

RULES AND REGULATIONS

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 91]

Realty Transfer Tax

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), amends Chapter 91 (relating to realty transfer tax) to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

The final-form rulemaking 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:

The definition of "association" is amended to address a 1994 statutory amendment to 1 Pa.C.S. § 1991 (relating to definitions) and a 1997 statutory amendment to section 1101-C of the TRC (72 P. S. § 8101-C).

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

The definition of "conservancy" is added to address a 1989 statutory amendment to section 1102-C.3(18) of the TRC (72 P. S. § 8102-C.3(18)).

The definition of "conversion" is added in the final-form rulemaking for clarity.

The definition of "corporation" is added to address the 1994 statutory amendment in 15 Pa.C.S. § 8925 (relating to taxation of limited liability companies).

The definition of "debt" is added for use in this final-form regulation.

The definition of "entity" is added in this final-form rulemaking for clarity.

The definition of "financing transaction" is added for use in this final-form rulemaking.

The definition of "living trust" is added to address the 1997 statutory amendment to section 1101-C of the TRC; and for further clarification, examples are added in this final-form rulemaking.

The definition of "ordinary trust" is added to address the 1997 statutory amendment to section 1101-C of the TRC. Clarification language has been added in the final-rulemaking.

The definition of "settlor" is added for use in this final-form rulemaking.

The definition of "testamentary trust" is added for use in this final-form rulemaking.

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 section 1102-C.5(b.1) of the TRC (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 this final-form rulemaking.

Section 91.153 (relating to principal and agent) is amended in this final-form rulemaking to add subsection (d).

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 § 91.155 (relating to timber and crops) to include complete timber removal and products of the soil. In the final-form 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 sections 1101-C and 1102-C of the TRC 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 this final-form 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 rulemaking, as recommended by the Independent Regulatory Review Commission (IRRC), the Department is removing Table I from the regulations. The Department proposed in § 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-form rulemaking.

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

A new § 91.170 (relating to 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-form rulemaking, the citation to this case law has been corrected. In addition,

this section was redrafted for clarity in the final-form 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 to § 91.193 (relating to excluded transactions) to bring the section into conformity with statutory changes from 1989—1997 to section 1102-C.3 of the TRC, 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. 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-form 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 in sections 1101-C, 1102-C and 1102-C.5(b.1) of the TRC regarding family farm partnerships. In this final-form 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 in § 91.211. Finally, the language in § 91.211(a)(1) has been amended to mirror the corresponding language in § 91.221(a)(1), as requested by two commentators.

Affected Parties

Persons or entities transferring an interest in real property could be affected by the regulations.

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, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061.

In its evaluation of provisions, during the proposal stage, the Department received numerous comments from 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). To clarify the exclusion for documents that merely confirm the conversion of entities, the De-

partment redrafted § 91.152(b). New provisions were added to § 91.153 to explain the tax treatment of IRC § 1031 regarding 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 amendments 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 final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The amendments will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are 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 Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P. O. Box 281061, Harrisburg, PA 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 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, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

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

This final-form rulemaking was deemed approved by the Committees on October 31, 2007, and was deemed approved by IRRC on November 1, 2007, in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Findings

The Department of Revenue finds that:

(1) Public notice of intention to amend the regulations 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 in 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 Chapter 91, are amended by amending §§ 91.101, 91.113, 91.132, 91.135, 91.136, 91.152—91.156, 91.162, 91.165, 91.166, 91.168, 91.193, 91.202 and 91.211; and by adding §§ 91.115, 91.170, 91.171, 91.195 and 91.221—91.223 to read as set forth in Annex A, with ellipsis referring to the existing text of the regulations.

(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

(Editor's Note: The proposal to amend §§ 91.153 and 91.168 was not included in the proposed rulemaking at 35 Pa.B. 6096.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 6181 (November 17, 2007).)

Fiscal Note: Fiscal Note 15-429 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 COLLECTION

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 or 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 does 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.

Document—A deed, quitclaim deed, ground rent, lease, occupancy agreement, contract or other writing evidencing an interest in realty other than:

(i) A will.

(ii) A conventional mortgage or assignment, extension, release or satisfaction thereof.

(iii) A contract for a deed or agreement of sale for the sale of realty whereby the legal title does not pass to the grantee until the total consideration specified in the contract or agreement has been paid, and the consideration is payable over a period of time not exceeding 30 years.

(iv) An instrument which solely grants, vests or confirms a public utility easement.

Entity—An association or corporation.

Family farm realty—One of the following:

(i) Realty devoted to the business of agriculture which was transferred without tax to a family farm corporation by document accepted after July 1, 1986, or recorded after July 31, 1986, by a member of the same family which directly owns at least 75% of each class of the stock of that family farm corporation.

(ii) Realty which was transferred to a family farm corporation without tax after February 15, 1986, under a document accepted prior to July 2, 1986, and recorded prior to August 1, 1986, by a sole proprietor family member.

Financing transaction—An arrangement in which the following apply:

(i) Realty is transferred by the debtor solely for the purpose of serving as security for the payment of a debt.

(ii) No sale or gift is intended.

(iii) The debtor retains possession and beneficial ownership of the 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 settlor without the consent of an adverse party.

(ii) Which vests no present interest in any of the trust 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 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, the 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 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.

(a) A real estate company is subject to pay a State tax at the rate of 1% of the value of the realty held by the real estate company when it becomes an acquired company under § 91.202 (relating to acquired real estate company). The tax shall be paid within 30 days after the real estate company becomes acquired.

(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 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 corporation; 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 real estate, the value of the real estate is the total agreed consideration for the sale which is paid or to be paid.

(b) 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 real estate.

Example 1 (existing mortgage lien):

S conveyed a parcel to P in a bona fide sale. The agreed cash consideration was \$20,000. P also agreed to assume S's mortgage on the parcel which had a remaining balance due of \$10,000. The value of the realty conveyed to P is \$20,000 plus \$10,000 or a total of \$30,000, because

$$\frac{\$20,000 \text{ (actual consideration)} + \$10,000 \text{ (amount of lien)}}{\$4,000 + \$6,000 \text{ (assessed value of two lots encumbered by lien)}} \times \$4,000 \text{ (assessed value of lot sold to B)}$$

(c) 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 § 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% 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% 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 real estate is its computed value where the 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.

the existing mortgage lien was not removed by the transfer.

Example 2 (a lien encumbers both the transferred realty and other realty):

S owns two lots, both of which are encumbered by a single \$10,000 lien. The assessed value of the lots are \$4,000 and \$6,000. S sells the lot assessed at \$4,000 to B for \$20,000 in a bona fide sale. If the lien is removed by the sale, the total consideration for the sale is \$20,000. If the lien is not removed by the sale the total consideration is \$24,000 which is computed as follows:

(2) In exchange for stock in a corporation, an interest in a partnership, limited partnership or association, or property—other than cash or credit—in a bona fide sale or otherwise.

(3) By gift or otherwise without consideration or for a nominal consideration.

(4) Under a transaction other than a bona fide sale.

§ 91.136. Appraisal.

The value of real estate shall be determined by appraisal only when 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 subsection only applies if the following apply:

(1) The grantee of the deed of confirmation held or holds record title to the property interest described in the deed of confirmation under a prior deed.

(2) The deed of confirmation is made solely for the purpose of making the grantee's record legal title under the prior deed sure and unavoidable.

(3) The grantor of the deed of confirmation has no interest in the real estate conveyed or 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 conversion of the entity is not taxable. This subsection only applies if all of the following occur:

(1) 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 entity is vested with all the same property, real, personal and mixed, franchises and debts before and after the conversion.

(ii) The entity is subject to all the same obligations before and after the conversion.

(iii) Liens upon the property of the entity before the conversion are not impaired by the conversion.

(iv) Any claim existing or action or proceeding pending by or against the entity before the conversion may be prosecuted to judgment against the entity after the conversion.

(3) The 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 conversion.

(4) Considering all the ownership interests in the 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 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. A and B want to convert their general partnership to a limited partnership known as AB, LP. A and B set up 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 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 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 real estate from A and B, individually, and AB, general partnership, as grantors to AB, LP as grantee. The deed is taxable because 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 AB purchased the real estate with partnership funds and titled the real estate in the name of AB. 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 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. 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 under § 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.

§ 91.153. Principal and agent.

(a) *Transfers from agent.*

(1) The transfer of realty without consideration from an agent to the agent's principal is not subject to tax, if the agent acquired the transferred realty for the exclusive benefit of the principal.

(2) The transfer from an agent to a third person of realty acquired by the agent for the exclusive benefit of the agent's principal is subject to tax to the same extent the transfer would be taxed if made directly by the agent's principal.

(b) *Transfers to agent.*

(1) A transfer without consideration to an agent from the agent's principal of realty in which the principal retains the beneficial interest is not subject to tax.

(2) A transfer to an agent from a third person of realty acquired by the agent for the exclusive benefit of the

agent's principal is subject to tax to the same extent that the transfer would be taxed if made directly to the agent's principal.

(c) *Presumption.* If the document by which title is acquired by a grantee fails to set forth that the realty was acquired by the grantee from or for the benefit of the agent's principal, there is a rebuttable presumption the realty is that of the grantee in the grantee's individual capacity if an exemption from taxation under this section is claimed.

(d) *Like-kind exchanges.* For purposes of this section and § 91.193(b)(11) (relating to excluded transactions), an agent or straw party does 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) Entities are separate from their stockholders, shareholders, partners and members. Transfers of title to real estate between 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 otherwise excluded.

(b) 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, the writing is not subject to tax.

(c) 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, 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. 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, copartners. The deed of transfer from X is fully taxable. Partnerships are separate entities from their partners.

Example 2. 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.

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

(b) Standing timber is considered nontaxable personal property if the writing provides for severance and complete removal at once or as soon as it can be reasonably done. A writing that conveys an interest in standing timber is a taxable document if any of the following apply:

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

(2) The writing is indefinite as to the time for removal.

(3) The 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 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 unless the transfer of the same real estate would be wholly excluded if the transfer 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 real estate or the proceeds from the sale of the real estate as a beneficiary under the terms of the trust, whether or not the beneficiaries are contingent or specifically named.

Example: G transfers 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 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 an ordinary trust is fully taxable except for a transfer for no or nominal actual consideration from the trustee to the person who has the vested remainder interest or who is otherwise entitled to receive the real estate or the proceeds from the sale of the real estate as a beneficiary under the terms of the trust.

(e) *Inter vivos transfers from living trusts.*

(1) A transfer 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 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), 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 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 real estate or the proceeds from the sale of the 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 real estate to a developer or contractor who is required by contract to reconvey the real estate to the grantor after making contracted-for improvements to the 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) 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, life estate and remainder factors as provided in subsection (d) are 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 consider-

ation 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 taxable value of T's life estate interest is the computed value of the entire real estate multiplied by the life estate factor based upon T's age.

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 taxable value of T's remainder interest is the computed value of the entire real estate multiplied by the remainder factor based upon L's age.

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. 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.

§ 91.166. Life maintenance.

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

§ 91.168. Sale and leaseback transactions.

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. Rule in *Baehr Bros. v. Commonwealth*, 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:

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

(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.

(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 (i) and (ii).

(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.

(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, the single document is excluded from tax. This rule only applies if the following apply:

(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 subsection (b)(2)(i)—(iv) 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. This 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 1 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). 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, 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. 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—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—G are effectuated by separate writings that each, by appearance, is nontaxable. 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) and 91.193(b)(1)(i), (7), (12) and (13) (relating to confirmatory deed; and 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 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. No. 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 the Bankruptcy Act (11 U.S.C. § 1146(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 1129 only when the transfer is authorized by the specific terms of a previously confirmed Chapter 11 plan.

(ii) 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 paragraph. However, transfers pursuant to sales authorized under these sections of the Bankruptcy Act may qualify for other exclusions. See paragraph (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 to a trustee of an ordinary trust as provided in § 91.156(a) (relating to trusts).

(9) A transfer from a trustee of an ordinary trust 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. § 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. § 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 15 Pa.C.S. §§ 1929 and 4127 (relating to effect of merger or consolidation; and merger, consolidation or division of qualified foreign business corporations) and 15 Pa.C.S. § 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, 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. A transfers title to real estate to B in exchange for a cash payment. As part of the same transaction, B immediately leases back the real estate to A for 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 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 paragraph (24)(v).

* * * * *

(32) Transfers to the trustee of a living trust as provided in § 91.156(c).

(33) Transfers from the trustee of a living trust as provided in § 91.156(e).

(34) Transfers from the trustee of a testamentary trust or living trust after the death of the settlor 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 the institutions enumerated in subsection (a) by gift or dedication are excluded transactions.

(c) Transfers of 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 public charities are taxable upon the same basis as transfers between private parties.

Subchapter J. REAL ESTATE COMPANY

§ 91.202. Acquired real estate company.

(a) A real estate company becomes acquired upon a change in the ownership of the company, if the change in the ownership interest:

- (1) Does not affect the continuity of the company.
- (2) Together with prior changes within the preceding 3 years, has the effect of transferring, directly or indirectly, 90% or more of the total capital and profits ownership interest in the company.

(b) An ownership interest may be changed by any of the following:

- (1) A member's or shareholder's sale, exchange, gift, bequest or other transfer of the ownership interest.
- (2) A member's withdrawal or the addition of a new member.
- (3) An issuance or cancellation of stock.

Example 1:

A and B are equal partners in their partnership. Over a period of 2 years, the partnership adds 18 new equal partners. As A and B own only 10% of the total ownership interest at the end of the 2-year period, the addition of the new members has the effect of transferring 90% of the total ownership interest in the partnership. The partnership, therefore, became an acquired company upon the admittance of the 20th partner.

Example 2:

C and D are equal partners in their partnership. C transfers her 50% partnership interest to E. One year later, E transfers the 50% partnership interest to F. The partnership does not become acquired as a result of these changes. As D still retains his 50% interest, 50% of the total ownership interest remains the same. The series of transactions relating to C's interest has the effect only of transferring 50% of the total ownership interest.

(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 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.

(d) An acquired real estate company can become acquired again upon a change in ownership interest in the company, if the change:

- (1) Does not affect the continuity of the company.
- (2) Together with prior changes within the preceding 3-year period commencing with the date that it became acquired, has the effect of transferring, directly or indi-

rectly, 90% or more of the total capital and profits ownership interest in the company.

(e) Changes in ownership interests which occurred prior to July 1, 1986, shall be taken into account in determining whether a real estate company becomes 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) 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.

(2) At least 75% of each class of stock of the corporation is owned by individuals who are members of the same family.

(b) To qualify as an asset devoted to the business of agriculture for the purpose of subsection (a), the assets must 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) Used by the member principally for agricultural purposes or set apart and directly used by the corporation primarily for commercial:

(i) Cultivation of the earth to produce food products suitable for human or animal consumption, seeds, tobacco, turf or sod.

(ii) Rearing, feeding, breeding and management of livestock.

(iii) Raising and harvesting of orchards and vineyards.

(iv) Beekeeping.

(v) Rearing, feeding, breeding and management of fish or other aquatic animals for use as a food or food product.

(c) For the purposes of subsection (a), an asset does not qualify as an asset devoted to the business of agriculture if it is set apart and directly and principally used in:

(1) Recreational activities such as hunting, fishing, camping, skiing, boating, show competition or racing.

(2) Raising, breeding or training game animals or birds, fish, cats, dogs or an animal intended to be used in sporting events or for recreational activities.

(3) Fur farming.

(4) Stockyard and slaughterhouse operations.

(5) Manufacturing or processing operations.

(6) The business of holding property for rental income.

(d) For the purposes of subsection (a), § 91.201(b) (relating to real estate company) applies.

(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 at 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:

(1) 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 voluntarily or involuntarily dissolves 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 § 91.203 (relating to declaration of acquisition) with respect to family farm real estate held on the date the family farm partnership became acquired.

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