

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 147]

Issuance of Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 5, 1999, meeting, adopted the following changes:

Amend § 147.2 (relating to general) by the addition of subsection (d) that requires new permit applicants to show proof they are authorized by their local governmental body to conduct the activity specified on the permit.

This amendment is adopted under the authority of 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Amendment to § 147.2

1. Introduction

To more effectively administer the wildlife permit system of the Commonwealth, the Commission at its June 8, 1999, meeting proposed, and at its October 5, 1999 meeting, finally adopted a change in § 147.2 to add subsection (d) requiring documentation that the privilege granted by a permit does not violate any local zoning ordinances or other local rule. This addition was adopted under authority contained in section 2901(b) of the code (relating to regulations for permits).

2. Purpose and Authority

The Commission is charged with the responsibility of regulating and issuing permits for the possession of game and wildlife and activities associated with that possession. Former permit regulations did not take into account local land use and other ordinances, which may impact on that possession or those activities. As a result, the Commission may have issued permits which allowed possession of wildlife or an activity that violated local law. A good example would have been a permit for possession of a tiger in a residential neighborhood. The adopted addition deals with these types of situations.

Section 2901(b) of the code authorizes the Commission to promulgate regulations "... for the issuance of any permit or ... to control the activities which may be performed under authority of any permit issued." This provision is the basis for the adopted change.

3. Regulatory Requirements

The adopted change requires all new applicants for permits to provide documentation that the proposed possession or activity complies with local requirements. It is anticipated that this will ordinarily be done in letter form.

4. Persons Affected

Persons wishing to apply for a Commission permit will be affected by the requirement.

5. Comment and Response Summary

One written comment was received from the Association of Township Supervisors totally in support of the adopted change.

6. Cost and Paperwork Requirements

There will be no additional charges imposed by the Commission. Municipalities may charge for furnishing the required documentation.

7. Effective Date

The change is effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

8. Contact Person

For further information on the adopted change, contact Thomas R. Littwin, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA (717) 783-6526.

Findings

The Commission finds that:

(1) The public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Game Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.2 to read as set forth at 29 Pa.B. 4169 (August 7, 1999).

(b) The Executive Director of the Game Commission shall submit this order and 29 Pa.B. 4169, and deposit it with the Legislative Reference Bureau as required by law.

(c) This order amending § 147.2 shall become effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

(Editor's Note: The proposal to add § 147.146, included in the proposed rulemaking at 29 Pa.B. 4169 (August 7, 1999), has been withdrawn by the Commission.)

Fiscal Note: 48-113. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 99-2039. Filed for public inspection December 3, 1999, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 93 AND 94]

Inheritance Tax; Disclaimers of Nonprobate Taxable Assets

The Department of Revenue (Department), under the authority contained in section 2103 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 9103), by this order amends Chapter 93 (relating to Inheritance Tax Division),

by adding § 93.141 (relating to disclaimers of nonprobate taxable assets) and deleting § 94.1 (relating to disclaimers of nonprobate taxable assets) to read as set forth in Annex A.

Purpose of Amendments

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

Explanation of Regulatory Requirements

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

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

Affected Parties

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

Comment and Response Summary

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

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

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

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

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

suggest that the *Bernecker* citation be incorporated in the notes of decisions section when the regulation is codified in the *Pennsylvania Code*.

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

(3) Proposed paragraph (3) under § 93.81(b) provided that the disclaimer shall be in writing and satisfy the requirements of 20 Pa.C.S. Chapter 62 (relating to disclaimers) in effect at the time the disclaimer is made. IRRC suggested that the phrase "in effect at the time the disclaimer is made" was unnecessary and should be deleted because disclaimers must satisfy the statutory requirements in effect at the time the disclaimer is executed. The Department agrees with IRRC's suggestion and has deleted the phrase from the final-form regulation (§ 93.141(c)(2)).

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

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

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

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

(6) With regard to proposed § 93.81(b)(7), IRRC stated that the paragraph was ambiguous because it appears to require subparagraphs (i)—(iii) to occur in order to allow a personal representative to make a disclaimer on behalf of a decedent without court authorization. However, section 6202 of the Probate, Estates and Fiduciary Code (20 Pa.C.S. § 6202) allows a disclaimer to be made without

court authorization only when the will of the decedent so authorizes. To resolve this issue, IRRC proposed language to restructure the paragraph. The Department agrees that the proposed language could be confusing and has restructured the provision in the final-form regulation (§ 93.141(d)).

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

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

Fiscal Impact

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

Paperwork

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

Effectiveness/Sunset Date

The amendments will become effective upon final publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

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

Regulatory Review

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

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

This final-form regulation was deemed approved by the Committees on October 14, 1999, and was approved by

IRRC on October 21, 1999, in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745a(e)).

Findings

The Department finds that:

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

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

Order

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

(a) The regulations of the Department, 61 Pa. Code, are amended by adding § 93.141 and by deleting a statement of policy in § 94.1 to read as set forth in Annex A. (*Editor's Note:* The proposal to add § 93.81 at 27 Pa.B. 4750 has been withdrawn by the Department.)

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

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

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

ROBERT A. JUDGE, Sr.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5777 (November 6, 1999).)

Fiscal Note: Fiscal Note 15-390 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE IV. COUNTY COLLECTIONS

CHAPTER 93. INHERITANCE TAX DIVISION

Subchapter F. DISCLAIMERS OF NONPROBATE TAXABLE ASSETS

§ 93.141. Disclaimers of nonprobate taxable assets.

(a) *Scope and application.* Subsection (c) sets forth specific criteria the Department will utilize to determine whether a disclaimer executed in regard to either nonprobate taxable assets or nontrust assets of a decedent is valid for Inheritance Tax purposes, when the disclaimer is made by the disclaiming party, or the personal representative of a deceased individual, or the guardian or attorney-in-fact of an incapacitated person or minor to whom the interest would devolve, absent a disclaimer.

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Disclaimant—Any party in an individual capacity, or a personal representative on behalf of a deceased indi-

vidual, or a guardian or attorney-in-fact on behalf of an incapacitated person or a minor who renounces or refuses to accept a transfer of property.

Disclaimer—A signed renunciation or refusal to accept an interest in property that describes the interest disclaimed. The disclaimer may disclaim, in whole or in part, any present or future interest, vested or contingent, including a possible future right to take as an appointee under an unexercised power of appointment or under a discretionary power to distribute income or principal.

Nonprobate taxable asset—Property transferred upon a decedent's death that is subject to Inheritance Tax but is not subject to administration by the personal representative of the decedent's estate.

(c) *Conditions.* Disclaimers of nonprobate taxable assets, including rights of survivorship interests in multiple-party accounts, titled tangible personal property or real estate, beneficial interests in third-party beneficiary contracts (that is, retirement benefit plans, annuity contracts, individual retirement accounts, Keogh Plan proceeds, matured endowment insurance policies and certain out-of-State government lottery contracts) and *intervivos* gifts are valid for Inheritance Tax purposes if the following conditions are met:

- (1) The disclaimer is made by a disclaimant.
- (2) The disclaimer is in writing and satisfies 20 Pa.C.S. Chapter 62 (relating to disclaimers).
- (3) The disclaimer is signed and dated by the disclaimant.
- (d) *Filing.*

(1) When the will of the decedent authorizes the personal representative to make a disclaimer on behalf of a decedent without court authorization, or when a disclaimant acts in his individual capacity, the personal represen-

tative or the individual shall sign and date the disclaimer within 9 months of the date of death of the decedent as provided in section 2116(c) of the TRC (72 P. S. § 9116(c)), attach a copy of the probated last will and testament to the Inheritance Tax return and file the documents referenced in this section with the Department.

(2) When the disclaimer is made by the personal representative of a deceased individual, or the guardian or attorney-in-fact, in accordance with 20 Pa.C.S. § 6202 (relating to disclaimers by fiduciaries or attorneys-in-fact), a petition, motion or other pleading as required by local rule shall be filed with the applicable county orphans' court and, within 9 months of the date of death of the decedent, the personal representative of a deceased individual, or the guardian or attorney-in-fact, shall attach a copy of the probated last will and testament to the inheritance tax return and file the documents referenced in this section with the Department. Filing the disclaimer with the applicable county orphans' court within 9 months of the date of death of the decedent satisfies the filing requirement. The disclaimer is not valid until the court authorizes the disclaimer.

(e) *Notice.* Notice of the filing of an estate's account and of its call for audit or confirmation shall include notice of the disclaimer under section 2116(c) of the TRC. This notice shall be given to the Pennsylvania Department of Revenue, Bureau of Individual Taxes, Inheritance Tax Division, Department 280601, Harrisburg, Pennsylvania 17128-0601.

**CHAPTER 94. INHERITANCE TAX
PRONOUNCEMENTS—STATEMENTS OF POLICY**

§ 94.1. (Reserved).

[Pa.B. Doc. No. 99-2040. Filed for public inspection December 3, 1999, 9:00 a.m.]