common usage; and therefore, the term does not need to be defined.

Section 91.155. Timber, crops and natural resources.

16. Comment:

"We have two concerns. First, the term 'natural resources' was added to the title of this section, even though this section only addresses timber and products of the soil. Therefore, the term 'natural resources' should be deleted from the title.

Second, proposed language in Subsection (b) establishes a standard that cannot be enforced. Under existing Subsection (b), standing timber is considered nontaxable personal property if the instrument provides for severance and removal 'within an immediate ascertainable date.' The proposed rulemaking changes the standard from an immediate specified date to ' . . . at once or as soon as it can be reasonably done.' The Department has stated that a reasonable amount of time could be established by using industry standards on a case-by-case basis. We believe that the contract or sales agreement should specify a reasonable time frame for removing the timber, such as within six months. This would provide the parties involved in the transaction and the Department with a measurable standard that could be enforced." (1)

16. Response (cont'd):

The Department anticipated consolidating § 91.169 (relating to conveyances of coal, oil, natural gas or minerals) into § 91.155 (relating to timber and crops). Therefore, the Department added the phrase "natural resources" to the subject heading. The Department later decided against the consolidation.

The phrase "natural resources" should have been removed at that time.

Therefore, the Department agrees with IRRC's recommendation and the final regulation is revised to delete the phrase "natural resources" from the heading of § 91.155.

The Department, however, does not intend to revise its amendments to § 91.155. The phrase "immediate ascertainable date" has been an ongoing source of abuse. Taxpayers and tax practitioners have argued that as long as there is an ascertainable date contained in the severance agreement, then that is sufficient to convert the timber to personal property, which is not subject to tax.

However, under Pennsylvania law, the classification of timber as real or personal property as part of a timber sale is not contingent upon an ascertainable date for removal, but whether "considering the nature and extent of the land, the number of feet of merchantable timber and the time given for removal, . . . the vendor intended the vendee to have an interest in the standing timber as land, or whether he contemplated a removal within a time reasonably necessary." *Havens v. Pearson*, 6 A.2d 84, 85 (Pa. 1939).

Thus, according to the Pennsylvania courts, the classification of timber as real or personal property is fact specific and not subject to a defined standard or test. The Department believes that the amendments to § 91.155 accurately reflect Pennsylvania case law on this issue.

Section 91.156. Trusts.

17. Comment:

"Another set of regulations (Section 91.156) attempts to clarify transfers to and from both ordinary trusts and living trusts. Essentially, a transfer to an ordinary trust is exempt if the transfer would have been wholly-exempt if it had been made directly from the grantor to 'all of the possible beneficiaries . . . whether or not the beneficiaries are contingent or specifically named.' This rule had been applied in a way that sometimes trapped estate planners into precipitating an unexpected transfer tax."

The *commentator also stated*, "The regulations do provide help to the estate planner under certain circumstances. Section 91.156(a) seems to make an exception for a trust which is set up so that the non-exempt party, i.e. the church, has a right to get other property from the trust under certain circumstances, but not the real estate or the proceeds from the real estate. Therefore, a church could be set up as a beneficiary, so long as it is made clear that the church would not be able to participate in any distribution of the real estate or the proceeds from real estate. . . ."

That section of the proposed regulation is written in a somewhat convoluted way and it should be clarified. However, this interpretation of the exemption is in accord with the Pennsylvania Supreme Court cases which were cited earlier." (5)

Another commentator stated, "Section 91.156(b) of the Proposed Regulations should be identical to statute and the words 'by itself neither qualify nor' should be deleted and replaced with the word 'not.'"

Section 91.156(c) should be expanded to encompass the intent and purpose of the statute to apply to estate planning trusts that satisfy either or both of the definitions of an OT or an LT. The provision should be amended to add at the end thereof 'or, if not the settlor, it satisfies the provisions of 91.156(a).' In addition, if the definition of settlor is not changed, Section 91.156(e) (2) should provide at the end 'or if the property was conveyed to the trust

17. Comment (cont'd):

from someone other than the settlor, the transfer from that person to the settlor would not have been subject to tax.'" (7)

17. Response:

Responding to commentator (5), the Department believes that the regulatory language in § 91.156(a) is sufficiently clear, and the commentator does not propose alternative language. The Department has made modification to the entire section for clarity in the final rulemaking.

The Department disagrees with commentator (7)'s request for revisions in Section 91.156(b). It is not intended to be identical in form to the statutory language. Rather, the regulation is designed to further explain the statutory language. (See the *Department's response to comment 4.*)

Commentator (7) provides important comments which point to the fact that a transfer can be made to a trust by someone other than the settlor. Therefore, § 91.156(c) and (e) have been revised in the final rulemaking to account for such situations.

Section 91.165. Reservations or conveyances of life estates.

18. Comment:

Commentator submitted comments on Table I at § 91.165. "It cannot be amended or updated by a published notice in the *Pennsylvania Bulletin*. If the Department wants to update the table, it must do so by promulgating another regulation. Therefore, Subsection (c) should be deleted.

In the alternative, the table could be deleted from the regulation and in its place the Department could specify how it calculates the values in the table. This would allow the Department to update the table as needed as a statement of policy without promulgating another regulation." (1)

18. Response:

The Department agrees with IRRC and has decided to remove the life estate and remainder factors table contained in § 91.165. In order to keep the table current, the Department is proposing at § 91.165(d) to publish applicable life estate and remainder factors by notice in the Pennsylvania Bulletin, as needed to account for changes in mortality and interest rates. The final regulation has been amended accordingly.

Section 91.170. The rule in *Baehr Bros. v. Commonwealth*, 493 Pa. 417, 426 A.2d 1086 (1981).

19. Comment:

IRRC and commentator (7) suggest that this new section lacks clarity and question how it will be interpreted and administered by the Department.

IRRC believes that the correct citation to the *Baehr Bros.* decision is 487 Pa. 417, 426 A.2d 1086 (1981), rather than the citation contained in the section heading. (1) (7)

Response:

The Department agrees that the *Baehr Bros.* case was incorrectly cited and has subsequently revised the citation in the final-form regulation.

Further, the Department has added provisions to the section to provide clarity. The final rulemaking contains enumerated conditions that must be met for the rules to apply and it also contains examples, which explain how the rules will be applied.

Section 91.193. Excluded transactions.

20. Comment:

"Subsection (c) states the following: 'Documents that convey or evidence the transfer of real estate between the parties involved in the transactions enumerated in subsection (b) are excluded from tax. Subsection (b) has no application to acquisitions of real estate companies as provided in § 91.202.' It is being promulgated to codify the Department's policy that the list of excluded transactions in

20. Comment (cont'd):

Subsection (b) does not apply to acquisitions of real estate companies.

The P[h]BA believes that transfers of interests in a real estate company are statutorily exempt. They also commented as follows: 'There is no rational policy reason to tax transfers of interests in real estate companies where comparable transfers of real estate would be subject to an exclusion or exemption from RTT.' What is the Department's statutory authority for taxing these types of transactions?"

(1)

Another commentator commented as follows: "To conform the suggested changes [above] to expand the exemptions accorded an OT to an LT, subparagraph (32) should be amended to read as follows:

(32) Transfers for no or nominal consideration to the trustee of a living trust from the settlor of the living trust, or if the transfer is not from the settlor, the transfer would comply with Section 91.193 (b) (8).

Proposed Regulation § 91.193(b) (33) should permit the transfer of real estate from a trust to any person during the life of the settlor without imposition of RTT if the transfer from the settlor to the person would not be taxable.

We suggest that Proposed Regulations § 91.193 (b) (33) be revised to provide:

Transfers for no or nominal actual consideration from the trustee of a living trust during the settlor's lifetime of property conveyed to the trust by the settlor to the settlor or any person to whom the settlor could transfer real estate without imposition of tax. If the property was conveyed to the trust by a person other than the settlor, the rules of Section 91.193 (b) (6) shall apply.

The RTT Law does not impose tax on a lease unless its term (as defined in the RTT Law and RTT Regulations) is 30 years or more. RTT Law § 8101-C 'Title to Real Estate.' Consequently, payment for rescission,

20. Comment (cont'd):

cancellation or abandonment of a lease of less than 30 years is not subject to tax because it is not a transfer of title to real estate. Therefore, we suggest that § 91.19[2]3 (b) (26) be clarified to make clear that it applies only to leases or other contracts the remaining term of which is 30 years or more:

The rescission, cancellation or abandonment of a lease or contract (i) for no or nominal consideration or (ii) the remaining term of which is less than 30 years. For purposes of this Section 91.19[2]3 (b) (26), the remaining term of the lease or the contract shall be determined under Section 91.19[2]3 (b) (24) (v).

We believe that the statutory exemptions and exclusions from RTT that apply to direct transfers of real estate also apply to transfers of interests in a real estate company." (7)

Response:

In response to commentators (1) and (7), subsection (c) is proposed to codify the Department's position that the exclusions under subsection (b) do not apply to real estate company acquisitions.

The exclusions contained in subsection (b) are only applicable to documents that effectuate or evidence the direct transfer of real estate. They do not apply to acquisitions of real estate companies.

The exclusions contained in subsection (b) existed prior to the adoption of the principle of real estate company acquisition taxation in 1986. When the Legislature added the provisions related to real estate company acquisition to the RTT law (72 P.S. § 8102-C.5), it did not incorporate the tax exclusions to those provisions.

The only statutory exclusion relating to real estate company acquisitions is the exclusion contained in 72 P.S. § 8102-C.3(b) (20), which provides that transfers between members of the same family of an ownership interest in a real estate company are excluded from tax. It should be noted that "members

20. Response (cont'd):

of the same family" is a defined term. The class of family members under that definition is different from the class of individuals between whom direct transfers of real estate are excluded under the family exclusion found in 72 P.S. § 8102-C.3(b)(6). This distinction is evidence that the Legislature intended to distinguish real estate acquisitions from direct transfers of real estate. For these reasons, the Department has not changed the proposed subsection (c) in the final rulemaking. The Department believes that commentator (7)'s proposed change to § 91.193(b)(26) is appropriate; therefore, this change has been made in the final rulemaking.

As also suggested by commentator (7), sections 91.193(b)(32), (33) and (34) have been revised in the final rulemaking. These revisions correspond to the Department's revisions to § 91.156.

Section 91.195. State-related universities and public charities.

21. Comment:

IRRC and several commentators disagree with the Department's proposed regulation at § 91.195(b) that enumerates the "State-related universities" which are not exempt instrumentalities of the Commonwealth for RTT purposes. The commentators believe that the universities listed are Commonwealth instrumentalities and suggest that the Department revise its regulation accordingly. (1) (4) (6) (7)

Further, IRRC suggests that if the Department does not add the "State-related universities" to the list of excluded parties, it should add a provision for those institutions, which exempts them from the tax when the property is used for public purposes as directed by the Institutions of Purely Public Charities Act (10 P.S. § 371 et seq.). (1)

Response:

As a matter of policy, the Department has revised the final rulemaking at § 91.195 to include transfers to those institutions by gift or dedication as excluded transactions.

Section 91.221. Family farm partnership.

22. Comment:

"This section establishes the criteria for when an entity qualifies as a family farm partnership. It is being added to address statutory changes to the Act. The PBA has questioned the reason Subsection[s] (a) (2) and (a) (3) impose additional requirements that are not found in the Act. We share the concerns of the PBA. What is the need for these additional requirements?" (1)

Another commentator responded, "The definition of family farm partnership in the RTT Law mimics the definition of family farm corporation. See 72 P.S. § 8101-C 'Family Farm Corporation' and 'Family Farm Partnership.' For an entity to qualify for the family farm entity benefits, in each case, 'at least seventy-five percent of its assets [must be] devoted to the business of agriculture.' *Id.* The statute does not explain how to measure whether 75% of either a family farm partnership's assets or a family farm corporation's assets are devoted to agriculture. Notwithstanding that the RTT Law is identical with respect to both types of entities on this issue, the Proposed Regulations at § 91.221 (a) (2) add a requirement that at least 75% of the book value of a partnership's assets must be devoted to the business of agriculture. We see no reason to distinguish between these two types of entities for this purpose and suggest either deleting this requirement at § 91.221 (a) (2) or adding it at current regulations § 91.211 (a).

Second, there is nothing in the RTT Law that requires a family farm partnership to be a common law partnership or general partnership. A common law and general partnership are the same thing. A partnership in Pennsylvania can be a general or limited partnership and either may elect to be a limited liability partnership. Such entities are all partnerships and the definition of family farm partnership in the RTT Law is not limited to a general partnership. Therefore, Proposed Regulations § 91.221 (a) (3) should be deleted." (7)

22. Response:

In response to IRRC and commentator (7)'s comments, the Department believes that essentially, the requirement contained in § 91.221(a) (2) conforms to and further describes the statutory requirement that a family farm partnership must have at least 75% of its assets devoted to the business of agriculture. The Department agrees with commentators (1) and (7) that the requirements for family farm partnerships and family farm corporations should be consistent. Therefore, in the final rulemaking, the regulation at § 91.211(a) (1) now mirrors the language at § 91.221 (2) [renumbered to § 92.221(a) (1)].

The Department's belief is that the Legislature intended the term "family farm partnership" to be limited to general partnerships or common law partnerships. The term "partnership" is not a defined term under the RTT law. Therefore, the Department must look to the generally accepted meaning of the term, which is a general or common law partnership.

In addition, the term "partnership" is used in the realty transfer tax statute's definition of the term "association." 72 P.S. 8101-C. In that definition, a partnership is a distinct type of association as distinguished from other types of associations such as limited partnerships or other forms of unincorporated enterprises.

The rules of statutory construction provide that the legislature is deemed not to have enacted superfluous language. *In re Employees of Student Services, Inc.*, 495 Pa. 42, 432 A.2d 189 (1981). If the term "partnership" also included limited partnerships, there would have been no need for the legislature to have separately identified both partnerships and limited partnerships in the statutory definition of "association."

If the Legislature had intended the term "family farm partnership" to include other types of unincorporated entities, it could have simply used the term "family farm association." Instead, the Legislature used the term "family farm partnership" and the Department is interpreting it accordingly. Therefore, no change has been made to § 91.221(a) (3) in the final rulemaking.

Section 91.222. Acquired family farm partnership.

23. Comment:

"We reiterate our comment that there is no reason to distinguish between a family farm partnership and a family farm corporation definitionally for purposes of determining whether such an entity is eligible for the family farm entity benefits or when such an entity becomes an acquired entity. Proposed Regulations § § 91.222(1) and (2) should mimic the current regulations § 91.212(1) and (2), or in the alternative, the current regulations § 91.212 should be amended to reflect the same changes as are reflected in Proposed Regulations § 91.222 (1) and (2).

Finally, as discussed above, since the RTT Law does not limit the type of partnership that may be a family farm partnership to a general partnership (or a common law partnership), Proposed Regulations § 91.222(3) should provide only that '[t]he partnership is voluntarily or involuntarily dissolved.' The remainder of Proposed Regulations § 91.222(3) is contrary to the statute and should be deleted." (7)

Response:

See response to comment 22 above.

Realty transfer tax regulation comments - matters not covered in proposed rulemaking.

24. Comment - Special purpose entity transactions:

In the current real estate lending market, real estate lenders very often require that real estate that secures a loan be held by a special purpose entity ('SPE'). An SPE is a bankruptcy remote entity that has no assets other than the real estate that secures the loan and conducts no business other than that in connection with the ownership of the real estate. Lenders do not want other activities of the borrower to cause financial difficulties and bankruptcy. It is therefore customary for borrowers to transfer title to a new, wholly owned entity with no other assets or activities. In fact, *Exton Plaza*, supra was a case involving an SPE limited partnership where the court found that RTT should not be imposed.

24. Comment (cont'd):

Pennsylvania is infamous in the lending and real estate circles for the roadblock that the RTT presents to facilitating these transactions in a cost effective manner.

Although we understand that the Department believes that it has no authority to address this issue, we believe that if the following conditions are satisfied, an SPE transaction should be treated as a financing transaction that is not subject to RTT: (i) the SPE is wholly owned by the original owner of the real estate, (ii) the transfer of the real estate to the SPE is required as a condition of the lender making the loan, (iii) the SPE only holds the real estate (and incidental personalty) that secures the loan, and (iv) the SPE conducts no other business than that in connection with the ownership of the real estate described in (i), (ii) and (iii).

Commentator also suggested that the definition of financing transaction in § 91.101 'Financing transaction' in the Proposed Regulations be revised to include Special Purpose Entity Transactions. (7)

Response:

The Department believes that this issue should be addressed in a future rulemaking.

25. Comment - Like-kind exchanges:

"The Proposed Regulations do not address the RTT consequences of like-kind exchange transactions under Section 1031 of the Internal Revenue Code of 1986 (the 'Code') involving accommodation parties. The market for like-kind exchange replacement properties constitutes a significant and growing part of the overall real estate market. The uncertainty surrounding the RTT treatment of various types of exchanges places Pennsylvania property owners at a distinct disadvantage in accessing this market."

Commentator suggested adding a new § 91.160 (b) Like-kind exchanges and provided sample language and examples. (7)

25. Response:

In response to commentator (7), the Department agrees and has made amendments to § 91.153 in the final rulemaking.

Other comments.

26. Comment:

"The regulations do not discuss what would happen if the conversion starts off with an exempt transaction where both partners share in the interest of the LLC which is set up as a general partner, and then later transfer a 100% interest in the LLC to the one partner that will manage the partnership. . . .Will the exemption be lost when the partners start out with equal shares in the LLC general partner, but later decide to amend the LLC documents to clarify that one of the partners has full management rights in the LLC?" (5)

Response:

The Department believes that commentator (5)'s questions are misplaced. The hypothetical situations involve changes in ownership interests in an entity following the entity's conversion. Such ownership changes invoke real estate company acquisition rules and are beyond the scope of conversions. That is why these hypothetical situations relating to conversions are not addressed by the regulation.

06/26/07

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-429
SUBJECT: REALTY TRANSFER TAX AMENDMENTS
AGENCY: DEPARTMENT OF REVENUE

2007 OCT -1 AM 10:13

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
10/1/07	Gail Wilkinson (minority)	HOUSE COMMITTEE ON FINANCE
10/1/07	Yisak Bolan	MAJORITY CHAIRMAN David K. Levdansky
10/1/07	RNY (minority)	SENATE COMMITTEE ON FINANCE
10/1/07	Buttiff F. Truong	MAJORITY CHAIRMAN Patrick M. Browne
10/1/07	St. Helmut	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)