

PROPOSED RULEMAKINGS

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 91]

Realty Transfer Tax Amendments

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

Purpose of Proposed Rulemaking

The proposed amendments to Chapter 91 improve the clarity and effectiveness of the Department's regulations as well as make the regulations consistent with Department policy.

Explanation of Regulatory Requirements

Three generic changes are proposed throughout the proposed rulemaking: (1) "realty" has been replaced with "real estate" to mirror language in Article XI-C of the TRC (72 P. S. §§ 8101-C—8114-C); (2) "excluded" has been changed to "exempt" in certain situations to apply the correct legal terminology; and (3) references to § 91.193 (relating to exemptions and exclusions) have been updated to reflect major proposed amendments to this section.

Proposed amendments to § 91.101 (relating to definitions) include the following new definitions for terms used in the regulations: "business trust," "common level ratio factor" with an example, "joint trust," "real party in interest," "straw party" and "turnkey project." The definition of "document" has been revised and subparagraphs (i)—(iv) are moved to § 91.193(b). The definition of "ordinary trust" has been enhanced. In addition, the following definitions are proposed to be deleted from § 91.131 (relating to definitions) to consolidate the definitions in § 91.101: "bona fide sales transaction," "computed value" and "grantor's affiliate." The definition of "computed value" has been amended to include real estate with a preferential assessed value under the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13).

Sections 91.132—91.137 are proposed to be rescinded. The majority of the text in these sections has been consolidated under proposed § 91.138 (relating to valuation) as follows:

<i>Current section</i>	<i>Proposed § 91.138</i>
§ 91.132. Bona fide sale transactions	Paragraph (1)—Bona fide sales Examples 1 and 2 are enhanced
§ 91.133. Leases	Paragraph (2)(viii)—Computed value Paragraph (5)(iv)—Special rules related to allocation of value
§ 91.134. Family farm realty and real estate company realty	Paragraph (2)(xiii)—Computed value
§ 91.135. Judicial sales and other transactions	Paragraph (2)(i)—(vii) and (xii)—Computed value

<i>Current section</i>	<i>Proposed § 91.138</i>
§ 91.136. Appraisal	Paragraph (3)(ii)(A)—Other valuation methods when there is not a bona fide sale or computed value
§ 91.137. Construction contracts	Paragraph (4)—Construction contracts and other executory agreements Paragraph (5)—Special rules related to allocation of value

Proposed amendments to § 91.151(3) (relating to correctional deed) correct the term "grantee" to "grantor."

Proposed amendments to § 91.152(a) (relating to confirmatory deed) delete language and explain the matter in more detail as new language proposed in subsection (b). The current language in subsection (b) is renumbered as subsection (c).

Proposed § 91.153(e) (relating to agent and straw party transactions), regarding agent or straw party conditions, expands on this subject matter that has generated questions from taxpayers.

Proposed amendments to § 91.156(c)(2) (relating to trusts) make the language consistent with subsection (e)(1). Subsection (h), regarding joint trusts, is proposed to be added.

Proposed amendments to § 91.157 (relating to joint estates) add language in subsection (a), including three examples to expand on this subject matter. Current subsection (a) is renumbered as subsection (b) and enhanced with three new paragraphs and four new examples. The existing language in subsection (b) is renumbered as subsection (c).

Proposed amendments to § 91.160 (relating to exchange of interest in real estate) delete the cross-reference to § 91.135 (relating to judicial sales and other transactions). In its place, language is proposed regarding computed value.

Proposed amendments to § 91.162 (relating to turnkey projects) improve this section to eliminate taxpayer confusion on this matter. The existing text is proposed to be deleted and replaced with subsections (a)—(c).

Proposed amendments to § 91.170 (relating to rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979)) add clarifying language to Example 1. New language is proposed in subsection (c) regarding statement of value. The existing language in subsection (c) is renumbered as subsection (d).

Language in proposed § 91.172 (relating to leasehold and possessory interests) is relocated from § 91.193.

Subchapter I (relating to excluded parties and transaction) is proposed to be renamed as "exemptions and exclusions."

Section 91.191 (relating to general applicability of tax) is proposed to be rescinded. The language is redundant as it already appears in § 91.111(b) (relating to imposition of tax on documents).

Major revisions are proposed to § 91.193. Language is being moved and proposed in § 91.193 as follows:

<i>Current § 91.193 location</i>	<i>Proposed location in § 91.193 unless noted otherwise</i>
Subsection (a)	Subsection (a)(20)
Subsection (b)	Subsection (a)
Subsection (b)(1)(i)—(v)	Subsection (a)(1)(i)—(v)
Subsection (b)(2)(i)—(iii)	Subsection (a)(2)(i)—(iii) (citation in subsection (a)(2)(i) updated)
Subsection (b)(3)	Subsection (a)(3)
Subsection (b)(4)	Subsection (a)(4)
Subsection (b)(5)	Subsection (a)(5)
Subsection (b)(6)(i)(A)—(F), (ii) and (iii)	Subsection (a)(6)(i)(A)—(F), (ii) and (iii) (enhanced with additional language and three new examples)
Subsection (b)(7)	Subsection (a)(7)
Subsection (b)(8)	Subsection (a)(8)
Subsection (b)(9)	Subsection (a)(9)
Subsection (b)(10)	Subsection (a)(10)
Subsection (b)(11)	Subsection (a)(11)
Subsection (b)(12)(i)—(iii)(A) and (B)	Subsection (a)(12)(i)—(iii)(A) and (B)
Subsection (b)(13)	Subsection (a)(13)
Subsection (b)(14)	Subsection (a)(14)
Subsection (b)(15)	Subsection (a)(15)
Subsection (b)(16)	Subsection (a)(16)
Subsection (b)(17)	Subsection (a)(17)
Subsection (b)(18)	Subsection (a)(18)
Subsection (b)(19)	Subsection (a)(19) (language added for clarity)
Subsection (b)(20) language deleted as already in § 91.202(c)	Subsection (a)(20) contains language from former subsection (a)
Subsection (b)(21)	Subsection (a)(21)
Subsection (b)(22)	§ 91.172(b). Leasehold and possessory interests
Subsection (b)(23)	Subsection (b)(3)
Subsection (b)(24)	Subsection (b)(6)
Subsection (b)(24)(i)—(iv)	§ 91.172
Subsection (b)(25)	Subsection (b)(7)
Subsection (b)(26)	§ 91.172(b)(2)
Subsection (b)(27)	§ 91.172(b)(3)
Subsection (b)(28)	Subsection (b)(5)
Subsection (b)(29) and (iii) under definition of “document”	Subsection (b)(4)
Subsection (b)(30) deleted	Superseded by § 91.170
Subsection (b)(31)	Subsection (a)(22)
Subsection (b)(32)	Subsection (a)(23)
Subsection (b)(33)	Subsection (a)(24)
Subsection (b)(34)	Subsection (a)(25)

<i>Current § 91.193 location</i>	<i>Proposed location in § 91.193 unless noted otherwise</i>
Subsection (b)	Proposed language added in subsection (b) Paragraphs (1) and (2) moved from definition of “document” Paragraph (3) moved from subsection (b)(23) Paragraph (4) moved from definition of “document” and subsection (b)(29) Paragraph (5) moved from definition of “document” and subsection (b)(28) Paragraph (6) moved from subsection (b)(24) Paragraph (7) moved from subsection (b)(25)
Subsection (c)	First sentence deleted (appears in subsection (a)) and second sentence amended for clarity

Proposed amendments to § 91.212 (relating to acquired family farm corporation) add clarifying language to be consistent with § 91.211 (relating to family farm corporation).

Proposed amendments to § 91.233 (relating to transfers by grantor of rented real estate) reflect the Department’s policy on this subject matter. New language has been proposed in this section as well as in the corresponding example.

Affected Parties

An entity transferring an interest in real property could be affected by this proposed rulemaking.

Fiscal Impact

The Department has determined that the proposed rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed rulemaking will not require additional paperwork for the public or the Commonwealth.

Effectiveness / Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final-form publication. A sunset date has not been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061 within 30 days after the date of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 4, 2011, the Department

submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DANIEL MEUSER,
Secretary

Fiscal Note: 15-453. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE IV. COUNTY COLLECTIONS

CHAPTER 91. REALTY TRANSFER TAX

Subchapter E. GENERAL

§ 91.101. Definitions.

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

* * * * *

Bona fide sales transaction—A transfer between a buyer, willing but not obligated to buy, and a seller, willing but not obligated to sell, each acting with adverse economic interests at arms-length in his own self-interest and with knowledge of the value of the real estate transferred.

Business trust—A trust organized under Pennsylvania law, including a trust under 15 Pa.C.S. §§ 9501—9507 (relating to business trusts), or the law of a state or foreign jurisdiction that expressly or impliedly has any of the following features:

- (i) An objective to carry on business.
- (ii) An objective to divide or distribute gains or earnings and profits to a trust beneficiary.
- (iii) Treatment of a beneficiary's interest in the trust as personal property.
- (iv) Treatment of a beneficiary as an associate or owner of the trust.
- (v) The free transferability of a beneficiary's interest in the trust.
- (vi) Centralized management of the trust and its assets by the trustee or the beneficiaries.
- (vii) A continuity of life.

* * * * *

Common level ratio factor—The reciprocal of the State Tax Equalization Board's common level ratio for each county converted into a multiplier and rounded to the nearest hundredth.

Example. If the State Tax Equalization Board's common level ratio for a county is 7:20 or 35%, the Department converts that percentage into its reciprocal of 2.86, which is the common level ratio factor. The factor is calculated as follows: 100% divided by 35% (1.00/.35) = 2.86 (rounded to the nearest hundredth).

Computed value—The amount determined by multiplying the assessed value of the real estate for local real estate tax purposes by the common level ratio factor of the taxing district. For real estate with a preferential assessed value under the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P.S. §§ 5490.1—5490.13), the assessed value of the real estate for local tax purposes will be the preferential assessed value if the following apply:

- (i) The application for the real estate's preferential assessed value is approved before the execution of the document conveying or evidencing the conveyance of the real estate.
- (ii) The conveyance of the parcel of real estate will not cause the termination of the preferential assessed value of the real estate conveyed without regard to whether roll-back taxes are assessed.

* * * * *

Document—A deed, quitclaim deed, ground rent, lease, occupancy agreement, contract or other writing [evidencing an interest in realty other than:] that conveys transfers, devises, vests, confirms or evidences the transfer of title to real estate.

[(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.]

* * * * *

Family farm [realty] real estate. One of the following:

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

* * * * *

Grantor's affiliate—One of the following:

(i) An organization, trade or business, whether or not incorporated, which is owned or controlled directly or indirectly by the grantor or by the same interests which own or control directly or indirectly the grantor.

(ii) A person who stands in one of the following relationships with the grantor with respect to the transaction between the grantor and grantee:

- (A) Principal.
- (B) Agent.
- (C) Partner.
- (D) Joint venturer.

Joint trust—A trust with more than one settlor.

* * * * *

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.] that meets the following requirements:

- (A) The trust is subject to the jurisdiction and ordinary rules applied in the orphan's court division of the court of common pleas or in other chancery or probate courts.
- (B) The trust takes effect during the lifetime of the settlor of the trust.
- (C) The trustee of the trust takes title to the trust property primarily for the purpose of protecting, managing or conserving trust assets 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:] A business trust.

[(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] A minor's estate.

(C) [Incompetents' estates] An incompetent's estate.

* * * * *

- (F) A trust for creditors.
- (G) An escrow relationship.
- (H) A temporary trust to hold disputed property.
- (I) A principal and agent relationship.
- (J) A relationship between a straw party and real party in interest.
- (K) A trust primarily for the benefit of business employees, their families or appointees, under a

stock bonus, pension, disability or death benefit, profit-sharing or other employee benefit plan.

- (L) A trust for bondholders.
- (M) A mortgagee in possession relationship.
- (N) Similar trusts or fiduciary relationships.

Real party in interest—The actual owner of real estate for whom a straw party holds nominal title and to whom flows all the benefits, burdens and incidents of ownership of the real estate.

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Straw party—A person who holds only nominal title to real estate for the benefit of the real party in interest.

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Turnkey project—A contractual arrangement whereby an owner of real estate agrees to transfer title to real estate under a defeasible deed to a developer or contractor in exchange for the developer or contractor's agreement to make improvements to the real estate.

Subchapter F. IMPOSITION OF TAX

§ 91.111. Imposition of tax on documents.

(a) Except as provided in Subchapter I (relating to [excluded parties and transactions] exemptions and exclusions), the person who delivers a document for acceptance or recording or on whose behalf a document is delivered for acceptance or recording and the person who accepts or presents for recording the document or on whose behalf the document is accepted or presented for recording are subject to pay a State tax at the rate of 1% of the value of the [realty] real estate conveyed, transferred, demised or released by the grantor under the document.

* * * * *

§ 91.112. Statement of value.

(a) *General.* Except as provided in this section, a statement of value in duplicate shall be completed and filed with a document presented for recording or for the affixation of tax stamps. The statement of value shall specify the true, full and complete value of the [realty] real estate transferred, demised or released—whether or not an exclusion from tax is claimed—and the reason why the instrument is not subject to tax under this chapter. The statement of value shall be executed by a responsible person connected with the transaction.

(b) *Value specified in document.* A statement of value is not required to be completed and filed if the parties to a recorded document claim no exclusion from tax and specify in the document the true, full and complete value of the [realty] real estate.

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§ 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] real estate 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.

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Subchapter G. VALUATION

(Editor's Note: The definitions in § 91.131 have been moved to § 91.101. The majority of the text in §§ 91.132—91.137 has been consolidated under proposed § 91.138.)

§ 91.131. [Definitions] (Reserved).

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

Bona fide sales transaction—A transfer between a buyer, willing but not obligated to buy, and a seller, willing but not obligated to sell, each acting with adverse economic interests at arms-length in his own self-interest and with knowledge of the value of the realty transferred.

Computed value—The amount determined by multiplying the assessed value of the realty for local real estate tax purposes by the common level ratio factor of the taxing district.

Grantor's affiliate—One of the following:

(i) An organization, trade or business, whether or not incorporated, which is owned or controlled directly or indirectly by the grantor or by the same interests which own or control directly or indirectly the grantor.

(ii) A person who stands in one of the following relationships with the grantor with respect to the transaction between the grantor and grantee:

(A) Principal.

(B) Agent.

(C) Partner.

(D) Joint adventurer.]

§ 91.132. [Bona fide sale transactions] (Reserved).

[(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 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:

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

(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.]

§ 91.133. [Leases] (Reserved).

[The value of leased realty is its computed value. If the leased premises constitute only a part of the assessed realty, the value of the leased premises is determined by multiplying the computed value of the assessed realty for local tax purposes by a fraction, the numerator being the fair rental value of the leased premises and the denominator being the fair rental value of the assessed realty.]

§ 91.134. [Family farm realty and real estate company realty] (Reserved).

[The value of family farm realty and real estate company realty is its computed value.]

§ 91.135. [Judicial sales and other transactions] (Reserved).

[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.

(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] (Reserved).

[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.]

§ 91.137. [Construction contracts] (Reserved).

[The value of realty also includes the value of contracted-for improvements to the realty, such as a building to be made as a permanent addition if under the construction agreement the grantor or grantor's affiliate is contractually obligated to the grantee to make the contracted-for improvements to the realty granted upon payment of the agreed consideration or a contractor is contractually obligated to the grantor and to the grantor's successors in interest to make contracted-for improvements to the realty granted upon payment of the agreed consideration and the contractual obligation is effective with the transfer or was effective prior to the transfer and not removed thereby.

Example 1:

O'Brien Land Company sells a lot to B for \$10,000. Prior to the transfer of the lot, B enters into a contract with O'Brien Construction Company for the construction of a home on the lot for the contract price of \$50,000. O'Brien Construction Company and O'Brien Land Company are subsidiaries of O'Brien Development Company. Tax is based on \$60,000.

Example 2:

After entering into an agreement with Acme Construction Company to have a home constructed on his lot for the contract price of \$50,000, D sells the lot and assigns his interest in the construction contract to B for \$25,000. The balance due on the construction contract is \$35,000. As \$15,000—\$50,000 less \$35,000—of the sales price is attributable to the contracted-for improvements, tax is based on \$10,000 for the lot and \$50,000 for contracted-for improvements for a total of \$60,000.

Example 3:

D, a developer who routinely sells options to purchase unimproved lots in his development to Acme Construction Company, agrees to sell one of the option lots to B for \$10,000. Acme Construction

Company requires B to enter into a construction agreement with it to build a home for \$50,000 as consideration for the release of its option to purchase the lot. Tax is based on \$60,000.

Example 4:

D, a developer, having agreed with Acme Construction Company that Acme Construction Company will be the exclusive builder for D's development, requires as a condition of sale that all buyers use Acme Construction Company as their builder. B buys a lot from D for \$10,000 and enters into a contract with Acme Construction Company for the construction of a home for the contract price of \$50,000. The tax is based on \$60,000.

Example 5:

D agrees to sell a lot to B for \$10,000. Prior to the transfer of the lot, B enters into a contract with Acme Construction Company for the construction of a home on the lot. There is no relationship between D and Acme Construction Company. Tax is based on the \$10,000 consideration for the lot.]

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 91.138. Valuation.

The value of real estate is its actual monetary worth. The burden is on the taxpayer to produce evidence of the actual monetary worth of the real estate. Actual monetary worth shall be determined as follows:

(1) *Bona fide sales.* In a bona fide sale of real estate for actual monetary worth, the exclusive value of the real estate is the total negotiated consideration for the sale which is paid or to be paid.

(i) The value includes the amount of any liens encumbering the real estate existing before the transfer and not removed thereby—whether or not the underlying indebtedness is assumed. If a lien encumbers a parcel of real estate or more than one parcel of real estate and if only a portion of the real estate or less than all of the parcels are transferred, then only a commensurate amount of the lien attributable to the transferred portion or parcels is included in the value. The commensurate amount of the lien shall be determined based upon the fair market values or the computed values of real estate that is transferred and of the real estate that is not transferred. If the fair market value is used rather than computed value, the taxpayer has the burden of proving the value based upon valuation methods standard in the real estate industry. See paragraph (3), regarding other valuation methods.

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 an outstanding balance due of \$10,000. The value subject to tax is \$30,000, which is the sum of the \$20,000 cash consideration and the \$10,000 mortgage balance.

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

S owns two lots, Blackacre and Whiteacre, both of which are encumbered by a single \$10,000 lien. The computed value of Blackacre is \$24,000 and the computed value of Whiteacre is \$12,000. S sells Blackacre to B for \$20,000 in a bona fide sale. The value subject to tax is the \$20,000 purchase price plus a commensurate part of

the \$10,000 lien. Because the computed value of Blackacre is 2/3 of the sum of Blackacre and Whiteacre's computed values (\$24,000 + \$12,000 = \$36,000), the commensurate part of the lien that is included in the taxable value is 2/3 of the \$10,000 lien, or \$6,667. The value subject to tax for the conveyance of Blackacre is therefore \$26,667.

(ii) The value for which a seller shall 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.

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. Z agrees to pay Y \$900,000 for the assignment. Because of the assignment, Z assumes Y's obligation to pay the \$100,000 sale price to X for the conveyance of the real estate. Therefore, the total amount that Z must pay as a result of the assignment is \$1 million. After the assignment, X executes a deed for the conveyance of the real estate to Z. Z pays X the \$100,000 sale price and pays Y \$900,000 for the assignment. The taxable value of the deed from X to Z for which X is liable is the original sale price of \$100,000. See also § 91.170(b), Example 1 (relating to rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979)).

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.

(2) *Computed value.* The exclusive value of the real estate is its computed value in the following situations:

- (i) Gifts.
- (ii) An execution upon a judgment.
- (iii) Foreclosure of a mortgage.
- (iv) Judicial sale.
- (v) Tax sale.
- (vi) A transfer of real estate under a foreclosure sale, judicial sale or tax sale to a transferee or assignee of a bid or other right of a purchaser under the foreclosure sale, judicial sale or tax sale.
- (vii) Transactions without consideration or for consideration less than the fair market value of the real estate.
- (viii) A taxable lease.
- (ix) An occupancy agreement.
- (x) A leasehold or possessory interest.
- (xi) The exchange of real or personal property, in whole or in part, for real estate. For purposes of this subparagraph, personal property includes:

- (A) An interest in an association or corporation.
- (B) Services.

(C) Noncash consideration other than the assumption of indebtedness evidenced by a lien encumbering the real estate at the time of the transfer and not removed by the transfer.

- (xii) The real estate of an acquired real estate company.

(xiii) The real estate of a family farm corporation or family farm partnership.

(3) *Other valuation methods when there is not a bona fide sale or computed value.*

(i) Alternate methods of valuation standard in the real estate industry may be used as evidence of the actual monetary worth of the real estate when the actual monetary worth of real estate cannot be determined by bona fide sale or computed value under paragraph (1) or (2).

(ii) Alternate valuation methods include:

(A) An independent appraisal prepared by a licensed real estate appraiser.

(B) A comparative market analysis prepared by a real estate broker/agent that provides a realistic estimate of the value of the real estate based on an analysis of sales of other real estate with similar characteristics.

(C) A bona fide sale that occurred within 2 years or less as long as there have not been changes to the real estate that have affected the value of the real estate.

(4) *Construction contracts and other executory agreements.* The value of real estate also includes the value of contracted-for improvements to the real estate, such as a building to be made as a permanent addition if under the construction agreement the grantor or grantor's affiliate is contractually obligated to the grantee to make the contracted-for improvements to the real estate granted upon payment of the agreed consideration or a contractor is contractually obligated to the grantor and to the grantor's successors in interest to make contracted-for improvements to the real estate granted upon payment of the agreed consideration and the contractual obligation is effective with the transfer or was effective prior to the transfer and not removed thereby.

Example 1. O'Brien Land Company sells a lot to B for \$10,000. Prior to the transfer of the lot, B enters into a contract with O'Brien Construction Company for the construction of a home on the lot for the contract price of \$50,000. O'Brien Construction Company and O'Brien Land Company are subsidiaries of O'Brien Development Company. Tax is based on \$60,000.

Example 2. After entering into an agreement with Acme Construction Company to have a home constructed on his lot for the contract price of \$50,000, D sells the lot and assigns his interest in the construction contract to B for \$25,000. The balance due on the construction contract is \$35,000. As \$15,000—\$50,000 less \$35,000—of the sales price is attributable to the contracted-for improvements, tax is based on \$10,000 for the lot and \$50,000 for contracted-for improvements for a total of \$60,000.

Example 3. D, a developer who routinely sells options to purchase unimproved lots in his development to Acme Construction Company, agrees to sell one of the option lots to B for \$10,000. Acme Construction Company requires B to enter into a construction agreement with it to build a home for \$50,000 as consideration for the release of its option to purchase the lot. Tax is based on \$60,000.

Example 4. D, a developer, having agreed with Acme Construction Company that Acme Construction Company will be the exclusive builder for D's development, requires as a condition of sale that all buyers use Acme Construction Company as their builder. B buys a lot from D for \$10,000 and enters into a contract with Acme Construction Company for the construction of a home for the contract price of \$50,000. The tax is based on \$60,000.

Example 5. D agrees to sell a lot to B for \$10,000. Prior to the transfer of the lot, B enters into a contract with Acme Construction Company for the construction of a home on the lot. There is no relationship between D and Acme Construction Company. Tax is based on the \$10,000 consideration for the lot.

(5) Special rules related to allocation of value.

(i) Allocation required. When there is a conveyance of both real estate and personal property or the conveyance of multiple parcels of real estate, whether the real estate is located in one or multiple taxing jurisdictions, with a single purchase price or value, the parties to the sale are required to allocate the sale price or value between the real estate and personal property or the multiple parcels of real estate. The allocation shall be reasonable and the amount allocated to the real estate must reflect the actual monetary worth of the real estate. If the transferor offers a discount or reduced sale price, the discount or reduction must be reasonably allocated.

Example 1. X enters into an agreement to sell its business assets to Y. X agrees to sell the assets for a total purchase price of \$8 million. X and Y are required to allocate the \$8 million purchase price between the real estate and personal property under the sale agreement. If the fair market value of the business real estate is \$5 million and the business personal property is \$3 million, a reasonable allocation would be \$5 million for the real estate and \$3 million for the personal property.

Example 2. Same facts as in Example 1, except that X agrees to sell all of the assets to Y for \$5 million, a \$3 million discount. The \$3 million discount must be reasonably allocated between the real estate and personal property. A reasonable allocation in this case would be a proportional allocation of the discount. The fair market value of the real estate is 5/8 of the total fair market value of X's assets. The fair market value of the personal property is 3/8 of the total fair market value of X's assets. Consequently, 5/8 of the \$5 million sale price (or \$3,125,000) is attributable to the real estate and 3/8 of the \$5 million sale price (or \$1,875,000) is attributable to the personal property.

(ii) Allocation factors. The Department will consider the following factors in determining whether an allocation is reasonable:

- (A) The computed value of the real estate.
- (B) The fair market value of the real estate and personal property.
- (C) Whether the parties to the sale have agreed to and both use the same allocation.
- (D) Whether the parties to the sale consistently use the allocation for other purposes, including tax and accounting purposes.

(iii) Subdivisions and partitions and partial conveyances. When only a portion of a parcel of real estate is conveyed, because of partition or otherwise, the taxable value of the portion must be its actual monetary worth using the valuation methods in this section.

(A) If the portion is sold as part of a bona fide sale, the taxable value is the sale price.

(B) If computed value is used, the computed value of the transferred portion of real estate must be the commensurate portion of the computed value of the entire parcel. The commensurate portion shall be determined based on the fair market values or computed values of the transferred portion of real estate and the portion that is

not transferred. If the fair market value is used rather than computed value, the taxpayer has the burden of proving the value based upon valuation methods standard in the real estate industry. See paragraph (3).

(iv) Leases. The value of the leased real estate is determined by multiplying the computed value of the entire parcel of real estate by a fraction, the numerator being the fair rental value of the leased premises and the denominator being the fair rental value of the entire parcel of real estate.

Subchapter H. SPECIAL SITUATIONS

§ 91.151. Correctional deed.

A deed made without consideration for the sole purpose of correcting an error in the description of the parties or of the premises conveyed is not taxable. This [exclusion] exemption only applies if:

* * * * *

(3) The parties have not treated the property interest described in the original deed as the property of the [grantee] grantor from the time of the original transaction.

§ 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:

* * * * *

(b) A deed made without consideration for the sole purpose of confirming a transfer of title to real estate by operation of law as a result of an existing survivorship interest is not taxable.

(c) 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:

* * * * *

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

* * * * *

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] exemption under § 91.193(a)(13) (relating to exemptions and exclusions) does not exempt 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] Agent and straw party transactions.

(a) *Transfers from agent or straw party.*

(1) The transfer of [realty] real estate without consideration from an agent to the agent's principal or from a straw party to the real party in interest is not subject to tax, if the agent or straw party acquired the transferred [realty] real estate for the exclusive benefit of the principal or real party in interest.

(2) The transfer from an agent or straw party to a third person of [realty] real estate acquired by the agent or straw party for the exclusive benefit of the [agent's] principal or real party in interest is subject to tax to the same extent the transfer would be taxed if made directly by the [agent's] principal or real party in interest.

(b) *Transfers to agent or straw party.*

(1) A transfer of real estate without consideration to an agent or straw party from the [agent's] principal [of realty in which] or real party in interest when the principal or real party in interest retains the beneficial interest in the real estate is not subject to tax.

(2) A transfer to an agent or straw party from a third person of [realty] real estate acquired by the agent or straw party for the exclusive benefit of the [agent's] principal or real party in interest is subject to tax to the same extent that the transfer would be taxed if made directly to the [agent's] principal or real party in interest.

(c) *Presumption.* If the document by which title to real estate is acquired by a grantee fails to set forth that the [realty] real estate was acquired by the grantee as an agent or straw party from or for the benefit of [the agent's] a principal or real party in interest, there is a rebuttable presumption that the [realty] real estate is that of the grantee in the grantee's individual capacity [if an exemption from taxation under this section is claimed] for purposes of the tax exemption provided under § 91.193(a)(11) (relating to exemptions and exclusions).

(d) *Like-kind exchanges.* For purposes of this section and [§ 91.193(b)(11) (relating to excluded transactions)] § 91.193(a)(11), an agent or straw party does not include:

* * * * *

(e) *Agent or straw party conditions.* For purpose of the exemption provided under this section and § 91.193(a)(11), an agent or straw party relationship does not exist if one of the following conditions exists:

(1) The purported agent or straw party can use or uses the real estate as collateral for financing in the agent or straw party's individual capacity.

(2) The purported agent or straw party can encumber or convey the real estate without the consent of the principal or real party in interest or to the detriment of the rights of the principal or real party in interest.

(3) The purported agent or straw party has other benefits, burdens and incidents of ownership consistent with an equitable and beneficial owner of the real estate.

(4) The purported principal or real party in interest is not liable for the acts of the purported agent or straw party or for the debts, damages and other obligations associated with the purported agent or straw party's owners and use of the real estate. This condition is only applicable to liabilities the purported agent or straw party incurs as a result of actual or implied authority under the scope of the agency or straw party arrangement. The fact that the purported principal or real party in interest has contractually agreed to indemnify the purported agent or straw party or that the purported agent or straw party has subrogation rights for the liabilities against the purported principal or real party in interest outside of the agent or straw party arrangement does not circumvent this condition.

§ 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] exempt.

* * * * *

§ 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] exempt 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.

* * * * *

(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] exempt 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] is treated as if the transfer was made directly from the grantor to the settlor.

* * * * *

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

* * * * *

(2) A transfer from the trustee of a living trust to its settlor is [**excluded**] exempt 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)] § 91.193(a)(6) (relating to exemptions and exclusions), then [the provisions of § 91.193(b)(6)(ii) apply] § 91.193(a)(6) (ii) applies to a subsequent transfer.

* * * * *

(h) *Joint trusts.* A joint trust may qualify as a living or ordinary trust for purposes of this section. For purposes of determining the applicability of this section, a joint trust will be viewed as a distinct trust of each settlor. Each distinct trust must meet the criteria of a living or ordinary trust and the elements necessary to establish a tax exemption.

§ 91.157. [**Cotenants**] Joint estates.

(a) [If cotenants partition realty, whether by agreement or judicial action, so that the property is divided into two or more distinct portions, the value of each resulting portion is not taxable to the extent of the grantee's prior interest.] Whenever there is a joint estate in real estate, whether the joint estate is a tenancy in common, joint tenancy or tenancy by the entireties, each joint tenant shall be deemed to own a fractional interest in the real estate for purposes of determining the realty transfer tax liability associated with the conveyance of an interest in the real estate to or from the joint tenant. Each joint tenant's fractional interest shall be deemed to be equal unless the document of conveyance that created the joint estate indicates otherwise.

Example 1. A document conveying title to real estate to X and Y, as tenants in common, joint tenants or tenants by the entireties is deemed to convey a 50% interest in the real estate to X and a 50% interest to Y. Likewise, a document conveying title to real estate from X and Y, as tenants in common, joint tenants or tenants by the entireties is deemed to convey a 50% interest in the real estate from X and a 50% interest from Y.

Example 2. X, Y and Z hold a joint estate in real estate either as tenants in common or joint tenants. Therefore, each are deemed to own a 1/3 fractional interest in the real estate. If X conveys his joint interest in the real estate, tax is calculated on the sale price paid for X's 1/3 interest or, in the event the conveyance is for no or nominal consideration, 1/3 of the computed value of the real estate.

Example 3. Spouses own real estate by the entireties. Despite the fact that the entireties estate creates a single interest in the entire estate as between the spouses, each spouse is deemed to own a fractional 50% interest in the real estate. A con-

veyance of the real estate will be deemed to be a transfer of a 50% interest from each spouse.

(b) Except as provided in §§ 91.159(b) and 91.193(a)(5) (relating to transfers by will or intestate law; and exemptions and exclusions), if a jointly-owned parcel of real estate is divided, whether by agreement or judicial action, into two or more distinct parcels, the value of a resulting parcel is not taxable if the cotenants remain owners of each parcel and their fractional ownership interests remain unchanged. If the single parcel of real estate is partitioned and one or more distinct parcels are transferred to a cotenant, then the transfer of each partitioned parcel is not taxable to the extent of the transferee cotenant's prior fractional interest in the jointly held real estate, but is taxable to the extent that the transferee cotenant receives an interest in the partitioned parcel that exceeds the prior fractional interest. The taxable value of each partitioned parcel is calculated as follows:

(1) Determine the value of the partitioned parcel. The value of a partitioned parcel shall be the actual monetary worth of the partitioned parcel determined under § 91.138 (relating to valuation).

(2) Multiply the value of the partitioned parcel by the owner's prior fractional interest in the whole parcel of real estate. If there is more than one owner of the resulting parcel, repeat step 2 for each owner and add the results for each owner together. This is the nontaxable portion of the partitioned parcel of real estate.

(3) Subtract the nontaxable portion from the value of the partitioned parcel. This is the taxable value of the resulting parcel.

Example 1. X, Y and Z are equal, tenant in common owners of a parcel of real estate. X, Y and Z decide to partition the real estate into two parcels. After the partition X, Y and Z are equal, tenant in common owners of each parcel. X, Y and Z execute a deed for each parcel. In this case, neither deed is subject to tax.

Example 2. X and Y are joint owners of a parcel of real estate with a computed value of \$150,000. X and Y each have a 1/2 ownership interest in the real estate. X and Y decide to partition the real estate into two parcels of equal size and value. X will own one parcel and Y will own the other. After partitioning the real estate, the real estate does not appreciate in value and each partitioned parcel has an actual monetary worth of \$75,000 (1/2 the computed value). X and Y execute a deed conveying one parcel to X and the other to Y. The deed conveying the parcel to X is taxable on \$37,500 (calculated as \$75,000 minus \$37,500 (\$75,000 × 1/2)). The deed conveying the parcel to Y is also taxable on \$37,500 (calculated as \$75,000 minus \$37,500 (\$75,000 × 1/2)).

Example 3. In year one, X and Y are joint owners of a parcel of real estate with a computed value of \$150,000. X has a 3/4 ownership interest and Y has a 1/4 ownership interest. In year two, X and Y decide to partition the real estate into two parcels of equal size. Because of the partition, the actual monetary worth of each parcel increases to \$100,000. Both parcels are subsequently assessed and have a computed value of \$100,000 each. In year three, after partitioning, X and Y execute a deed conveying one

parcel to X and the other to Y. The deed conveying the parcel to X is taxable on \$25,000 (calculated as \$100,000 minus \$75,000 ($\$100,000 \times 3/4$)). The deed conveying the parcel to Y is taxable on \$75,000 (calculated as \$100,000 minus \$25,000 ($\$100,000 \times 1/4$)).

Example 4. X, Y and Z are joint owners of a parcel of real estate with a computed value of \$200,000. X has a 3/4 ownership interest and Y and Z each have a 1/8 ownership interest. The parties decide to partition the real estate into two parcels. X will own one parcel and Y and Z will own the other. The actual monetary worth of each parcel after partition remains unchanged and is \$100,000 each. After partitioning, the parties execute a deed conveying one parcel to X and the other to Y and Z. The deed conveying the parcel to X is taxable on \$25,000 (calculated as \$100,000 minus \$75,000 ($\$100,000 \times 3/4$)). The deed conveying the parcel to Y and Z is taxable on \$75,000 (calculated as \$100,000 minus \$25,000 [$(\$100,000 \times 1/8) + (\$100,000 \times 1/8)$]).

(c) If the transfer merely changes the undivided proportionate interest of the cotenants, the value of the property is taxable to the extent of the proportionate change in ownership interest.

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§ 91.158. Industrial development authorities and agencies.

A transfer to an industrial development authority or a nonprofit industrial development agency is not taxable. A transfer from an industrial development authority or nonprofit industrial development agency is taxable unless one of the following applies:

* * * * *

(2) The [**realty**] **real estate** conveyed to the grantee was transferred of record to the authority or agency by the grantee as security for the debt of the grantee under a financing transaction.

(3) The transaction meets the following requirements:

(i) The authority or agency held record legal title to the [**realty**] **real estate** granted.

(ii) At the time the authority or agency and grantee entered into the contract for a deed, sales agreement or lease and option agreement, no person other than the authority or agency had an equity interest in or option to purchase the [**realty**] **real estate** granted to the grantee.

(iii) The grantee shall directly use the [**realty**] **real estate** for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture.

§ 91.159. Transfers by will or intestate law.

(a) A document which evidences a specific or residuary devise of real estate by will or under intestate law and a document under an orphan's court adjudication allocating [**realty**] **real estate** to a surviving spouse as part of his exemption or allowance is not taxable under [§ 91.193(b)(7) (relating to excluded transactions)] § 91.193(a)(7) (relating to exemptions and exclusions) if the document is without consideration or for nominal actual consideration. A transfer made under the exercise of an option to purchase [**realty**] **real estate**

under a will is for consideration and is taxable, whether the transfer is a bona fide sale or not.

(b) If a joint interest in [**realty**] **real estate** passes to two or more heirs or devisees by will or under intestate law, a subsequent transfer of division in kind between the heirs or devisees is not taxable under [§ 91.193(b)(5)] § 91.193(a)(5) unless the transfer is for consideration or an heir or devisee takes a share greater in value than his undivided interest. If the transfer is for consideration or an heir or devisee takes a share greater than his undivided interest, the property received by an heir or devisee is taxable to the extent of the value of the grantor's interest under the will or under intestate law.

Example 1:

By will, A, B and C inherited three lots of equal value as tenants in common. A, B and C convey one lot to A, one lot to B and one to C. The deeds are for nominal actual consideration. The three conveyances are not taxable under [§ 91.193(b)(5)] § 91.193(a)(5), because the value of each party's share is equal to his undivided interest, the property divided passed by will, and the division was accomplished without additional consideration.

Example 2:

Assume the same facts as in Example 1, except that B and C convey their interests in two lots to A for \$10,000 and A conveys his one-third interest in the remaining lot to B and C. These conveyances are not [**wholly excludable** under § 91.193(b)(5) or (7)] **exempt** under § 91.193(a)(5) or (7). Unless otherwise [**excludable—familial**] **exempt—familial** relationship, and the like—the lots conveyed to A are [**excludable**] **exempt** only to the extent of A's one-third interest under the will. The interest conveyed by A is fully taxable.

(c) If an interest in [**realty**] **real estate** would have passed to an heir or devisee by will or under intestate law but for that heir's or devisee's disclaimer of the interest or family agreement, the value of the interest disclaimed is not [**wholly excludable**] **exempt** from tax under [§ 91.193(b)(5) or (7)] § 91.193(a)(5) or (7) unless there is no or nominal consideration passing from the grantee to the heir or devisee for the disclaimer or the conveyance is [**otherwise excludable**] **exempt** from tax.

Example:

Assume the same facts as in Example 1 of subsection (b), except that B and C disclaim their interest in the two lots in exchange for A's renunciation of all of his interest in the remaining lot and \$10,000. In this situation [§ 91.193(b)(5) and (7)] § 91.193(a)(5) and (7) are inapplicable. The conveyances would be taxed the same as in Example 2 of subsection (b).

§ 91.160. Exchange of interest in real estate.

If parties exchange [**realty**] **real estate** between themselves, the [**deeds**] **deed** transferring title to each [**are**] **party** is subject to tax. The [**tax shall be computed on the basis of the value of the interest in each realty conveyed under § 91.135 (relating to judicial sales and other transactions)**] **taxable value of each parcel of real estate conveyed is its computed value.**

§ 91.161. Charitable, religious and educational organizations.

A transfer of [realty] real estate to or from charitable, religious, educational or other nonprofit organizations is taxable on the same basis as other deeds. See [§ 91.193(b)(17)(relating to excluded transactions)] § 91.193(a)(17) (relating to exemptions and exclusions).

§ 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.]

(a) *Turnkey conditions.* A turnkey project only exists when the following conditions apply:

(1) Title to real estate is conveyed to a developer or contractor solely for the purpose of providing the developer or contractor a security interest in the real estate to secure payment for improvements to the real estate.

(2) The developer or contractor's interest in the real estate is limited to that of a secured creditor. A developer or contractor may not be recognized as a secured creditor but rather as having a direct ownership in the real estate if one of the following conditions exist:

(i) The developer or contractor obtains financing for the improvements and uses the real estate as collateral for the financing.

(ii) The developer or contractor has the right to encumber or convey the real estate.

(iii) The developer or contractor has other incidents of ownership consistent with an equitable and beneficial owner of the real estate.

(3) The developer or contractor is required by contract to reconvey the real estate to the grantor after the improvements have been completed and the developer or contractor has received full payment for the improvements.

(b) *Exemption.* A document that transfers title to real estate from the owner of real estate to a developer or contractor as part of a turnkey project is not taxable. A document that reconveys title to the real estate to the grantor of the real estate for purposes of extinguishing the security interest after the improvements and full payment have been made is also not taxable.

(c) *Default.* A document that is executed to make the developer or contractor's interest in the real estate absolute in the event of the owner's default under the contract is exempt as a confirmatory deed under § 91.152 (relating to confirmatory deed). A subsequent conveyance of title to the real estate to the grantor is subject to tax.

§ 91.167. Deed of easement.

Except as provided in [§ 91.193(b)(27) (relating to excluded transactions)] § 91.172(b)(3) (relating to leasehold and possessory interests), easements represent a taxable interest in real estate. The tax base in these instances is the actual consideration or the actual monetary worth thereof.

§ 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)] § 91.193(b)(3) (relating to exemptions and exclusions).

§ 91.170. Rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979).

* * * * *

(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.

* * * * *

(2) If each separate transfer in the series is [excluded] exempt from tax, the single document is [excluded] exempt from tax. This rule only applies if the following apply:

* * * * *

(v) The application of [§ 91.193(b)(6)(ii) (relating to excluded transactions)] § 91.193(a)(6)(ii) (relating to exemptions and exclusions) 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]. Z agrees to pay Y \$900,000 for the assignment. Because of the assignment, Z assumes Y's obligation to pay the \$100,000 sale price to X for the conveyance of the real estate. Therefore, the total amount that Z must pay as a result of the assignment is \$1 million. After the assignment, 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]. Z pays X the \$100,000 sale price and pays Y \$900,000 for the assignment. The deed is deemed to be two taxable transactions—a transfer of real estate from X to Y and a subsequent transfer from Y to Z. The taxable value of the deed from X to Z is \$1,100,000 based upon the original sale price of \$100,000 and the total amount of \$1 million that Z had to pay as a result of the assignment. X and Y are jointly and severally liable for the tax on the original sale price of \$100,000 [(See § 91.132(c))]. See § 91.138(1)(ii) (relating to valuation). 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)] § 91.193(a)(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)] § 91.193(a)(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)] § 91.193(a)(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)] § 91.193(a)(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)] § 91.193(a)(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)] § 91.193(b)(3). 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.

* * * * *

(c) **Statement of value.** When subsection (b) applies to a document, a statement of value as provided in § 91.112 (relating to statement of value) shall be filed for each transfer of title to real estate represented by the document.

(d) **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:

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§ 91.171. Transfers by operation of law.

Except as provided in §§ 91.152(a) and [91.193(b)(1)(i), (7), (12) and (13)] 91.193(a)(1)(i), (7), (12) and (13) (relating to confirmatory deed; and [**excluded transactions**] **exemptions and exclusions**), 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.

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 91.172. Leasehold and possessory interests.

(a) **Taxable interests.** A leasehold or possessory interest under a real estate lease or occupancy agreement is taxable under the following circumstances:

(1) **Perpetual interest.** The term of the interest is or approximates a perpetual interest.

(2) **Thirty-year term.** The term of the interest is for 30 years or more. In determining the term of a lease under this paragraph, the following shall apply:

(i) **General rule.** The term shall be the period during which the tenant is entitled to possession of the real estate. The term shall be calculated under the following rules:

(A) The term begins when the tenant has the right to the possession of the real estate under the lease agreement regardless of when the tenant takes possession of the real estate.

(B) If the period of possession is contingent instead of fixed, the term of possession shall be the maximum possible period of possession provided for under the agreement. The period of possession is fixed if the terms of the lease provide for one set, definitive and ascertainable time period of possession that is not subject to change. The period of possession is contingent if the terms of the lease provide for two or more possible periods of possession depending on facts, conditions or circumstances.

(C) The term includes:

(I) The initial term.

(II) A renewal or extension of the initial term, whether under an option or right to renew or extend, if the renewal or extension is negotiated with and made part of or incorporated by reference into the lease or occupancy

agreement. A renewal or extension is negotiated with the lease or occupancy agreement if all of the duties and obligations of the lessor and lessee under the renewal or extension are established under the grant of the renewal or extension and all that remains to bind the lessor and lessee to those duties and obligations is for the lessee to exercise the renewal or extension.

(D) The date that the lease is executed and the date that rental payments begin are not determinative of the period of possession, although these facts are subject to the Department's review and consideration when determining the term of a lease.

(E) A license granted to the tenant to enter and inspect the real estate during due diligence or similar periods is not considered a possessory right for purposes of this subparagraph.

(ii) *Splitting agreements.* Section 91.170(d) (relating to rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979)) applies to a lease or occupancy agreement, renewal or extension that is executed separately from another lease or occupancy agreement, renewal or extension for purposes of circumventing this rule.

(iii) *Subsequent renewals or extensions.* A renewal or extension negotiated after, separately from and not in contemplation of the original lease or occupancy agreement, and renewals or extensions thereto, may not be added to the full term under the original lease agreement or renewals or extensions thereto. However, an amendment to a lease or occupancy agreement that provides for a renewal or extension of the original lease or occupancy agreement or renewals or extensions thereto shall be deemed to be an execution of a new lease or occupancy agreement, the term of which shall be the remaining term under the original lease or occupancy agreement and any existing renewals or extension thereto and the additional term provided for under the amendment. The document that provides for the amendment is the taxable document to the extent it creates a term of 30 years or more.

(iv) *Presumption.* It shall be presumed that a right or option to renew or extend a lease or occupancy agreement shall be exercised if the lessor and lessee cannot renegotiate the rental charge for the renewal or extension period unconditionally.

(A) A lessor and lessee cannot renegotiate a rental charge unconditionally if it is fixed at a set amount for the period or a method for calculating the rental charges is established.

(B) Renewals or extensions at the option of the lessee using any method other than an arms-length negotiation between the lessor and the lessee to establish the rental charge at the time of the renewal or extension are included in determining the term of a lease.

(C) A method for calculating the rental charge is established if the manner or procedure for calculating the rental charge is in the lease or occupancy agreement. A method for calculating the rental charge includes a provision whereby the lessor and the lessee agree to utilize a rental charge determined by an independent appraiser or appraisers selected by either or both the lessor and the lessee, or an average of rental charges.

Example 1. Lessor and lessee enter into a lease of real estate with a fixed initial term of 25 years. Under the terms of the lease, lessee has the option to renew the lease for an additional term of 6 years at a rent for the renewal term to be set at fair rental value at the time of the renewal, as negotiated by the parties at the time of

the renewal. The renewal term is not included in determining lease term because the lease does not establish a set rental charge for the renewal term or establish a method of determining the rental charge for the renewal term.

Example 2. Lessor and lessee enter into a lease of real estate with a fixed initial term of 25 years. Under the terms of the lease, lessee has the option to renew the lease for an additional term of 6 years, with the rent for the renewal term to be determined by appraisers designated by each party, which appraisers will determine fair rental value and then the rent for the 6-year renewal term will be the average of the fair rental values determined by the designated appraisers. The optional renewal term is included in determining the term of the lease because the lease establishes a method of determining the rental charge for the renewal term.

(3) *Equity lease.* Except in the case of a contract for a deed or its equivalent, a leasehold or possessory interest under which the lessor recognizes gain or loss upon the lease transaction for Federal income tax purposes and the rentals and other payments required to be made as a condition to continued use or possession are not deductible by the lessee as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business under section 162(a) of the Internal Revenue Code (26 U.S.C.A. § 162(a)) and are recoverable by the lessee through allowances for depreciation or amortization for Federal income tax purposes.

(b) *Nontaxable interests.* The following leasehold or possessory interests under a real estate lease or occupancy agreement are not taxable:

(1) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof. See § 91.169 (relating to conveyances of coal, oil natural gas or minerals).

(2) 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 subsection (a)(2).

(3) A sublease or the assignment of a lessee's rights under an existing lease, unless the lessee is released from performance under the lease by the lessor.

Example 1. B, the lessee under a lease with A, subleased the leased premises to C. B remained liable to A for full performance under the lease. The sublease is not taxable because B has not been released from performance under the lease by A.

Example 2. E, the lessee under a 99-year lease with D, assigned the leased premises to F. D released E from future performance under the lease. If the unexpired term of the lease is 30 years or more or the assignee obtains an equity interest in the premises under the assignment, the assigned lease is subject to tax.

(4) A leasehold or possessory interest under a real estate lease or occupancy agreement that is not taxable under subsection (a) is exempt from tax.

Subchapter I. [EXCLUDED PARTIES AND TRANSACTIONS] EXEMPTIONS AND EXCLUSIONS

§ 91.191. [General applicability of tax] (Reserved).

[Each party to a document is jointly and severally liable for the tax imposed by this chapter,

unless the party is an excluded party or the document evidences an excludable transaction.]

§ 91.192. [Excluded] Exempt parties.

(a) The Commonwealth and its governmental subdivisions, instrumentalities, agencies and other subordinate governmental bodies and the United States and its instrumentalities, agencies and other subordinate bodies are [excluded] exempt from payment of the tax imposed by this chapter.

(b) The [excluded] exempt status of a party does not relieve the other parties to a transaction from the entire tax due. The tax liability of a nonexempt party to a transaction may be discharged by the other parties as they agree but without prejudice to the rights of the Commonwealth against [nonexcluded] exempt parties to the transaction.

§ 91.193. [Excluded transactions] Exemptions and exclusions.

(a) [Excluded parties. A transaction in which all parties are excluded parties under § 91.192(a) (relating to excluded parties) is excluded from tax.

(b) Additional exclusions. Other transactions which are excluded from tax include:] Exemptions. The following are exempt from tax:

* * * * *

(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)] 1146(a) of the Bankruptcy Act [(11 U.S.C. § 1146(c))] (11 U.S.C. § 1146(a)). To claim this [exclusion] exemption, 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.

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(6) Transfers between certain family members:

(i) A transfer between any of the following:

* * * * *

(F) Persons who were previously married but who have since been divorced, if the transferred [realty] real estate was acquired by both spouses or by either spouse before or during their marriage. This exemption only applies if the transfer is under the final divorce decree or a court ordered division or distribution of the real estate incident to the divorce.

Example 1. During the marriage, husband and wife purchased a parcel of real estate and took title as tenants by the entireties. Five years later, the spouses file for divorce. The spouses receive a divorce decree, but the spouses do not request a division of their marital assets as part of the

divorce. Upon the divorce becoming final, the spouses are no longer married; by law, they become equal tenants in common in the real estate. Two years later, ex-husband agrees to convey his tenant in common interest in the real estate to ex-wife. The conveyance of ex-husband's interest is subject to tax because the ex-spouses are no longer married and the conveyance was made after and not in connection with the divorce.

Example 2. Same facts as Example 1, except that as part of the divorce decree the Orphans' Court accepts a property settlement agreement executed by the spouses. The agreement provides that husband will convey his interest in the real estate to wife within 3 years of the divorce decree. In this case, ex-husband's conveyance of the real estate to ex-wife two years after the divorce is not subject to tax because it was executed as part of the property settlement that was approved as part of the divorce decree.

Example 3. Same facts as Examples 1 and 2, except that the property settlement is bifurcated from the divorce proceeding, and the property settlement agreement is approved by order of the court after the divorce decree is entered. Further, the agreement provides that ex-husband will convey his interest in the real estate to ex-wife who is to use the real estate as a primary residence for herself and the ex-spouses' children. The property settlement agreement also provides that ex-wife will convey the entire interest in the real estate to ex-husband at the earlier of their living children reaching 25 years of age or wife and children ceasing to use the real estate as their primary residence. When ex-husband conveys his interest in the real estate to ex-wife, the conveyance is exempt from tax. Also, when ex-wife conveys the real estate to ex-husband after all the children reach 25 years of age or ex-wife and the children no longer use the real estate as their personal residence, the deed of conveyance will also be exempt from tax. Both conveyances are deeds executed as the final severance of the marital unit pursuant to the divorce as approved by the Court.

* * * * *

(11) A transfer for no or nominal actual consideration between principal and agent or straw party and a transfer between an agent or straw party and third party, where the transfer of the same [realty] real estate would be [excluded] exempt if the transfer were made directly between the principal of the agent or straw party and the third party. See § 91.153 (relating to principal and agent).

* * * * *

(13) Certain transfers to shareholders.

(i) A transfer from a corporation or association to its shareholder or member if:

(A) The transferred [realty] real estate is held of record in the name of the corporation or association or is held of record in the name of an agent of the corporation or association who acquired the [realty] real estate as agent for the corporation or association.

* * * * *

(14) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority. See § 91.158 (relating to industrial development authorities and agencies).

Example. In an industrial development agency transaction, C enters into a contract for the improvement of a manufacturing plant. C transfers the plant [**realty**] **real estate** to the IDA, which borrows money to finance the improvements. The IDA leases back the [**realty**] **real estate** to C, or sells the [**realty**] **real estate** back to C under an installment-sale contract. C's payments to the IDA under the lease or installment-sale contract are sufficient to enable the IDA to recover its financing costs. Title to the improved [**realty**] **real estate** is transferred back to C at the end of the lease term or installment-sales agreement payment term.

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(19) A transfer of real estate devoted to the business of agriculture to a family farm corporation or family farm partnership by a member of the same family which directly owns at least 75% of each class of the stock thereof or the interest in the partnership.

(Editor's Note: Paragraph (20) is proposed to be deleted because the rule is in § 91.202(c). The text in paragraph (22) is proposed to be added in proposed § 91.172. Paragraphs (23)—(25), (28) and (29) are proposed to be added in proposed § 91.193(b). Paragraph (24)(i)—(iv) is proposed to be added to § 91.172. Paragraph (26) is proposed to be added in § 91.172(b)(2). Paragraph (27) is proposed to be added in § 91.172(b)(3). Paragraph (31) is renumbered as subsection (a)(22). The remaining paragraphs have been renumbered under subsection (a).)

(20) [**Transfers of interest in a real estate company between members of the same family. See § 91.202(c) (relating to acquired real estate company).**] A transaction in which all parties are exempt parties under § 91.192(a) (relating to exempt parties).

* * * * *

(22) [**Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof. See § 91.169 (relating to conveyances of coal, oil, natural gas or minerals.)**]

(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.

(24) A real estate lease or occupancy agreement, unless one of the following applies:

(i) The lease or occupancy agreement is for a term of 30 years or more.

(ii) Gain or loss is realized on the lease transaction by the lessor for Federal income tax purposes and the rentals and other payments required to be made as a condition to continued use or possession are not deductible by the lessee as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business under section 162(a) of the Internal Revenue Code (26 U.S.C.A. § 162(a)) and are recoverable by the lessee through allowances for depreciation or amortization for Federal income tax purposes.

(iii) The lease or occupancy agreement is perpetual or otherwise approximates a perpetual lease.

(iv) The lease does not constitute an excludable lease under § 91.168 (relating to sale and leaseback transactions).

(v) In determining the term of a lease under this paragraph, it shall be presumed that a right or option to renew or extend a lease will be exercised if the lessor and lessee cannot renegotiate the rental charges for the renewal or extension period unconditionally. A lessor and lessee cannot renegotiate a rental charge unconditionally if it is fixed at a set amount for the period or a method for establishing the rental charges is established. Renewals or extensions at the option of the lessee at fair rental value at the time of the renewal or extension are not included in determining the term of a lease.

(25) A transfer of a deed to a burial site which does not convey title to land but only a right to sepulchre and to erect monuments.

(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).

(27) A sublease or the assignment of a lessee's rights under an existing lease, unless the lessee is released from performance under the lease by the lessor.

Example 1: B, the lessee under a lease with A, subleased the leased premises to C. B remained liable to A for full performance under the lease. The sublease is not taxable because B has not been released from performance under the lease by A.

Example 2: E, the lessee under a 99-year lease with D, assigned the leased premises to F. D released E from future performance under the lease. If the unexpired term of the lease is 30 years or more or the assignee obtains an equity interest in the premises under the assignment, the assigned lease is subject to tax.

(28) Transfer of an easement to a person furnishing public utility service, if the easement is used in, or useful for, furnishing public utility services.

(29) A contract for a deed in which the legal title does not pass to the purchaser until the total consideration specified in the contract has been paid, unless the following apply under the contract:

(i) The purchaser obtains or retains possession of the real estate.

(ii) The consideration is payable over a period of time exceeding 30 years.

(30) The assignment of a buyer's rights, under a contract for a deed, unless the buyer is released from performance under the agreement by the seller.

(31) A transaction evidenced by a document made, acknowledged and accepted prior to February 15, 1951.

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

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

[(34)] (25) Transfers from the trustee of a testamentary trust or living trust after the death of the settlor as provided in § 91.156(f).

(b) Exclusions. The following are excluded from tax:

(1) A will.

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

(3) 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.

(4) A land contract or contract for a deed in which the legal title does not pass to the purchaser until the total consideration specified in the contract has been paid, unless the consideration is payable over a period of time exceeding 30 years.

(5) An instrument that solely grants, vests or confirms a public utility easement. This exclusion is only applicable if the easement is granted to a person furnishing public utility service and if the easement is used in, or useful for, furnishing public utility services.

(6) A real estate lease or occupancy agreement under § 91.172(b) (relating to leasehold and possessory interests).

(7) A transfer of a deed to a burial site which does not convey title to real estate but only a right to sepulcher and to erect monuments.

(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] Subsections (a) and (b) do not have application to acquisitions of real estate companies as provided in § 91.202 (relating to acquired real estate company).

§ 91.194. Statement of value.

Except for the exclusion for public utility easements in [§ 91.193(b)(28) (relating to excluded transactions) and the exclusion] § 91.193(b)(5) (relating to exemptions and exclusions) and the exemption for familial transactions in [§ 91.193(b)(6)] § 91.193(a)(6), in order to exercise an [exclusion] exemption provided in this subchapter, the true, full and complete value of the transferred [realty] real estate shall be shown on the statement of value. For leases of coal, oil, natural gas or minerals and familial transactions, the statement of value may be limited to an explanation of the reason the document is not subject to tax.

§ 91.195. State-related universities and public charities.

(a) For purposes of §§ 91.192 and [91.193(a)] 91.193(a)(20) (relating to [excluded] exempt parties; and [excluded transactions] exemptions and exclusions), institutions that are part of the State System of Higher Education and the following State-related universities constitute [excluded] exempt parties:

* * * * *

(b) Transfers to the institutions enumerated in subsection (a) by gift or dedication are [excluded] exempt 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] exempt parties.

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Subchapter J. REAL ESTATE COMPANY

§ 91.201. Real estate company.

(a) A corporation or association is a real estate company when it is primarily engaged in the business of holding, selling or leasing [realty] real estate 90% or more of the ownership interest in which is held by 35 or fewer persons and which does one of the following:

(1) Derives 60% or more of its annual gross receipts from the ownership or disposition of [realty] real estate.

(2) Holds [realty] real estate, the value which comprises 90% or more of its entire tangible asset holdings, exclusive of tangible assets which are freely transferable and actively traded on an established market.

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Subchapter K. FAMILY FARM CORPORATION AND FAMILY FARM PARTNERSHIP

§ 91.212. Acquired family farm corporation.

A family farm corporation holding family farm [realty] real estate becomes an acquired family farm corporation when:

(1) Because of the acquisition or transfer of a corporate asset, less than 75% of the book value of its total assets are devoted to the business of agriculture.

* * * * *

§ 91.213. 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 [realty] real estate held on the date the family farm corporation became acquired.

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Subchapter L. CREDITS AGAINST TAX

§ 91.233. Transfers by grantor of rented real estate.

[If there is a transfer of real estate which has been rented by the grantor to another] When a lessor transfers title to real estate that is subject to a lease upon which realty transfer tax was paid and the transfer occurs during the term of the lease, a credit for the amount of tax paid at the time of the [rental shall be given to the grantor toward the tax] lease, if any, shall be given against the subsequent tax liability due upon the document of transfer. This credit is not applicable if the transfer occurs after the termination of the lease upon which tax was paid. To claim the credit a statement of value shall accompany the document.

Example:

A leases real estate to X for a 50-year term. The computed value of the real estate is \$800,000, and tax is paid on the lease in the amount of \$8,000. [A

sells the real estate subject to X's lease to P for \$1 million.] Subsequently, and during the term of the lease, A enters into an agreement whereby A agrees to sell X the real estate subject to lease (the buyer could be X or another party) for \$1 million. The deed conveying the real estate from A to the buyer is subject to tax in the amount of \$10,000 based upon the sale value of \$1 million. However, a credit for the amount of tax paid on the lease can be applied against the tax liability for the deed. The computation of the tax is as follows:

Tax [on transfer to P] liability for the deed	\$10,000
Tax paid on the lease [to X]	- 8,000
	<hr/>
Tax to be paid [to recorder on transfer to P] on the deed	\$ 2,000

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