

CHAPTER 93. INHERITANCE TAX DIVISION

Subchap.	Sec.
A. VALUATION	93.1
B. ENTRY INTO SAFE DEPOSIT BOX	93.21
C. DEDUCTIONS	93.101
D. PAYMENT OF TAX	93.121
E. BASIS OF TAX	93.131
F. DISCLAIMERS OF NONPROBATE TAXABLE ASSETS	93.141

Authority

The provisions of this Chapter 93 issued under the Inheritance and Estate Tax Act of 1961 (72 P. S. §§ 2485-101—2485-1201) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 93 adopted April 11, 1962; amended through May 11, 1970, unless otherwise noted.

Subchapter A. VALUATION**GENERAL**

- Sec.
93.1. Valuation of stocks if death on weekend or holiday.
93.2. Applicability and construction.

PROHIBITION OF ENTRY

- 93.11. Limitation of entry by statute or regulation.

GENERAL**§ 93.1. Valuation of stocks if death on weekend or holiday.**

In order that there may be uniformity of method by the Commonwealth and the Federal Government in the valuation of stocks listed on the New York or American Stock Exchange in those cases where death occurs on a weekend or a holiday, the following method shall be used:

- (1) If death occurs on a weekend, the valuation of a stock listed on the New York or American Stock Exchange shall be the average of the mean between the high and low for Friday and the mean between the high and low on the Monday after death.
- (2) If death occurs on a holiday, the valuation of the stock is the average of the mean of the high and the low on the day preceding the holiday and the mean between the high and low of the succeeding market day.

§ 93.2. Applicability and construction.

(a) This subchapter may not apply to corporations, municipalities, governmental and political subdivisions and agencies, churches, lodges, eleemosynary associations or corporations or fiduciaries where boxes, rented in the names of the entities, are never used for the deposit of personal assets of those having access to the boxes. No financial institution may be liable for unauthorized entry unless it has knowledge of the use of the box for personal assets of those having access to the boxes. If an agent, deputy or person in a capacity has the right of access to a safe deposit box, the provisions of § 93.22 (relating to duties of institution, agent or deputy having access to box), shall be applicable.

(b) This subchapter is applicable as provided in the following examples, except that this subchapter may not be construed to be limited by the examples:

(1) If the box is registered in a partnership, fictitious or trade name, or the like, where the decedent had the right of entry either as principal or as deputy or agent.

(2) If the box is registered in an assumed or maiden name, or the like, where the decedent had the right of entry otherwise than as deputy or agent.

(c) This subchapter may not be construed to confer upon a person the right of entering into a safe deposit box of a decedent which he does not otherwise have.

(d) Effective February 1, 1982, the Department is replacing existing inheritance tax report forms with new, self-assessing inheritance tax returns and schedules, Form REV-1500. After July 1, 1982, the Department will accept only Form REV-1500. The returns for decedents' estates in which the date of death is after January 31, 1982 shall be filed on the new form REV-1500; however, the Department will permit estates which are in the process of preparing tax returns on the old form as of January 31, 1982 to file that return, if such returns are filed prior to July 1, 1982.

Source

The provisions of this § 93.2 amended March 5, 1982, effective March 6, 1982, 12 Pa.B. 877. Immediately preceding text appears at serial page (35988).

PROHIBITION OF ENTRY**§ 93.11. Limitation of entry by statute or regulation.**

No person seeking entry otherwise prohibited by the act, having actual knowledge of the death of a decedent may enter a safe deposit box of the decedent unless the entry is made under sections 1111—1115, 1121 or 1122 of the act (72 P. S. §§ 2485-1111—2485-1115, 2485-1121 or 2485-1122) (Repealed) and no person acting as deputy, agent or in a similar capacity may enter a safe deposit box except as provided in this subchapter.

Subchapter B. ENTRY INTO SAFE DEPOSIT BOX**GENERAL PROVISIONS**

- Sec.
93.21. Definitions
93.22. Duties of institution, agent or deputy having access to box.

**PERMISSION TO ENTER BOX OF A DECEDENT WITHOUT
NOTICE TO THE DEPARTMENT**

- 93.31. Entry with bank employe—inventory.
93.32. Inventory form.
93.33. Removal of contents of box.
93.34. Entry with Department representative.
93.35. Entry under court order.
93.36. Entry into box used by business firm.
93.37. Entry into safe deposit box to remove will and cemetery deed.

ENTRY UPON NOTICE TO DEPARTMENT

- 93.41. Entry into safe deposit box after notice to the Department.
93.42. Notice to the Department.
93.43. Exoneration of financial institution.

SUBSEQUENT ENTRIES

- 93.51. Subsequent entries into safe deposit boxes.

**CONFIDENTIAL NATURE OF CONTENTS OF SAFE
DEPOSIT BOX**

- 93.61. Confidential information.

PENALTIES

- 93.71. Penalties—other than bank employes.
93.72. Penalties—Bank employes.
93.73. Disclosure of confidential information.

GENERAL PROVISIONS**§ 93.21. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Inheritance and Estate Tax Act (72 P. S. §§ 2485-101—2485-1201)(Repealed).

Box—A safe deposit box.

Financial institution—Includes a bank, bank and trust company, trust company, national banking association, savings and loan association, building and loan association, mutual savings bank, credit union or other facility of depository which undertakes as a business or for profit to keep personal property.

Safe deposit box or box—A box in a financial institution located in this Commonwealth in the name of the decedent alone or in the names of the decedent and another; the term includes any type of vault, room or area where the property of a decedent is kept; the term does not include a box in the names of a decedent and the decedent's surviving spouse if the box is in their names alone.

Authority

The provisions of this § 93.21 issued under section 104 of the Inheritance and Estate Tax Act of 1961 (72 P. S. § 2485-104)(Repealed).

Source

The provisions of this § 93.21 amended March 25, 1983, effective March 26, 1983, 13 Pa.B. 1142. Immediately preceding text appears at serial page (35990).

§ 93.22. Duties of institution, agent or deputy having access to box.

(a) If an agent, deputy or person in that capacity is given the right of access to a safe deposit box of a renter, cotenant or lessor, the financial institution shall require that the designation of the agent executed hereafter contain the statement of the renter, cotenant or lessor to the following effect:

(1) That the agent is not authorized to deposit or keep in the box a property in which or to which he has a personal interest.

(2) That the authority given by the renter, cotenant or lessor shall extend only during the life of the renter, cotenant or lessor, except as otherwise provided by statute.

(b) If an agent, deputy or person in that capacity exercises right of access to a safe deposit box he shall upon every occasion sign a statement to the following effect:

(1) That none of his personal property is being placed in the box to which access is being had and the property therein is being removed.

(2) That he is acting under the authority given to him by the owner, cotenant or lessor of the safe deposit box and that the principal is alive.

(3) That he makes the foregoing statements under penalty of criminal or civil prosecution under relevant laws of the Commonwealth.

Cross References

This section cited in 61 Pa. Code § 93.2 (relating to applicability and construction).

**PERMISSION TO ENTER BOX OF A DECEDENT WITHOUT
NOTICE TO THE DEPARTMENT**

§ 93.31. Entry with bank employe—inventory.

(a) Entry into a safe deposit box of a decedent is permissible under the supervision of an employe of the financial institution in which the box is located. At the time of the entry if the provisions of section 1111 of the act (72 P. S. § 2485-1111)(Repealed) are complied with, the contents of the safe deposit box may be removed in whole or in part.

(b) The right to enter the safe deposit box under the provisions of this section shall be available only when the bank employe makes or causes to be made a record of the contents of the box prior to removal of the contents.

(c) The inventory required by this section shall be attested to by an employe of the bank to be complete and correct under penalty of perjury.

(d) The financial institution shall be permitted to make a reasonable charge for the services required by this section and the charge shall be a deduction as an administration expense under section 611 of the act (72 P. S. § 2485-611) (Repealed).

Cross References

This section cited in 61 Pa. Code § 93.32 (relating to inventory form).

§ 93.32. Inventory form.

(a) The inventory required by § 93.31 (relating to entry with bank employe—inventory), shall be prepared on the form provided by the Department.

(b) A person may reproduce the form provided by the Department if the reproduction is substantially similar to the Department form.

(c) Upon completion of the form, the original and one copy shall be filed with the register of wills of the county in which the decedent resided. In the case of a nonresident decedent, the forms shall be filed with the register of wills who issued letters, if any in this Commonwealth, otherwise with the Department.

(d) The register shall deliver the forms to the county inheritance tax office in the same manner as delivery is made of the inheritance tax inventory and appraisalment.

(e) The inheritance tax appraiser shall attach the forms to the official appraisements when filing the appraisements with the register of wills.

(f) Items that are purely personal and are without monetary value, thus having no tax significance, need not be inventoried in detail.

(g) Everything of apparent monetary value shall be inventoried with as complete description or identification as is reasonably possible. Anything contained in sealed envelopes, regardless of how marked, shall be listed as contained in the described envelope.

(h) The form for recording contents of the safe deposit box shall be completed on forms which may be obtained from the Bureau of County Collections, Department of Revenue, 411 South Second Street, Harrisburg, Pennsylvania 17127.

Cross References

This section cited in 61 Pa. Code § 93.33 (relating to removal of contents of box); 61 Pa. Code § 93.34 (relating to entry with Department representative); and 61 Pa. Code § 93.35 (relating to entry under court order).

§ 93.33. Removal of contents of box.

No item may be removed from the box until the form required by § 93.32 (relating to inventory form) has been completed. The only exception to this rule shall be the removal of a will, or evidence of ownership of a burial lot or other form of interment, or both.

§ 93.34. Entry with Department representative.

(a) Entry into a safe deposit box of a decedent shall be permitted if the person desiring entry is accompanied by a representative of the Department. The form to be completed shall be substantially the same as the one provided for in § 93.32 (relating to inventory form).

(b) The procedure for entry into a safe deposit box under this section shall be informal. The person desiring entry may contact the inheritance tax office in the county wherein the box is located and set a time mutually agreeable for entry into the safe deposit box. Properly identified personnel shall be assigned to accommodate persons desiring to proceed under this section. Identification by the Department will include an official identification card with a letter of authorization attached.

(c) After completion of the inventory required to be made by section 1112 of the act (72 P.S. § 2485-1112)(Repealed), the person who is present shall be requested to attest the inventory as so compiled.

(d) Upon request of the personal representative, a copy of the inventory completed by the representative of the Department shall be given to him.

(e) This section shall permit entry into a safe deposit box when notice is not given to the Department. Alternate entry shall be afforded by the provisions of §§ 93.41—93.43 (relating to entry upon notice to Department).

§ 93.35. Entry under court order.

(a) This section shall afford a person desiring to enter the safe deposit box of a decedent the opportunity to petition the court for entry. As used in this section, court is intended to mean the Orphans' Court of the county in which the decedent resided at the time of his death; or in the case of a nonresident of the Commonwealth, the Orphans' Court in which letters, if any, are granted or if there are no letters, the Orphans Court of Dauphin County.

(b) In petitioning the Orphans' Court, notice of the petition shall be given to the Commonwealth through the local inheritance tax office of the Department.

(c) Upon cause shown, the court may order that a designated person or persons may enter the box and remove the contents. This shall be done under the supervision as the court may direct.

(d) A list of the contents should be made and the form filed in the same manner as provided in § 93.32 (relating to inventory form).

§ 93.36. Entry into box used by business firm.

(a) This section shall provide for nonregulated entry into safe deposit boxes of decedents by business firms when the Department believes that the business requires ready access to a safe deposit box used in connection therewith and there are no personal assets of the members of the firm contained therein.

(b) Entry into a safe deposit box may be permitted by a financial institution upon presentation to it of a certificate issued by the Department. Presentation of a certificate shall relieve the bank from further responsibility under the act.

(c) In the application for a certificate to be granted by the Secretary of Revenue under this section, the business firm so applying shall be able to substantiate the following:

(1) That no property belonging to individuals having a right of access may be placed in the business box.

(2) That immediate access is always necessary.

(d) A firm desiring a certificate under section 1114 of the act (72 P. S. § 2485-1114)(Repealed) shall file an application furnishing substantially the information in affidavit form, on forms which may be obtained from the Bureau of County Collections, Department of Revenue, 411 South Second Street, Harrisburg, Pennsylvania 17127.

§ 93.37. Entry into safe deposit box to remove will and cemetery deed.

(a) A financial institution may permit entry, and entry may be made by a person into a safe deposit box of a decedent in order to remove a will of the decedent, to obtain instructions left by the decedent for burial or other form of interment, or to secure evidence of the ownership of a burial lot in which the decedent is to be interred. The will, if found, may be withdrawn from the box for proper disposition.

(b) Once the will, burial instructions, or evidence of the burial lot has been removed from the box of the decedent, there shall be no further entry into the safe deposit box of the decedent except if it is under the remaining provisions of Article XI of the Inheritance and Estate Tax Act (72 P. S. §§ 2485-1101—2485-1153)(Repealed). Nothing shall be removed from the box other than those items provided for in this section.

(c) A record of the entry of a person into the box for the purposes indicated by this section shall be made by an employe of the financial institution and the original copy shall be sent to the register of wills and a copy to be mailed to the local inheritance tax office of the Department.

(d) The record of access under this section shall be signed under penalty of perjury and shall be in the form which may be obtained from the Bureau of County Collections, Department of Revenue, 411 South Second Street, Harrisburg, Pennsylvania 17127.

Cross References

This section cited in 61 Pa. Code § 93.51 (relating to subsequent entries into safe deposit boxes).

ENTRY UPON NOTICE TO DEPARTMENT

§ 93.41. Entry into safe deposit box after notice to the Department.

(a) This section is intended to apply as an alternative for entry into the safe deposit box of a decedent. If an individual does not wish to follow these provisions to secure entry into a safe deposit box, he may enter the box after he has mailed a notice by certified mail to the Department, the local office of the Department, and also the financial institution in which the box is located, specifying the date fixed for entry and the place where the box is located. Notice of entry under this section shall be made so that the date fixed for entry and contained in the notice may not be less than 7 days after the date the notice is mailed. In computing the 7 days, the day the notice is mailed may not be computed. For example, if the notice was mailed on January 1, 1962, in computing the 7 days, the computation would begin January 2, and would include the third through the eighth and entry could be made on the ninth or thereafter.

(b) The notice shall be printed or written legibly in ink and shall contain the following information:

- (1) The name and address of the decedent.
- (2) The name and address of the financial institution where the safe deposit box is located.
- (3) The exact time during normal business hours of the financial institution when entry is to be made, whether daylight or standard time.
- (4) The applicant for entry shall sign and print his name and address, stating his relationship, if any, to the decedent.

Cross References

This section cited in 61 Pa. Code § 93.34 (relating to entry with Department representative); 61 Pa. Code § 93.42 (relating to notice to the Department); and 61 Pa. Code § 93.43 (relating to exoneration of financial institution).

§ 93.42. Notice to the Department.

The notice required by section § 93.41 (relating to entry into safe deposit box after notice to the Department) will be sent to the necessary parties by certified mail which shall provide for a record of the mailing with a receipt having been furnished to the sender. An exact copy of the notice shall be transmitted to the financial institution in which the box is located.

Cross References

This section cited in 61 Pa. Code § 93.34 (relating to entry with Department representative).

§ 93.43. Exoneration of financial institution.

(a) Although no representative of the Department is present, it may be lawful for a financial institution to permit entry into the safe deposit box of a decedent and removal of its contents by a person who furnishes the bank with a copy of the notice, a copy of the receipt, and a statement as provided in subsection (e) that he or someone in his behalf has given written notice.

(b) In the event that notice is given to the Commonwealth and neither the Commonwealth nor the person giving the notice is present at the time fixed, the notice shall be of no effect, and may be construed as though no notice has been given.

(c) If the person giving notice fails to appear at the designated time and place and the Commonwealth representative is present, no entry shall thereafter be permitted under § 93.41 (relating to entry into safe deposit box after notice to the Department) without further compliance with that section at a subsequent date.

(d) In view of the fact that Article XI of the act (72 P. S. §§ 2485-1101—2485-1153)(Repealed) is not intended to confer upon a person a right of entry into a safe deposit box of a decedent which he does not otherwise have, the exoneration of the financial institution provided for in this section is not to be effective if the person who desires entrance to the safe deposit box has no right to enter it and is permitted to do so by the financial institution.

(e) The financial institution shall require a statement which conforms substantially to the following form:

The undersigned does hereby certify under penalty of perjury that there was mailed to the Department of Revenue, Harrisburg, Pennsylvania, and to the local office of the Department of Revenue, by certified mail, by me (if by another, state the identity of that person and his address), as evidenced by the record of the mailing made by the Post Office Department and attached hereto, and make a part hereof,

and that the undersigned also mailed or caused to be mailed by _____ (Name and address of party mailing the copy) At the same time a similar notice to _____ (Name and address of financial institution) that such notice fixed the ____ day of _____ 19 ____ at ____ (a.m.) (p.m.) Eastern Daylight or Standard Time and _____ as the place for entering the safe deposit box of _____ (Name of decedent) late of _____ who died _____, such box being numbered _____.

The right of entry to this box is to be gained by _____ (Explain entry).

This statement is made by the undersigned under penalty of perjury as provided for by the Inheritance and Estate Tax Act of 1961.

(Signature of party making application)

(Print name)

(Address)

Cross References

This section cited in 61 Pa. Code § 93.34 (relating to entry with Department representative).

SUBSEQUENT ENTRIES

§ 93.51. Subsequent entries into safe deposit boxes.

(a) Clearly, once the person desiring entrance into the safe deposit box has complied with either of the relevant sections of this act does not restrict subsequent entries.

(b) Subsequent entries made after the first valid entrance is completed under § 93.37 (relating to entry into safe deposit box to remove will and cemetery deed), which permits the removal of the will, evidence of the burial lot and instructions for interment shall be subject to the restrictions imposed by this act.

CONFIDENTIAL NATURE OF CONTENTS OF SAFE DEPOSIT BOX

§ 93.61. Confidential information.

An information gained by a person, including the employe of the bank, the representative of the Commonwealth or one nominated to be in a supervisory capacity by a court shall be confidential and shall be available only for the purpose of collecting inheritance taxes imposed under this act. This section was pro-

vided by the legislature to protect the information contained in the box of the decedent from exposure to the public. It coincides with section 731 of the Fiscal Code (72 P. S. § 731).

Cross References

This section cited in 61 Pa. Code § 93.73 (relating to disclosure of confidential information).

PENALTIES

§ 93.71. Penalties—other than bank employes.

(a) This section provides for a penalty in the case of a person who, having actual knowledge of the death of a decedent, enters a safe deposit box of the decedent. The act provides that the person shall be guilty of a misdemeanor and upon conviction, shall be sentenced to pay a fine not exceeding \$10,000 or undergoing imprisonment not exceeding 1 year, or both.

(b) The conditions precedent for imposition of the penalty in this section are the following:

(1) That the person who enters has actual knowledge of the death of the decedent.

(2) That he actually entered the safe deposit box without complying with the provisions of this article.

(c) The act does not require that the entrance to the safe deposit box was for the purpose of evading the tax, but only that an entrance was made in violation of this article.

§ 93.72. Penalties—bank employes.

This section provides for a penalty in the case of a bank employe who has actual knowledge of the death of the decedent and permits the entry in violation of section 1152 of the act (72 P. S. § 2485-1152)(Repealed). This section provides that the person shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding \$1,000. The motive of the bank employe is of no importance, rather only that he knew of the death of the decedent and that he permitted the entrance into the safe deposit box without insuring compliance under section 1152 of the act (72 P. S. § 2485-1152)(Repealed).

§ 93.73. Disclosure of confidential information.

This section provides for a penalty in the case of anyone who violates the provisions of § 93.61 (relating to confidential information). The disclosure is a misdemeanor and on conviction shall be sentenced to pay a fine not exceeding \$10,000 or undergo imprisonment not exceeding 1 year, or both.

Subchapter C. DEDUCTIONS

Sec.
93.101. Medical expenses and insurance.

Source

The provisions of this Subchapter C adopted June 12, 1981, effective June 13, 1981, 11 Pa.B. 2059, unless otherwise noted.

§ 93.101. Medical expenses and insurance.

(a) *Scope and application.* The purpose of this section is to establish rules relating to the deduction of unpaid medical expenses of a decedent in cases where the expenses are paid by proceeds of medical insurance and to establish rules relating to the taxation of transfers of medical insurance proceeds. This ruling shall take effect immediately.

(b) *Deduction of medical expenses.* Deduction of medical expenses shall comply with the following:

(1) Medical expenses of a decedent which are unpaid at his date of death are deductible liabilities of the decedent under section 631 of the act (72 P. S. § 2485-631)(Repealed) whether or not the expenses are later paid by Medicare Part A or Part B, Blue Cross, Blue Shield or other medical payment insurance.

(2) When inheritance tax is imposed upon a transfer described by sections 221—241 of the act (72 P. S. §§ 2485-221—2485-241)(Repealed) the medical expenses shall be deductible only to the extent that the transferee has actually paid the expenses and he is legally obligated to pay them or the estate subject to administration by a personal representative is insufficient to pay them.

(c) *Taxability of medical insurance proceeds.* Taxability of medical insurance proceeds shall comply with the following:

(1) The payment of proceeds from medical insurance, including Medicare Part A or Part B, Blue Cross, Blue Shield, directly to the provider of medical services by an insurer in payment of the decedent's medical expenses is not a taxable transfer from the decedent.

(2) To the extent that medical insurance proceeds are paid or payable to the decedent's estate or personal representative, the proceeds are property of the decedent, the transfer of which is taxable.

Subchapter D. PAYMENT OF TAX

Sec.
93.121. Election to prepay tax on future interest.

Authority

The provisions of this Subchapter D issued under the Inheritance and Estate Tax Act of 1961 (72 P. S. § 2485-104)(Repealed), unless otherwise noted.

§ 93.121. Election to prepay tax on future interest.

(a) *Scope and application.* This section establishes rules relating to the prepayment of inheritance tax on a future interest where the future interest will vest in more than one person but where the persons do not desire to prepay.

(b) *Election to prepay.*

(1) When there is more than one person in whom a future interest will vest in possession and enjoyment, an election to have the value of the future interest determined as of the date of the election and to prepay the tax under section 714 of the act (72 P. S. § 2485-714)(Repealed) may be made by a fiduciary or a party in interest with respect to the particular interest of a person.

(2) An election to prepay and payment of tax upon a particular interest of a person shall be effective only with respect to the tax upon the transfer to that person.

Source

The provisions of this § 93.121 adopted January 7, 1983, effective January 8, 1983, 13 Pa.B. 158.

Subchapter E. BASIS OF TAX

Sec.

93.131. Payments from employment benefit plans and life insurance contracts.

Source

The provisions of this Subchapter E adopted October 10, 1986, effective October 11, 1986, 16 Pa.B. 3830, unless otherwise noted.

§ 93.131. Payments from employment benefit plans and life insurance contracts.

(a) *Scope and application.* The purpose of this section is to establish rules relating to the circumstances under which payments received from employment benefit plans and life insurance contracts are subject to the inheritance and estate tax.

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

Employment benefit plans—Payments under pension, stock bonus, profit-sharing and other retirement plans including, but not limited to, H. R. 10 plans, individual retirement accounts, individual retirement annuities and individual retirement bonds.

Life insurance contracts—A contract possessing features of risk shifting and risk distribution, between the holder of a policy and an insurance company under which the company agrees, in return for the payment of premiums, to pay a specified sum to the designated beneficiaries upon the death of the insured. For purposes of this section, a life insurance contract does not include

a matured endowment policy or a policy where the decedent's only rights, at the time of his death, were to receive a refund under the policy.

(c) *Life insurance contract.*

(1) *For the estate of a decedent dying prior to December 13, 1982.* Payments received from a life insurance contract are exempt from the inheritance tax, unless the payments are made to the estate of the decedent. Payments made to the estate of the decedent from a life insurance contract are subject to the tax.

(2) *For the estate of a decedent dying on December 13, 1982 and thereafter.* Payments received from a life insurance contract are exempt from the inheritance tax whether they are paid to the estate or some other beneficiary.

(d) *Employment benefit plans.*

(1) *General rule.* Payments received from employment benefit plans will be exempt from the inheritance tax to the extent that one of the following exist:

(i) The payments are exempt from the Federal estate tax under the Internal Revenue Code of 1954 (26 U.S.C.A. §§ 1—9602), a supplement to the Code or another similar provision in effect for Federal estate tax purposes.

(ii) The payment would be exempt for Federal estate tax purposes if it had not been made in a lump-sum or other nonexempt form of payment, and the payment is made in a lump-sum or other nonexempt form of payment.

(iii) The decedent during his lifetime did not have the right to possess, including proprietary rights at termination of employment, enjoy, assign or anticipate the payments made. A decedent will be considered as not having the right to possess, enjoy, assign or anticipate the employment benefit plan payments where the only rights under the plan are to designate a beneficiary or contingent beneficiaries, and to receive a regular monthly payment under the plan. The possession of either of these rights, alone or together, will not subject the plan to the inheritance tax, as long as no other rights exist.

(2) *Exceptions.*

(i) To the extent that a decedent, before death, possessed rights in an employment benefit plan beyond those described in paragraph (1)(iii), payments received from the plan will be subject to the tax unless exempted under paragraph (1)(i) or (ii) or otherwise exempt by statute. Rights under a plan which would subject the plan's payments to the tax include, but are not limited to:

(A) Right to withdraw benefits, including the right to withdraw only upon payment of a penalty or additional tax if the penalty or additional tax is smaller than 10% of the withdrawal.

(B) Right to borrow monies from the employment benefit plan.

(C) Right to assign the benefits of the employment benefit plan to another.

(D) Right to pledge the plan or its benefits.

- (E) Right to anticipate the benefits of the employment benefit plan other than in regular monthly installments.
- (F) Right by contract or otherwise, to materially alter the employment benefit plan.
- (ii) Payments from an employment benefit plan that are received by the estate of a decedent who died prior to December 13, 1982, are subject to tax.

Subchapter F. DISCLAIMERS OF NONPROBATE TAXABLE ASSETS

Sec.
93.141. Disclaimers of nonprobate taxable assets.

§ 93.141. Disclaimers of nonprobate taxable assets.

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

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

Disclaimant—Any party in an individual capacity, or a personal representative on behalf of a deceased individual, or a guardian or attorney-in-fact on behalf of an incapacitated person or a minor who renounces or refuses to accept a transfer of property.

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

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

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

- (1) The disclaimer is made by a disclaimant.

(2) The disclaimer is in writing and satisfies 20 Pa.C.S. Chapter 62 (relating to disclaimers).

(3) The disclaimer is signed and dated by the disclaimant.

(d) *Filing.*

(1) When the will of the decedent authorizes the personal representative to make a disclaimer on behalf of a decedent without court authorization, or when a disclaimant acts in his individual capacity, the personal representative or the individual shall sign and date the disclaimer within 9 months of the date of death of the decedent as provided in section 2116(c) of the TRC (72 P. S. § 9116(c)), attach a copy of the probated last will and testament to the Inheritance Tax return and file the documents referenced in this section with the Department.

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

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

Notes of Decisions

Synopses for Disclaimer Regulation:

The survivorship interest in jointly held property may be disclaimed by a surviving joint tenant in accordance with 72 P. S. § 9116(c). *In Re Estate of Bernecker*, 654 A.2d 246 (Pa. Cmwlth. 1995).

In order to make an effective disclaimer for inheritance tax purposes the disclaimer must be filed within the time limits provided by Section 406 of the Pennsylvania Inheritance and Estate Tax Act of 1961, 72 P. S. § 2485-406, see now 72 P. S. § 9116(c). *In Re Pomerantz Estate*, 28 D. & C. 3rd 521, 3 Fiduc. Rep.2d 374 (O. C. Montg. 1983).

The right to renounce a testamentary gift passes upon death to a decedent's personal representative. *McGrady Estate*, 42 D. & C.2d 519, 17 Fiduc. Rep. 405 (Pa. Orph. 1966).

Authority

The provisions of this § 93.141 issued under 2103 of the Tax Reform Code of 1971 (72 P. S. § 9103).

Ch. 93

INHERITANCE TAX DIVISION

61 § 93.141

Source

The provisions of this § 93.141 adopted December 3, 1999, effective December 4, 1999, 29 Pa.B. 6112.

[Next page is 94-1.]

93-18

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