4/18/05

Regulatory Analysis Form

(1) Agency Revenue	This space for use by IRRC RECEIVED 2005 OCT 21 AM 10:08 INDEPENDENT REGULATORY REVIEW COMMISSION
(2) I.D. Number (Governor's Office Use) 15-429	IRRC Number: 2503

(3) Short Title

Realty Transfer Tax Amendments

(4) PA Code Cite	(5) Agency Contacts & Telephone Numbers
61 Pa. Code - Chapter 91	Primary Contact: Mary R. Sprunk (717) 783-7524 Secondary Contact: Douglas A. Berguson (717) 346-4633

(6) Type of Rulemaking (check one)	(7) Is a 120-Day Emergency Certification Attached?
☒ Proposed Rulemaking ☐ Final Order Adopting Regulation ☐ Final Order, Proposed Rulemaking Omitted	☒ 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).

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

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

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

The 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) and was forwarded to interested parties upon request.

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

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.

(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.

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(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 revised Table I used to calculate the taxable amount of RTT in the case of reservation or conveyance of life estates. Table I is being revised to update the life expectancy as of the 2000 Federal census along with an interest rate of 5% used to calculate the net present value of the property. These factors are used to calculate the life estate factor used in Table I. Due to the infrequency of the effected 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 <u>Baltimore County v. Hechinger Liquidation Trust (In re Hechinger Inv. Co. of Del., Inc.)</u>, 335 F.3d 243 (3d Cir. Del. 2003) results in a stricter standard than the Department was currently using. However, the number of effected 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 a 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 <u>Hechinger</u> decision now requires that bankruptcies under Chapter 7 and 13 be confirmed prior to changing the deed in order to be exempt from 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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

4/18/05

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Copy below is hereby approved as to form and legality. Attorney General By: ______________ (Deputy Attorney General) OCT 12 2005 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 Gregory C. Fajt TITLE Secretary of Revenue (Executive Officer, Chairman or Secretary)	Copy below is hereby approved as to form and legality. Executive or Independent Agencies BY DAVID J. DEVRIES 8.31.05 DATE OF APPROVAL EXECUTIVE (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 PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code, Chapter 91

Realty Transfer Tax

Realty Transfer Tax Amendments

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. Realty Transfer Tax, to read as set forth in Annex A.

Purpose of Regulation

The amendments to Chapter 91. Realty Transfer Tax, are made 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).

"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.

"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.

"Ordinary trust" - The definition is added to address the 1997 statutory amendment to 72 P.S. § 8101-C.

"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).

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 have been added to § 91.152 (relating to confirmatory deeds).

Language clarifying the taxation regarding conversion of real estate between business 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 natural resources, complete timber removal, and products of the soil.

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).

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 regulation, the Department is proposing to update the table using factors based on the 2000

Federal census for a single life tenant, computed at 6% interest. In addition, to keep the table current, the Department is proposing at § 91.165(c) to update the table at least once every 5 years by published notice in the Pennsylvania Bulletin.

A new § 91.171 (relating to the rule in Baehr Bros. v. Commonwealth, 493 Pa. 417, 426 A.2d 1086 (1981)) sets forth rules to determine whether a document is excludible or subject to tax. A new § 91.172 (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). In the past, the Department would allow a transfer to be exempt from realty transfer tax 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 now requires that bankruptcies under Chapter 7 and 13 be confirmed prior to changing the deed in order to be exempt from realty transfer tax. A new subsection (c) is added to promulgate the Department's policy that list of excluded transactions in subsection (b) do not apply to acquisitions of real estate companies.

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.

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) 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.

Affected Parties

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

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 would 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 amendment will require no additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

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

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 21, 2005, the Department submitted a copy of this proposed amendment to the Independent Regulatory

Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. The Independent Regulatory Review Commission may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

GREGORY C. FAJT
SECRETARY OF REVENUE

03/29/05

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 - 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.A. § 8997 or joint venture. 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:

(1) A stepson or stepdaughter.

(2) 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 preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

Corporation - A corporation, joint-stock association, limited liability company, business trust or banking institution which is organized under the laws of this 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.

* * *

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:

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

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

(3) 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.

(4) From which no transfer of property or money 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.

(5) 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.

Ordinary trust - 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. The term shall not include:

(1) Business trusts organized under the Associations Code, Massachusetts business trusts or associations using the forms and methods of an ordinary trust which have 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.

(2) Minors' estates.

(3) Incompetents' estates.

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

(5) 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 <u>or family farm partnership</u> is subject to pay a State tax at the rate of 1% of the value of the family farm [realty] <u>real estate</u> held by the family farm corporation <u>or the family farm partnership</u> 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 <u>or the family farm partnership</u> becomes acquired.

<u>§ 91.115. Publication of common level ratio factors.</u>

<u>The Department shall 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.</u>

Subchapter G. Valuation

§ 91.132. Bona fide sale transactions.

[Except as provided in § 91.136(2), I](a) In a bona fide sale of [realty] <u>real estate</u>, the value of the [realty] <u>real estate</u> is the total agreed consideration for the sale which is paid or to be paid.

<u>(b)</u> This 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 value 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 is a party to the assignment and receives part or all of the consideration paid for the assignment. If the seller 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 receives.

§ 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] one of the following occurs:

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

(2) The [realty] 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 a prior recorded document, including a deed that only asserts an existing survivorship interest, is not taxable. This [exclusion] subsection only applies if the following apply:

* * *

(b) A deed made without consideration for the sole purpose of confirming real estate ownership following a merger, consolidation or change in the form or identity of a corporation or an association. 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 owner(s).

(2) Without the making of any document:

(i) The resultant entity is vested with all the 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.

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

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

(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, may be prosecuted to judgment against the resultant entity.

(3) The original entity or, in the case of a merger or consolidation, any party thereto, 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.

(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.

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

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. 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 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. The limited partnership is the surviving entity of the merger. The general partnership ceases to exist as a result of the conversion. 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. 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.

Example 2. Assume the same facts as 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. 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.

Example 3. Assume the same facts as Example 2, except that 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 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, the deed is taxable.

(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 shall 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 shall 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.

§ 91.154. 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 are entities separate from their stockholders, shareholders, partners and members. Transfers 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).

(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 shall not be excludible under either §§ 91.151 or 91.152 (relating to correctional deeds; or confirmatory deeds).

(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 shall not be excludible under either §§ 91.151 or 91.152 (relating to correctional deeds; and confirmatory deeds).

(d) Examples.

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.

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.

§ 91.155. Timber [and], crops, and natural resources.

* * *

(b) Standing timber [and crops are] is considered nontaxable personal property if the instrument 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 standing timber, however, is taxable if the transferee has discretion as to the time of removal, the instrument is indefinite as to the time for removal or the instrument 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.

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

(1) Are planted annually and gathered during a single, annual season.

(2) Are propagated for the purpose of being transplanted or grafted.

(3) Require annual pruning, spraying or cultivation.

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

§ 91.156. Trusts.

(a) Transfers to ordinary trusts. A transfer to an ordinary trust is fully taxable, [except if] unless the transfer of the same property would be wholly exempt if the transfer were 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 or the proceeds from the sale of the property as a beneficiary under the terms of the trust, whether or not such beneficiaries are contingent or specifically named.

Example: G transfers property 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 shall by itself neither qualify nor disqualify a transfer from the exemption provided by subsection (a).

(c) Transfers to living trusts. A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust is exempt.

(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 or the proceeds from the sale of the property 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 shall be treated as if such 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.

(f) Transfers from testamentary trusts and living trusts after the death of the settlor. A transfer of real estate from 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 or the proceeds from the sale of the property as a beneficiary under the terms of the trust.

(g) Requirement for exemption. No exemption shall 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			

(a) The value of a life estate or remainder interest in real estate shall be the consideration paid or to be paid for the life estate or remainder interest.

(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, then the factors in Table I shall be multiplied by the real estate's computed value to calculate the value of a life estate or remainder interest.

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, i.e., $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 taxable value of T's life estate interest is the computed value of the entire real estate multiplied by T's life estate factor ($100,000 x .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 taxable value of T's remainder interest is the computed value of the entire real estate multiplied T's remainder factor ($100,000 x .15257), or $15,257.

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

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

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

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

(2) 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) 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 paragraphs (1) and (2).

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

(c) 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 shall 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.

§ 91.172. Transfers by operation of law.

Except as provided in § 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 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 L. 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 (11 U.S.C. § 1129) and exempt under section 1146(c) of that 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 where 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 Federal Bankruptcy Act (Act) (11 U.S.C. § 1225) and exempt under section 1231(c) of the 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 Act only where the transfer is authorized by the specific terms of previously confirmed Chapter 12 plan.

(iii) Transfers made under the authority of sections 363 or 365 of the Act (11 U.S.C. §§ 363 or 365) and occurring before the confirmation of a plan will not qualify for exemption under this clause.

*   *   *

(6) Transfers between certain family members:

*　　*　　*

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

*　　*　　*

(8) A transfer for no or nominal consideration to a trustee of an ordinary trust, where the transfer of the same property would be <u>wholly</u> excluded if the transfer were made directly by the grantor to all the possible beneficiaries <u>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</u>, whether or not the beneficiaries are contingent or specifically named. See § 91.156 (relating to trusts).

(9) A transfer for no or nominal actual consideration from a trustee [to a beneficiary to an ordinary trust] <u>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</u>. See § 91.156.

*　　*　　*

(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 and the conservancy has owned the real estate for at least two years immediately prior to the transfer.

* * *

(26) The rescission, cancellation or abandonment of an existing lease or contract for a deed for no or nominal consideration.

(32) Transfers for no or nominal actual consideration to the trustee of a living trust from the settlor of the living trust.

(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.

(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.

(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 constitute excluded parties. Transfers to such institutions by gift or dedication are excluded transactions.

(b) 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 to an institution that is part of the State System of Higher Education other than gift or dedication and all transfers by such 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.

* * *

(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 such corporation to the business of agriculture or used by such member for agricultural purposes.

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

(4) [Set] Used by such 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 shall include 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.

Partnerships

§ 91.221. Family farm partnership.

(a) An entity shall constitute a family farm partnership only for so long as all of the following requirements are satisfied:

(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.

(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 occur:

(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.

02/09/05

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 15-429

SUBJECT: Realty Transfer Tax Amendments

AGENCY: DEPARTMENT OF REVENUE

#2503

TYPE OF REGULATION

RECEIVED
2005 OCT 21 AM 10:09
INDEPENDENT REGULATORY REVIEW COMMISSION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/21/05	Nancy S. Cole	HOUSE COMMITTEE ON FINANCE
10/21/05	Jami Fetter	
10/21/05	Krysti Kreiser	SENATE COMMITTEE ON FINANCE
10/21/05	[illegible]	
10/21/05	Stephen F. Hoffman	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
10/21/05	Maya Garas	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

October 14, 2005