

ARTICLE IV. COUNTY COLLECTIONS

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CHAPTER 91. REALTY TRANSFER TAX

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Authority

The provisions of this Chapter 91 issued under The Fiscal Code (72 P. S. §§ 1—1867); and The Realty Transfer Tax Act (72 P. S. §§ 3283—3292), unless otherwise noted.

Source

The provisions of this Chapter 91 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092, unless otherwise noted.

Subchapter A. [Reserved]

Source

The provisions of this Subchapter A adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (81512), (35956) to (35958) and (81513) to (81514).

§ 91.1. [Reserved].

Source

The provisions of this § 91.1 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (81512) and (35956).

§ 91.2. [Reserved].**Source**

The provisions of this § 91.2 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35956) to (35957).

§ 91.3. [Reserved].**Source**

The provisions of this § 91.3 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35957) to (35958).

§ 91.4. [Reserved].**Source**

The provisions of this § 91.4 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (81513).

§ 91.5. [Reserved].**Source**

The provisions of this § 91.5 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (81513) to (81514).

§ 91.6. [Reserved].**Source**

The provisions of this § 91.6 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended May 20, 1983, effective May 21, 1983, 13 Pa.B. 1719; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (81514).

§ 91.7. [Reserved].**Source**

The provisions of this § 91.7 adopted January 16, 1976; effective January 17, 1976, 6 Pa.B. 79; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (81514).

Subchapter B. [Reserved]**Source**

The provisions of this Subchapter B adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (81515), (94397) to (94398), (45938) to (45939), (94399) to (94400), (35966) to (35969) and (94401) to (94402).

§ 91.11. [Reserved].**Source**

The provisions of this § 91.11 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94397).

§ 91.12. [Reserved].**Source**

The provisions of this § 91.12 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 2, 1979, effective November 3, 1979, 9 Pa.B. 3651; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94397) to (94398), (45938) to (45939) and (94399).

§ 91.13. [Reserved].**Source**

The provisions of this § 91.13 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94399).

§ 91.14. [Reserved].**Source**

The provisions of this § 91.14 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94399).

§ 91.15. [Reserved].**Source**

The provisions of this § 91.15 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94399) to (94400).

Notes of Decisions

In a corporate dissolution, there is no realty transfer tax on the transfer of realty from the corporation to the trustees for the stockholders. *Baehr Brothers v. Commonwealth*, 487 Pa. 233, 409 A.2d 326, 328 (1979).

§ 91.16. [Reserved].**Source**

The provisions of this § 91.16 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved October 5, 1984, effective October 6, 1984, 14 Pa.B. 3624. Immediately preceding text appears at serial page (49981).

§ 91.17. [Reserved].**Source**

The provisions of this § 91.17 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94400).

§ 91.18. [Reserved].**Source**

The provisions of this § 91.18 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94400).

§ 91.19. [Reserved].**Source**

The provisions of this § 91.19 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35966).

§ 91.20. [Reserved].**Source**

The provisions of this § 91.20 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35966).

§ 91.21. [Reserved].**Source**

The provisions of this § 91.21 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35966) to (35967).

§ 91.22. [Reserved].**Source**

The provisions of this § 91.22 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35967).

§ 91.23. [Reserved].**Source**

The provisions of this § 91.23 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35967).

§ 91.24. [Reserved].**Source**

The provisions of this § 91.24 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35967).

§ 91.25. [Reserved].**Source**

The provisions of this § 91.25 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35967) to (35968).

§ 91.26. [Reserved].**Source**

The provisions of this § 91.26 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35968).

§ 91.27. [Reserved].**Source**

The provisions of this § 91.27 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35968).

§ 91.28. [Reserved].**Source**

The provisions of this § 91.28 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35969).

§ 91.29. [Reserved].**Source**

The provisions of this § 91.29 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended February 25, 1977, effective February 26, 1977, 7 Pa.B. 528; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35969) and (94401).

§ 91.30. [Reserved].**Source**

The provisions of this § 91.30 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94401) to (94402).

§ 91.31. [Reserved].**Source**

The provisions of this § 91.31 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94402).

§ 91.32. [Reserved].**Source**

The provisions of this § 91.32 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94402).

Subchapter C. [Reserved]**Source**

The provisions of this Subchapter C adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94402) to (94406), (35976) to (35979), (94407) to (94408), (35982) to (35983) and (115275) to (115276).

§ 91.41. [Reserved].**Source**

The provisions of this § 91.41 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94403).

§ 91.42. [Reserved].**Source**

The provisions of this § 91.42 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 29, 1974, effective November 30, 1974, 4 Pa.B. 2454; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94403).

§ 91.43. [Reserved].**Source**

The provisions of this § 91.43 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94404).

§ 91.44. [Reserved].**Source**

The provisions of this § 91.44 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94404).

§ 91.45. [Reserved].**Source**

The provisions of this § 91.45 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94404).

§ 91.46. [Reserved].**Source**

The provisions of this § 91.46 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94404).

§ 91.47. [Reserved].**Source**

The provisions of this § 91.47 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94404) to (94405).

§ 91.48. [Reserved].**Source**

The provisions of this § 91.48 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94405).

§ 91.49. [Reserved].**Source**

The provisions of this § 91.49 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94405).

§ 91.50. [Reserved].**Source**

The provisions of this § 91.50 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 29, 1974, effective November 30, 1974, 4 Pa.B. 2454; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94405).

§ 91.51. [Reserved].**Source**

The provisions of this § 91.51 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved October 5, 1984, effective October 6, 1984, 14 Pa.B. 3624. Immediately preceding text appears at serial page (94405).

§ 91.52. [Reserved].**Source**

The provisions of this § 91.52 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (94406).

§ 91.53. [Reserved].**Source**

The provisions of this § 91.53 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35976).

§ 91.54. [Reserved].**Source**

The provisions of this § 91.54 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35976) to (35977).

§ 91.55. [Reserved].**Source**

The provisions of this § 91.55 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 29, 1974, effective November 30, 1974, 4 Pa.B. 2454; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35977) to (35979).

§ 91.56. [Reserved].**Source**

The provisions of this § 91.56 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 29, 1974, effective November 30, 1974, 4 Pa.B. 2454; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35979) and (94407).

§ 91.57. [Reserved].**Source**

The provisions of this § 91.57 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94407) to (94408).

§ 91.58. [Reserved].**Source**

The provisions of this § 91.58 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved October 5, 1984, effective October 6, 1984, 14 Pa.B. 3624. Immediately preceding text appears at serial page (94408).

§ 91.59. [Reserved].**Source**

The provisions of this § 91.59 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (94408) and (35982).

§ 91.60. [Reserved].**Source**

The provisions of this § 91.60 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35982).

§ 91.61. [Reserved].**Source**

The provisions of this § 91.61 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 29, 1974, effective November 30, 1974, 4 Pa.B. 2454; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (35982) to (35983).

§ 91.62. [Reserved].**Source**

The provisions of this § 91.62 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35983).

§ 91.63. [Reserved].**Source**

The provisions of this § 91.63 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended November 29, 1974, effective November 30, 1974, 4 Pa.B. 2454; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (35983).

§ 91.64. [Reserved].**Source**

The provisions of this § 91.64 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (115275).

§ 91.65. [Reserved].**Source**

The provisions of this § 91.65 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; amended February 25, 1977, effective February 26, 1977, 7 Pa.B. 529; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (115275).

§ 91.66. [Reserved].**Source**

The provisions of this § 91.66 adopted September 12, 1975, effective September 13, 1975, 5 Pa.B. 2401; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (115275).

§ 91.67. [Reserved].**Source**

The provisions of this § 91.67 adopted November 2, 1979, effective November 3, 1979, 9 Pa.B. 3651; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (115276).

Subchapter D. [Reserved]**Source**

The provisions of this Subchapter D adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial pages (115276) to (115277).

§ 91.81. [Reserved].**Source**

The provisions of this § 91.81 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (115276).

§ 91.82. [Reserved].**Source**

The provisions of this § 91.82 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved January 9, 1987, effective January 10, 1987, 17 Pa.B. 186. Immediately preceding text appears at serial page (115277).

§ 91.83. [Reserved].**Source**

The provisions of this § 91.83 adopted May 10, 1967; amended through March 26, 1971, effective March 27, 1971, 1 Pa.B. 1092; reserved September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096. Immediately preceding text appears at serial page (115277).

Subchapter E. GENERAL

- Sec.
91.101. Definitions.
91.102. Acceptance of documents.

§ 91.101. Definitions.

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

Association—

(i) An unincorporated enterprise owned or conducted by two or more persons, including, but not limited to, a partnership, limited partnership, limited liability partnership or restricted professional company that is deemed to be a limited partnership under 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies) or joint venture.

(ii) The term does not include an ordinary or living trust, limited liability company, decedent's estate, tenancy in common, tenancy by the entireties or joint tenancy.

Child—A son or daughter by either natural birth or adoption. The term does not include:

(i) A stepson or stepdaughter.

(ii) A son or daughter of an individual whose parental rights have been terminated.

Conservancy—An entity which possesses a tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3)) and which has as its primary purpose, the preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

Conversion—A change of an entity's:

(i) Form of organization.

(ii) Place of organization.

(iii) Name or identity.

Corporation—A corporation, joint-stock association, limited liability company, business trust or banking institution which is organized under the laws of the Commonwealth, the United States or any other state, territory or foreign country or dependency.

Debt—A legally enforceable obligation arising out of a genuine debtor-creditor relationship to pay a fixed or determinable sum of money at a future date.

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

(i) A will.

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

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

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

Entity—An association or corporation.

Family farm realty—One of the following:

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

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

Financing transaction—An arrangement in which the following apply:

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

(ii) No sale or gift is intended.

(iii) The debtor retains possession and beneficial ownership of the real estate transferred before default.

(iv) The transferee obtains title or ownership to the real estate only so far as is necessary to render the instrument of transfer effective as security for the debt.

(v) The transferee or the transferee's successor is obligated to return the transferred real estate at no or only nominal consideration to the debtor upon payment of the debt before default.

Living trust—An ordinary trust:

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

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

(iii) All the corpus and income of which can be reached or materially affected by the settlor without revocation of the trust or the consent of an adverse party.

(iv) From which no transfer of corpus or income may be made by the trustee at any time prior to the death of the settlor to any person in the capacity of a beneficiary other than the settlor.

(v) Under which the trustee exercises no discretion as to the disposition of the trust corpus or income during the settlor's lifetime to any person other than the settlor without the express direction of the settlor to make the specific disposition.

(vi) Which the trustee or, if the settlor was the trustee, the successor trustee is required under the governing instrument to distribute the corpus and retained income upon the death of the settlor.

Example 1. If a trust agreement provides that the income of the trust is distributable one-half to the settlor and one-half to another person, at least annually, the trust is not a living trust because income of the trust is required to be transferred to someone other than the settlor in the capacity as a beneficiary during the settlor's lifetime.

Example 2. If a trust agreement provides that during the settlor's lifetime, the trustee may in the trustee's sole and absolute discretion, make distributions to members of the settlor's family (or other persons), the trust does not qualify as a living trust because someone other than the settlor can receive trust corpus or income without the settlor's consent prior to the settlor's death.

Example 3. If a trust agreement provides that during the settlor's lifetime, the trustee, solely at the direction of the settlor, may transfer trust corpus or income to a person other than the settlor, the provision will not in itself disqualify the trust as a living trust. Because the trustee has the authority to distribute trust corpus or income to someone other than the settlor only at the settlor's direction, effectively the settlor is making the transfer. Thus, the settlor is the party who is reaching and materially affecting the trust corpus or income. Further, the transfer is not made to the other person in the capacity as a trust beneficiary.

Ordinary trust—

(i) A private trust which takes effect during the lifetime of the settlor of the trust and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving trust assets, under the ordinary rules applied in the orphan's court division of the court of common pleas or in other chancery or probate courts, until distribution to the beneficiaries of the trust.

(ii) The term does not include:

(A) Business trusts organized under Pennsylvania law or the law of any state or foreign jurisdiction, or any form of trust that has either of the following features:

- (I) The treatment of beneficiaries as associates.
- (II) Beneficial interests in the trust estate or profits that are evidenced by transferable shares, similar to corporate shares, or are otherwise treated as personal property.
- (B) Minors' estates.
- (C) Incompetents' estates.
- (D) A resulting or constructive trust created by operation of law.
- (E) A testamentary trust.

*Settlor—*One who creates and furnishes the consideration for the creation of a trust by the transfer of property to the trust.

Testamentary trust—A private trust that is established by will or takes effect only at or after the death of the settlor.

Authority

The provisions of this § 91.101 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.101 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233356) to (233357).

§ 91.102. Acceptance of documents.

The date of acceptance of a document is rebuttably presumed to be its date of execution, that is, the date specified in the body of the document as the date of the instrument.

Authority

The provisions of this § 91.102 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.102 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Subchapter F. IMPOSITION OF TAX

Sec.

- 91.111. Imposition of tax on documents.
- 91.112. Statement of value.
- 91.113. Imposition of tax on declarations of acquisition.
- 91.114. Agents.
- 91.115. Publication of common level ratio factors.

Cross References

This subchapter cited in 61 Pa. Code § 91.111 (relating to imposition of tax on documents).

§ 91.111. Imposition of tax on documents.

(a) Except as provided in Subchapter I (relating to excluded parties and transactions), 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 conveyed, transferred, demised or released by the grantor under the document.

(b) Except as provided in Subchapter I, it is the joint and several legal duty of the parties to the transaction to pay the proper tax due. This duty may be discharged by the parties as they agree but without prejudice to the rights of the Commonwealth against the parties.

Authority

The provisions of this § 91.111 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.111 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 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 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.

(c) *Specific exceptions.* A statement of value is not required to be completed and filed if the instrument is a will, a conventional mortgage or assignment, extension, release or satisfaction thereof, or an instrument which solely grants, vests or confirms a public utility easement. Nontaxable assignments or terminations of leases and of contracts for deeds, declarations of taking and contracts for deeds—unless the consideration is payable over a period of time exceeding 30 years—are not subject to tax or reporting requirements under this chapter.

(d) *Familial relationship.*

(1) A statement of value is not required to be filed, nor is the document required to set forth its value, when the following apply:

(i) The parties to the document are not subject to tax by reason of familial relationship.

(ii) The document clearly indicates that relationship.

(2) A statement of value shall be filed if the deed fails to indicate the specific familial relationship claimed, if one or more of the parties to the document are not related, or if another exclusion from taxation is claimed.

(e) *Mineral leases.* Although a statement of value shall be filed to claim the exclusion for a lease of coal, oil, natural gas or minerals, there is no requirement to indicate the value of the lease.

(f) *Filing.* A recorder of deeds shall cross-reference on the statement of value filed the deed book volume and page where the document is recorded, and shall retain on file in the office for public inspection a copy of the statement of value accompanying a document.

Authority

The provisions of this § 91.112 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.112 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.113. Imposition of tax on declarations of acquisition.

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

(b) A family farm corporation or family farm partnership is subject to pay a State tax at the rate of 1% of the value of the family farm real estate held by the family farm corporation or the family farm partnership when it becomes an acquired company under §§ 91.212 and 91.222 (relating to acquired family farm corporation; and acquired family farm partnership). The tax shall be paid within 30 days after the family farm corporation or the family farm partnership becomes acquired.

Authority

The provisions of this § 91.113 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.113 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233359).

§ 91.114. Agents.

(a) A recorder of deeds and commissioner of records is an agent for the sale of stamps to be used in paying the tax.

(b) The Department may also appoint other persons as agents for the sale of stamps.

(c) An agent for the sale of stamps shall affix stamps to a document, whether or not the document is to be recorded.

Authority

The provisions of this § 91.114 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.114 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.115. Publication of common level ratio factors.

The Department will publish the applicable common level ratio factors for each fiscal year beginning July 1 and ending June 30 and during the fiscal year, any changes thereto, in the *Pennsylvania Bulletin*.

Authority

The provisions of this § 91.115 adopted under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.115 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

Subchapter G. VALUATION

Sec.

- 91.131. Definitions.
- 91.132. Bona fide sale transactions.
- 91.133. Leases.
- 91.134. Family farm realty and real estate company realty.
- 91.135. Judicial sales and other transactions.
- 91.136. Appraisal.
- 91.137. Construction contracts.

§ 91.131. Definitions.

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.

Authority

The provisions of this § 91.131 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.131 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.170 (relating to rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979)).

§ 91.132. Bona fide sale transactions.

(a) In a bona fide sale of real estate, the value of the real estate is the total agreed consideration for the sale which is paid or to be paid.

(b) The value includes liens existing before the transfer and not removed thereby—whether or not the underlying indebtedness is assumed—or a commensurate part of the liens, if they also encumber other real estate.

Example 1 (existing mortgage lien):

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

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

(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.

Authority

The provisions of this § 91.132 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.132 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233360) to (233361).

§ 91.133. Leases.

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.

Authority

The provisions of this § 91.133 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.133 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.136 (relating to appraisal).

§ 91.134. Family farm realty and real estate company realty.

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

Authority

The provisions of this § 91.134 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.134 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.135. Judicial sales and other transactions.

The value of real estate is its computed value where the real estate is transferred through any of the following:

- (1) By execution upon a judgment or upon foreclosure of a mortgage or under a judicial sale or tax sale or a transfer to a transferee or assignee of a bid or other rights of a purchaser under a judicial or tax sale.
- (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.

Authority

The provisions of this § 91.135 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.135 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233362).

Cross References

This section cited in 61 Pa. Code § 91.160 (relating to exchange of interest in real estate); 61 Pa. Code § 91.165 (relating to reservations on conveyances of life estates); and 61 Pa. Code § 91.166 (relating to life maintenance).

§ 91.136. Appraisal.

The value of real estate shall be determined by appraisal only when one of the following occurs:

- (1) The real estate was transferred in lieu of foreclosure.
- (2) The real estate is not the subject of a bona fide sale, cannot be valued under § 91.133 (relating to leases) and is not separately assessed for local real estate tax purposes.

Authority

The provisions of this § 91.136 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.136 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233362) and (322419).

§ 91.137. Construction contracts.

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.

Authority

The provisions of this § 91.137 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.137 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Notes of Decisions

Construction Contract Price Taxable

For purposes of the realty transfer tax, the value of the conveyance of land from developer to purchaser included not only the price of the property listed on the deed, but also the price executory house construction contract on the property that purchaser executed on the same day as the deed. *Harmon Homes, Inc. v. Commonwealth*, 898 A.2d 1200, 1204 (Pa. Cmwlth. 2006).

Subchapter H. SPECIAL SITUATIONS

Sec.

- 91.151. Correctional deed.
- 91.152. Confirmatory deed.
- 91.153. Principal and agent.
- 91.154. Documents involving corporations, partnerships, limited partnerships and other associations.
- 91.155. Timber and crops.
- 91.156. Trusts.
- 91.157. Cotenants.
- 91.158. Industrial development authorities and agencies.

- 91.159. Transfers by will or intestate law.
- 91.160. Exchange of interest in real estate.
- 91.161. Charitable, religious and educational organizations.
- 91.162. Turnkey projects.
- 91.163. Ground rents.
- 91.164. Quitclaim deeds.
- 91.165. Reservations or conveyances of life estates.
- 91.166. Life maintenance.
- 91.167. Deed of easement.
- 91.168. Sale and leaseback transactions.
- 91.169. Conveyances of coal, oil, natural gas or minerals.
- 91.170. Rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979).
- 91.171. Transfers by operation of law.

§ 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 only applies if:

- (1) The property interest in the correctional deed is identical to the property intended to pass with the original deed.
- (2) The parties treated the property interest described in the correctional deed as that of the grantee from the time of the original transaction.
- (3) The parties have not treated the property interest described in the original deed as the property of the grantee from the time of the original transaction.

Authority

The provisions of this § 91.151 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.151 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.164 (relating to quit claim deeds); and 61 Pa. Code § 91.193 (relating to excluded transactions).

§ 91.152. Confirmatory deed.

(a) A deed made without consideration for the sole purpose of confirming title to real estate under a prior recorded document, including a deed that only asserts a transfer of title to real estate by operation of law as a result of an existing survivorship interest, is not taxable. This subsection only applies if the following apply:

- (1) The grantee of the deed of confirmation held or holds record title to the property interest described in the deed of confirmation under a prior deed.
- (2) The deed of confirmation is made solely for the purpose of making the grantee's record legal title under the prior deed sure and unavoidable.

(3) The grantor of the deed of confirmation has no interest in the real estate conveyed or the grantor received his interest by a document that was void from inception.

(b) A deed made without consideration for the sole purpose of confirming an entity's existing real estate ownership following a conversion of the entity is not taxable. This subsection only applies if all of the following occur:

(1) The entity holds title to the real estate at the time of the conversion as opposed to its owners. An entity does not hold title to real estate if the entity's owners have merely made a capital contribution of the real estate to the entity without the conveyance of title to the real estate.

(2) Without the making of any document:

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

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

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

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

(3) The entity is not required to wind up its affairs or pay its liabilities and distribute its assets either because there is no break in the continuity of its existence or because its separate existence ceases with the conversion.

(4) Considering all the ownership interests in the entity prior to the conversion, there is no change in proportionate ownership interests resulting from the conversion. Notwithstanding the provisions of § 91.154 (relating to documents involving corporations, partnerships, limited partnerships and other associations), when determining if there is a change in proportionate ownership interests, entities will not be considered to be entities separate from their members, partners, stockholders or shareholders; and when determining if there is a change in proportionate ownership interests resulting from the change to a limited partnership, the interests of the limited partners and general partners will both be considered.

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

Example 1. A and B are equal partners in a general partnership known as AB, general partnership. One of the assets of the partnership is real estate that A and B contributed to the partnership but own in their individual names. A and B want to convert their general partnership to a limited partnership known as AB, LP. A and B set up a limited liability company (LLC) to be the 1% general partner in the limited partnership. A and B will have a 99% limited partnership interest in the limited partnership (that is, A and B each have a 49.5% limited partnership interest). In order to effectuate the conversion, A and B merge AB into AB, LP.

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

By way of the merger, AB has changed its business organization form, or converted, from a general partnership to a limited partnership. AB, LP continues the same business as AB and has all the same assets and liabilities as AB. Further, ownership of the business has not changed. A and B were equal owners of AB and are equal owners of AB, LP through their equal ownership of the LLC and their equal limited partnership interests in AB, LP.

After the conversion, A and B prepare a deed for the real estate from A and B, individually, and AB, general partnership, as grantors to AB, LP as grantee. The deed is taxable because the real estate was in the name of A and B individually. Legal title was never transferred to the general partnership. Therefore, the deed effectuates a transfer of title in the real estate from A and B, individually, to AB, LP. AB, general partnership is merely joining in the deed. A document that transfers title to real estate from individuals to an entity is taxable.

Example 2. Assume the same facts as in Example 1 except that AB purchased the real estate with partnership funds and titled the real estate in the name of AB. Because the general partnership holds title to the real estate and because the deed merely confirms AB's existing ownership of the real estate following its conversion to AB, LP, the deed is not taxable.

Example 3. Assume the same facts as in Example 2, except that instead of setting up a limited liability company (LLC) to be the general partner of AB, LP, A becomes the general partner and B becomes the limited partner. Each holds a 50% interest in the partnership's income. Although A and B each have an equal income interest, A now has sole control over the limited partnership as its general partner and B has only an income interest as a limited partner. In the general partnership, A and B had equal management and income interests. Because there is a change in ownership interests, AB, LP is a different entity than AB. Therefore, the deed is taxable.

Example 4. X, Y and Z are equal co-partners in XYZ general partnership. XYZ general partnership owns Pennsylvania real estate. X, Y and Z desire to change the form of the general partnership to a limited liability company (LLC). X, Y and Z set up an LLC to take the place of the general partnership. X, Y and Z are equal members in the LLC. To effectuate the conversion, X, Y and Z transfer their partnership interests to the LLC. As a result, the LLC becomes the sole partner of the partnership. By law, the partnership must dissolve. As part of the dissolution, the partnership conveys all its assets, including real estate, and assigns its liabilities to the LLC, the sole partner. Because of the dissolution, the general partnership ceases to exist and the LLC survives with the same owners, assets and liabilities as the general partnership. Because of the dissolution, there has been a break in the continuity of the general partnership. Consequently, the exclusion under this subsection does not apply. Further, the document that conveyed the real estate from the general partnership to the LLC effectuated a direct

transfer of real estate from the general partnership to the LLC while they both existed. Because the transfer was from an entity, XYZ general partnership, to its sole member, the LLC, the document is subject to tax under § 91.154(a) (relating to documents involving corporations, partnerships, limited partnerships and other associations), and the exclusion under § 91.193(13) (relating to excluded transactions) does not exclude the document from tax because the LLC has not owned its interest in the general partnership for more than 2 years.

Authority

The provisions of this § 91.152 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.152 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233365).

Cross References

This section cited in 61 Pa. Code § 91.164 (relating to quit claim deeds); 61 Pa. Code § 91.193 (relating to excluded transactions); and 61 Pa. Code § 91.171 (relating to transfers by operation of law).

§ 91.153. Principal and agent.

(a) *Transfers from agent.*

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

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

(b) *Transfers to agent.*

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

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

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

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

(1) A qualified intermediary as defined under Federal Treasury regulation in 26 CFR 1.1031(k)-1(g)(4) (relating to treatment of deferred exchanges) in an Internal Revenue Code § 1031 exchange.

(2) An exchange accommodation titleholder or any other accommodation party utilized in a parking transaction as defined under Federal Revenue Procedure 2000-37 (Rev. Proc. 2000-37, 2000-2 C.B. 308) in an Internal Revenue Code § 1031 exchange.

Authority

The provisions of this § 91.153 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.153 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233365) to (233366).

Cross References

This section cited in 61 Pa. Code § 91.153 (relating to excluded transactions).

§ 91.154. Documents involving corporations, partnerships, limited partnerships and other associations.

(a) Entities are separate from their stockholders, shareholders, partners and members. Transfers of title to real estate between entities and their stockholders, shareholders, partners and members, including transfers between a subsidiary and a parent corporation and transfers in consideration of the issuance or cancellation of stock, are fully taxable, unless otherwise excluded.

(b) If a person dedicates and sets aside real estate for an entity's use through a writing without conveying title to the real estate to the entity, the writing is not subject to tax.

(c) If a person dedicates and sets aside real estate for an entity's use through a writing and the writing does not result in a conveyance of title to the real estate to the entity, there is no tax imposed when an entity relinquishes its control over the real estate back to the person through a writing.

(d) *Examples are as follows:*

Example 1. X owns title to real estate. X transfers title to the real estate to X, Y, Z trading as XYZ partnership or X, Y and Z, copartners. The deed of transfer from X is fully taxable. Partnerships are separate entities from their partners.

Example 2. D, E and F are partners in both TUV and QRS partnerships. D, E and F, trading as TUV Partnership, transfer real estate to D, E and F trading as QRS Partnership. The deed is fully taxable because TUV Partnership and QRS Partnership are separate entities even though each has the same partners.

Example 3. Assume the same facts as in Example 1, except that X dedicates and sets the real estate aside for the partnership's use under the partnership agreement without conveying title to the real estate to the partnership. Because title remains with X, no tax is due.

Example 4. Assume the same facts as in Example 3. Subsequent to X's dedication of the real estate to the partnership's use, X decides to withdraw from the partnership. When X withdraws from the partnership, the partnership relinquishes its control over the real estate as part of the partnership's purchase of X's interest in the partnership. The relinquishment is made in writing. Because X has always held title to the real estate, there is no tax liability when the partnership relinquishes its control to the real estate.

Authority

The provisions of this § 91.154 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.154 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233366) to (233367).

Cross References

This section cited in 61 Pa. Code § 91.152 (relating to confirmatory deed).

§ 91.155. Timber and crops.

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

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

- (1) The transferee has discretion as to the time of removal.
- (2) The writing is indefinite as to the time for removal.
- (3) The writing provides more time for the removal than is reasonably necessary considering the nature and extent of the land and the number of feet of merchantable timber to be removed.

(4) Even if the writing provides a reasonable time for the severance and complete removal of the timber, the transferor concurrently conveys title to the underlying real estate to the transferee, or gives the transferee the right or option to purchase the underlying real estate within the period for severance of the timber.

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

- (1) The products are planted annually and gathered during a single, annual season.

- (2) The products are propagated for the purpose of being transplanted or grafted.
- (3) The products require annual pruning, spraying or cultivation.
- (4) The products are the annual products of shrubs, trees or annual or perennial plants.

Authority

The provisions of this § 91.155 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.155 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233367).

§ 91.156. Trusts.

(a) *Transfers to ordinary trusts.* A transfer of real estate for no or nominal consideration to an ordinary trust is fully taxable unless the transfer of the same real estate would be wholly excluded if the transfer was made directly from the grantor to all of the possible beneficiaries who have a remainder interest or who are otherwise entitled to receive the real estate or the proceeds from the sale of the real estate as a beneficiary under the terms of the trust, whether or not the beneficiaries are contingent or specifically named.

Example: G transfers real estate to a trust without consideration for the use of B, G's spouse, for life. Under the trust, the remainder interest is vested in G's church. As a direct transfer to the religious organization would be taxable, the transfer to the trust is fully taxable.

(b) *Contingent beneficiaries.* A trust provision which identifies a contingent beneficiary by reference to the heirs of the trust settlor as determined by the laws of intestate succession will by itself neither qualify nor disqualify a transfer from the exemption provided by subsection (a).

(c) *Transfers to living trusts.*

(1) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust is excluded from tax.

(2) A transfer for no or nominal actual consideration to a trustee of a living trust from a grantor other than the settlor is fully taxable unless the transfer of the real estate would be wholly excluded if the transfer was made directly from the grantor to the settlor.

(d) *Transfers from ordinary trusts.* A transfer from an ordinary trust is fully taxable except for a transfer for no or nominal actual consideration from the trustee to the person who has the vested remainder interest or who is otherwise entitled to receive the real estate or the proceeds from the sale of the real estate as a beneficiary under the terms of the trust.

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

(1) A transfer from the trustee of a living trust during the settlor's lifetime to a grantee other than the settlor will be treated as if the transfer were made directly from the settlor to the grantee.

(2) A transfer from the trustee of a living trust to its settlor is excluded from tax, irrespective of who conveyed the real estate to the trustee. However, if the grantor who conveyed the real estate to the trustee is the settlor's family member as defined in § 91.193(b)(6) (relating to excluded transactions), the provisions of § 91.193(b)(6)(ii) apply to a subsequent transfer.

(f) *Transfers from testamentary trusts and living trusts after the death of the settlor.* A transfer of real estate from the trustee of a testamentary trust or a living trust after the death of its settlor is exempt from tax only if the transfer is made for no or nominal actual consideration and to the person who, under the governing instrument of the trust, has the vested remainder interest or who is otherwise entitled to receive the real estate or the proceeds from the sale of the real estate as a beneficiary under the terms of the trust.

(g) *Requirement for exemption.* An exemption will not be granted under this section unless the recorder of deeds is presented with a copy of the trust agreement.

Authority

The provisions of this § 91.156 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.156 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233367).

Cross References

This section cited in 61 Pa. Code § 91.193 (relating to excluded transactions).

§ 91.157. Cotenants.

(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.

(b) 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.

Example:

X, Y and Z each own an undivided one-third interest in Lot 3. X and Y each convey a one-twelfth interest to Z, leaving X and Y each with a one-quarter interest and Y with a one-half interest. As the grantors conveyed a one-sixth interest and the grantee received a one-sixth interest, the transfer is taxable on one-sixth of its value.

Authority

The provisions of this § 91.157 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.156 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 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 a nonprofit industrial development agency is taxable unless one of the following applies:

- (1) The document was delivered after December 19, 1985, and before July 2, 1986, and recorded prior to August 1, 1986.
- (2) The realty 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 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 granted to the grantee.
 - (iii) The grantee shall directly use the realty for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture.

Authority

The provisions of this § 91.158 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.158 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.193 (relating to excluded transactions).

§ 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 to a surviving spouse as part of his exemption or allowance is not taxable under § 91.193(b)(7) (relating to excluded transactions) if the

document is without consideration or for nominal actual consideration. A transfer made under the exercise of an option to purchase realty 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 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) 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), 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). Unless otherwise excludable—familial relationship, and the like—the lots conveyed to A are excludable 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 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 from tax under § 91.193(b)(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 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) are inapplicable. The conveyances would be taxed the same as in Example 2 of subsection (b).

Authority

The provisions of this § 91.159 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.159 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.193 (relating to excluded transactions).

§ 91.160. Exchange of interest in real estate.

If parties exchange realty between themselves, the deeds transferring title to each are 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).

Authority

The provisions of this § 91.160 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.160 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.161. Charitable, religious and educational organizations.

A transfer of realty to or from charitable, religious, educational or other non-profit organizations is taxable on the same basis as other deeds. See § 91.193(b)(17) (relating to excluded transactions).

Authority

The provisions of this § 91.161 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.161 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 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.

Authority

The provisions of this § 91.162 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.162 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233371).

§ 91.163. Ground rents.

An instrument creating, transferring or extinguishing ground rent is taxable upon the same basis as other deeds.

Authority

The provisions of this § 91.163 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.163 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.164. Quitclaim deeds.

A quitclaim deed is taxable upon the same basis as another deed if there is an actual conveyance of real estate. See §§ 91.151 and 91.152 (relating to correctional deed; and confirmatory deed).

Authority

The provisions of this § 91.164 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.164 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.165. Reservations or conveyances of life estates.

(a) The value of a life estate or remainder interest in real estate will be the consideration paid or to be paid for the life estate or remainder interest except as provided for in subsection (b) or (c).

(b) When no or nominal consideration or consideration less than actual monetary worth is paid for a life estate or remainder interest in real estate, life estate and remainder factors as provided in subsection (d) are multiplied by the real estate's computed value in order to calculate the value of a life estate or remainder interest.

(c) When consideration that is paid or to be paid for the conveyance of real estate or the computed value of real estate must be apportioned to calculate the taxable value of a life estate or remainder interest that is part of the conveyance, the life estate and remainder factors as provided in subsection (d) are multiplied

by the consideration paid or to be paid for the conveyance of the real estate or the computed value in order to calculate the value of the life estate or remainder interest.

(d) The Department will publish by notice in the *Pennsylvania Bulletin* life estate and remainder factors and their effective date to be used for the calculation of the taxable value of a life estate and remainder interest in real estate.

(1) *Formula.* The factors will be based upon tables published by the Internal Revenue Service for calculating the present worth of a life estate and remainder interest. The Department will use the factors contained in the Internal Revenue Service Table using an interest rate equal to the average interest rate for the 36 consecutive months prior to the publication of the factors in the *Pennsylvania Bulletin*.

(2) *Updates.* The Department will update the factors periodically as needed to account for changes in mortality and interest rates.

Example 1: In an arm's length transaction for actual monetary worth, L conveys a life estate interest (or remainder interest, as the case may be) in real estate to T for \$50,000. The taxable value of the life estate is the consideration paid, that is \$50,000.

Example 2: L conveys a life estate interest in real estate to T for less than actual monetary worth. L reserves the remainder interest for himself. The computed value of the entire real estate is \$100,000. T is 50 years old. The taxable value of T's life estate interest is the computed value of the entire real estate multiplied by the life estate factor based upon T's age.

Example 3: L conveys a remainder interest in real estate to T for less than actual monetary worth. L retains a life estate interest in the real estate. The computed value of the entire real estate is \$100,000. L is 50 years old. The taxable value of T's remainder interest is the computed value of the entire real estate multiplied by the remainder factor based upon L's age.

Example 4: X sells real estate to X's friends Y and Z. The sale consists of a life estate to Y and the remainder to Z. Y is 60 years old, and Z is 45 years old. X sells the real estate to Y and Z for a total, arm's length purchase price of \$100,000, but the agreement of sale does not apportion the purchase price between the price to be paid for the life estate and the remainder interest. To calculate the taxable value of the life estate and remainder interest, the life estate and remainder factors based upon Y's age are multiplied by the total purchase price.

Authority

The provisions of this § 91.165 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.165 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233371) to (233373).

§ 91.166. Life maintenance.

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

Authority

The provisions of this § 91.166 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.166 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233373).

§ 91.167. Deed of easement.

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

Authority

The provisions of this § 91.167 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.167 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 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).

Authority

The provisions of this § 91.168 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.168 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial page (233374).

Cross References

This section cited in 1 Pa. Code § 91.193 (relating to excluded transactions).

§ 91.169. Conveyances of coal, oil, natural gas or minerals.

Instruments evidencing an interest in all or a fixed amount of unremoved coal, oil, natural gas or minerals in place are taxable if the interest conveyed, transferred, released, demised, vested or confirmed thereby is an estate in fee simple or approximates an estate in fee simple.

Authority

The provisions of this § 91.169 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.169 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 1 Pa. Code § 91.193 (relating to excluded transactions).

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

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

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

(ii) Each of the writings for which the document stands would be excludible from tax under this article and effective notwithstanding the insolvency, bankruptcy or other legal disability of the signatories thereto.

(iii) Title to the affected real estate would not revert or be in any way impaired or encumbered by reason of the recordation of the writings described in subparagraphs (i) and (ii).

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

(3) Separate transfers of an interest in timber, coal, oil, gas or other appurtenance to real estate and the real estate to which the interest is appurtenant will be taxed as a single transfer of both interests if the transactions are entered into in contemplation of their coinciding and meeting in the same person.

(b) Combining transactions. When a single document represents, in substance, two or more transfers of title to real estate, the document will be viewed as a series of separate transfers and documents.

(1) The tax due on the single document will be the same as the sum of tax that would be due had each transfer been effectuated by a document. The tax liability for the single document will be allocated among the parties as if each transfer had been effectuated by a document.

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

(i) Each transfer and document in the series could have been accomplished and executed individually under the laws of the Commonwealth or the United States.

(ii) Completing the series of transfers and documents would result in the same transfer accomplished by the single document.

(iii) The series of transfers and documents have not been reduced to one transfer and document in order to avoid a legal, contractual, economic or personal detriment associated with completing the series of transfers and documents.

(iv) The series of transfers and documents would have been completed without the benefit of this rule.

(v) The application of § 91.193(b)(6)(ii) (relating to excluded transactions) will not be avoided by the application of this rule.

Example 1. X enters into an agreement of sale with Y for the conveyance of real estate for \$100,000. Y subsequently assigns the sales agreement to Z for \$1 million. X executes a deed for the conveyance of the real estate to Z and receives \$100,000. Y receives \$1 million from Z for the assignment. The taxable value of the deed from X to Z is \$1,100,000. X and Y are jointly and severally liable for the tax on \$100,000 (See § 91.132(c)). Y and Z are liable for the remaining tax on \$1 million.

Example 2. D dies leaving a will that devises real estate to D's two sons, X and Y. D is also survived by another son, Z. Z wants the real estate. X and Y do not want the real estate. X and Y agree to sell the real estate to Z. D's estate could execute a deed for the real estate to X and Y as tenants in common without the imposition of tax. See § 91.193(b)(7). X and Y could then sell and transfer their interests in the real estate to Z without the imposition of tax. See § 91.193(b)(6)(i)(C). Therefore, assuming the criteria in subsection (b)(2)(i)—(iv) are met, D's estate could sell and transfer the real estate to Z without the imposition of tax on the deed of transfer even though the deed from D's estate to Z would otherwise be taxable.

Example 3. X and Y are siblings. X has a child, Z (Y's niece/nephew). Y conveys title to real estate to Z by a document. Documents that convey title to real estate from a person's sibling to the person's child are subject to tax. Therefore, the document from Y to Z is taxable. This rule does not prohibit the imposition of tax. Although Y could have transferred the real estate to X by a document without the imposition of tax, see § 91.193(b)(6)(i)(C), and X could then, by a separate document, have transferred the same real estate to Z without tax, see § 91.193(b)(6)(i)(B). The document from Y to Z is still subject to tax because the two-step transaction would violate the rule under § 91.193(b)(6)(ii) regarding family transfers made within 1 year.

Example 4. X conveys title to real estate to an industrial development authority (IDA) as security for a loan of \$1 million in a financing transaction in which the IDA is the lender. In turn, the IDA enters into an installment land contract with X for the real estate. The total installment payments serve as the debt service on the loan. During the term of the installment land contract, X enters into an agreement of sale with Y for the real estate. The purchase price for the real estate is \$5 million. At the end of the installment sales contract, X directs the IDA to convey the real estate directly to Y. In this case, the deed from the IDA to Y will be viewed as two transfers and documents: a transfer from the IDA to X in satisfaction for the repayment of the \$1 million loan and a subsequent deed for the sale of the real estate from X to Y for \$5 million. The taxable value of the deed from the IDA to Y is \$5 million. The taxable value is calculated by adding the taxable value of the transfer from the IDA to X and the transfer from X to Y as if each transfer had been effectuated by a document. The transfer from the IDA to X is excluded as the second leg in a financing transaction. See § 91.193(b)(23). Neither the IDA or X are liable for tax on this transaction. The transfer from X to Y is taxable on the sale value of \$5 million. X and Y are jointly and severally liable for the tax on the \$5 million sale value.

Example 5. Same facts as in Example 4 except that there is no sale between X and Y. Rather, X is the sole owner of a subsidiary business entity. At the end of the installment sale term between the IDA and X, X directs the IDA to convey the real estate to the subsidiary business entity. The conveyance is for no or nominal consideration. Under this set of facts, the deed to the subsidiary will also be seen as a two step transaction. As in Example 4, the first step of the transaction will be the transfer of the real estate from the IDA to X. That transaction is excluded from tax. The IDA and X have no liability for that transaction. The second step of the transaction is the transfer from X to its subsidiary business entity. The second step is taxable; and because the transaction is for no or nominal consideration, the taxable value is the computed value of the real estate. X and the subsidiary business entity are jointly and severally liable for the tax on that transfer.

(c) *Splitting transactions.* If a series of two or more transactions and associated writings, one or more of which would not be subject to tax if considered separately, are completed instead of a single transaction and taxable document, the series of transactions and writings will be considered as if completed by the single transaction and document. Therefore, each individual writing in the series of transactions and writings will be subject to tax upon a portion of the value of the title to real estate conveyed in respect of the transactions and writings. If it is not possible to determine how to apportion all or part of the taxable value between two or more of the writings, the value for which apportionment cannot be determined shall be divided equally among all writings that do not have an apportioned value. This rule only applies if:

(1) The parties to the single transaction and document are identical to the parties to the series of transactions and writings. For purposes of this section, parties are identical if they are the same person or the person's affiliate. The term "affiliate" in this section has the same meaning as the term "grantor's affiliate" in § 91.131 (relating to definitions).

(2) Completing the series of transactions and writings results in the same outcome that would have resulted from completing the single transaction and document.

(3) The primary purpose for completing the series of transactions and writings rather than completing the single transaction and document is the avoidance of tax.

Example 1. X agrees to sell and convey real estate to Z for \$2 million. The conveyance can be accomplished by one, taxable document based upon the sale price of \$2 million. To avoid paying tax on the full sale price of the transfer, X and Z agree to divide the conveyance into four separate transactions: D—G. Transaction D involves a deed of conveyance for a portion of the value of the real estate. Z pays \$100,000 for the deed. Transactions E—G are effectuated by separate writings that each, by appearance, is nontaxable. Z pays \$400,000 for transaction E and its respective writing and a total of \$1.5 million for transactions F and G and their respective writings. The four transactions and writings effectuate the same outcome as would have been accomplished by the single transaction and document. Therefore, all four transactions are considered as accomplished by the single transaction and document, and each writing is taxable upon the portion of the value of the real estate that it represents. The deed of conveyance for transaction D represents the conveyance of a portion of the real estate. Z paid \$100,000 for the deed. Therefore, its taxable value is \$100,000. Transactions E, F and G and the associated writings effectuated the transfer of the remaining portion of the real estate. Because Z paid \$400,000 for the writing under transaction E, the taxable value of the writing is \$400,000. There was no allocation of the purchase price for transactions F and G and the associated writings. Therefore, the remaining portion of the real estate value that has not been allocated, that is \$1.5 million, is divided equally, \$750,000 each, between the writings for transactions F and G.

Example 2. X is a land developer and is the sole owner of business entity 1 and 2.

X has business entity 1 purchase vacant real estate. Realty Transfer Tax is paid on the document of transfer for the real estate. X then has business entity 1 lease the real estate under a short term lease (less than 30 years) to business entity 2. Business entity 2 makes \$10 million worth of improvements to the real estate. Business entity 1 remains the owner of the underlying real estate and business entity 2 remains the owner of the improvements.

X then enters into an agreement with Y for the sale of the real estate and improvements for \$15 million. The agreement provides that X will have business

entity 1 convey its ownership in the underlying real estate to Y for a sale price of \$2 million. Business entity 1 and Y effectuate the transfer of the underlying real estate and pay realty transfer tax on the deed of conveyance based upon the \$2 million sale value.

The agreement also provides that X will have business entity 2 assign its lessee interest in the short term lease to Y for the remaining \$13 million sale price. No tax is paid on the assignment of the lessee interest. Y then terminates the lease resulting in a merger of the real estate and improvements in Y. Y has, in substance, purchased both the underlying real estate and improvements. By breaking the simple sale of the underlying real estate and improvements into multiple transactions, X and Y have attempted to avoid paying tax on the full sale price of \$15 million. In this case, the multiple transactions will be viewed as a single transaction. Therefore, the total taxable value of the single transaction is the \$15 million sale price.

Authority

The provisions of this § 91.170 adopted under section under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of the § 91.170 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

§ 91.171. Transfers by operation of law.

Except as provided in §§ 91.152(a) and 91.193(b)(1)(i), (7), (12) and (13) (relating to confirmatory deed; and excluded transactions), any writing that satisfies the requirements of the Statute of Frauds and confirms or evidences a transfer of title to real estate that is accomplished by operation of law is taxable on the same basis as a document that effectuates a conveyance or transfer or vests title to real estate.

Authority

The provisions of this § 91.171 adopted under section under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of the § 91.171 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

**Subchapter I. EXCLUDED PARTIES AND
TRANSACTIONS**

Sec.

- 91.191. General applicability of tax.
- 91.192. Excluded parties.
- 91.193. Excluded transactions.
- 91.194. Statement of value.
- 91.195. State-related universities and public charities.

§ 91.191. General applicability of tax.

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.

Authority

The provisions of this § 91.191 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.191 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.192. Excluded 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 from payment of the tax imposed by this chapter.

(b) The excluded 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 parties to the transaction.

Authority

The provisions of this § 91.192 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.192 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Notes of Decisions*Constitutionality*

In an action in which taxpayers presented constitutional challenges to the imposition of a tax at the 1% rate established by the Pennsylvania Realty Transfer Tax Act within the context of a real estate transfer in which one party to the transaction is exempt, the Act did not discriminate against parties

dealing with the Federal government in violation of the Federal supremacy clause, where the complained-of-provisions of the act merely remove liability from the Federal government, as must be done to accommodate its immunity from taxation, and the act does not direct how the economic burden of the tax must be apportioned among the parties and, indeed, such determination is expressly left to the parties. *Wilson Partners v. Board of Finance and Revenue*, 737 A.2d 1215 (Pa. 1999); cert. denied 528 U. S. 1159 (2000).

Cross References

This section cited in 61 Pa. Code § 91.193 (relating to excluded transactions).

§ 91.193. Excluded transactions.

(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:

(1) A transfer to the United States or the Commonwealth or to an instrumentality, agency or governmental body of either if the transfer is:

(i) In lieu or confirmation of a taking by eminent domain. To qualify for the exclusion, the deed shall be made under a prior statute, ordinance, resolution, plan or order for the condemnation, appropriation or acquisition of the real estate transferred by condemnation or in lieu thereof. The statement of value accompanying a document that effectuates such a transfer shall contain a specific reference to the ordinance, resolution or other official action by which the grantee was authorized to file a declaration of taking of the transferred real estate.

(ii) By gift or dedication.

(iii) A reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments, if the reconveyance is made within 1 year of condemnation.

(iv) Made under a judicial sale for the collection of taxes or a levy and seizure of property for the collection of taxes.

(v) Made under a mortgage foreclosure action.

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States, including:

(i) A transfer under a bankruptcy plan confirmed under section 1129 of the act of November 6, 1978 (Pub. L. No. 95-598) (92 Stat. 2549), known as the Federal Bankruptcy Act (Bankruptcy Act) (11 U.S.C. § 1129) and exempt under section 1146(c) of the Bankruptcy Act (11 U.S.C. § 1146(c)). To claim this exclusion, a copy of the order and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption.

A transfer is made under a plan confirmed under section 1129 only when the transfer is authorized by the specific terms of a previously confirmed Chapter 11 plan.

(ii) A transfer under a bankruptcy plan confirmed under section 1225 of the Bankruptcy Act (11 U.S.C. § 1225) and exempt under section 1231(c) of the Bankruptcy Act (11 U.S.C. § 1231(c)). To claim this exclusion, a copy of the order and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1225 of the Bankruptcy Act only when the transfer is authorized by the specific terms of a previously confirmed Chapter 12 plan.

(iii) Transfers made under the authority of sections 363 or 365 of the Bankruptcy Act (11 U.S.C. § 363 or § 365) and occurring before the confirmation of a plan will not qualify for exemption under this paragraph. However, transfers pursuant to sales authorized under these sections of the Bankruptcy Act may qualify for other exclusions. See paragraph (16).

(3) A conveyance to a local taxing authority under acquisition by the authority of a tax delinquent property at a sheriff sale or a tax claim bureau sale.

(4) A correctional deed or confirmatory deed. See §§ 91.151 and 91.152 (relating to correctional deed; and confirmatory deed).

(5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants. If any of the parties take shares greater in value than his undivided interest, tax is due on the excess. See § 91.159 (relating to transfers by will or intestate law).

(6) Transfers between certain family members:

(i) A transfer between any of the following:

(A) Husband and wife.

(B) A lineal ascendent—parent, grandparent, great grandparent and the like—and lineal descendent—child, grandchild, great grandchild and the like.

(C) Children of the same parent—siblings.

(D) A lineal ascendent—parent, grandparent, great grandparent and the like—of a child and the spouse of the child, unless the child is deceased and the child's spouse has remarried.

(E) An individual and the individual's sibling's spouse, unless the sibling is deceased and the sibling's spouse has remarried.

(F) Persons who were previously married but who have since been divorced, if the transferred realty was acquired by both spouses or by either spouse before or during their marriage.

(ii) A subsequent transfer by the transferee within 1 year shall be subject to tax as if the original grantor was making the transfer to the transferee's grantee.

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

Example:

A and B, C's parents, transferred two lots to C and D, C's spouse. Within 1 year of that transfer, C and D conveyed one of the lots to E and F, D's parents, and the other lot to G, C's brother. The transfer to E and F is not excludable, because a direct transfer from A and B to E and F would have been taxable. The transfer to G is excludable, because the transfer between C and D and G is an excludable transfer between siblings and between a sibling's spouse and a sibling and because a direct transfer from A and B to G, their lineal descendent, would have been an excludable transfer.

(7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir. See § 91.159.

(8) A transfer to a trustee of an ordinary trust as provided in § 91.156(a) (relating to trusts).

(9) A transfer from a trustee of an ordinary trust as provided in § 91.156(d).

(10) A transfer which merely confirms the appointment of a successor trustee to fill a vacancy or an additional trustee or the removal or resignation of a trustee.

(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 would be excluded 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).

(12) A transfer under the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation if:

(i) The document merely confirms that an interest in real estate passed by operation of law to a nonprofit corporation under a statutory division of a nonprofit corporation. See 15 Pa.C.S. § 5957(b) (relating to effect of division).

(ii) The document merely reflects that the corporation changed from a business corporation to a nonprofit corporation, or vice versa. See 15 Pa.C.S. § 5966 (relating to effect of conversion).

(iii) The document merely confirms that an interest in real estate passed by operation of law to a new or surviving corporation under a statutory merger or consolidation, unless the primary intent for the merger or consolidation is avoidance of the Realty Transfer Tax. See 15 Pa.C.S. §§ 1929 and 4127 (relating to effect of merger or consolidation; and merger, consolidation

or division of qualified foreign business corporations) and 15 Pa.C.S. § 5929(b) (relating to effect of merger or consolidation). In determining whether a merger or reorganization is undertaken to avoid tax, the Department will consider the following factors:

(A) Is one or more of the corporations which are parties to the reorganization a real estate company, an acquired real estate company, a family farm corporation or an acquired family farm corporation.

(B) Does the merger or consolidation, of itself or together with other changes in interest, have the effect of transferring directly or indirectly, 90% or more of the total ownership rights in the real estate company, acquired real estate company family farm corporation or acquired family farm corporation.

(13) Certain transfers to shareholders.

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

(A) The transferred realty 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 as agent for the corporation or association.

(B) The grantee owns stock of the corporation or an interest in the association in the same percentage as the grantee's interest in or ownership of the real estate being conveyed.

(C) The stock of the corporation or the interest in the association has been held by the grantee for more than 2 years.

(ii) In order to claim this exclusion, the statement of value shall identify the grantee as a stockholder in the corporation or as a holder of an interest in the association, set forth the date of acquisition of the stock or interest and indicate the grantee's ownership share of the corporation or association.

Example:

E and F each owned 50% of the stock in corporation G. On partial liquidation of corporation G, G's real estate is distributed to E. If E held his stock for more than 2 years, the real estate distribution is taxable only to the extent of F's proportionate interest in corporation G.

(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 to the IDA, which borrows money to finance the improvements. The IDA leases back the

realty to C, or sells the realty 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 is transferred back to C at the end of the lease term or installment-sales agreement payment term.

(15) A transfer from a nonprofit industrial development agency or authority to an industrial enterprise purchasing directly from it. See § 91.158.

(16) A transfer to a holder of a bona fide mortgage in default if the transfer is made in lieu of foreclosure or the transfer is made under a judicial sale in which the mortgage holder is the purchaser. The exemption granted by this section does not apply to a transferee or assignee of the bid or other rights of the holder in the judicial sale. To claim this exemption the statement of value shall indicate the mortgage book volume and page where the mortgage is recorded.

(17) A transfer between religious organizations if:

(i) Both the grantor and grantee are either a religious or apostolic association or corporation or a nonprofit corporation, fund or foundation founded, endowed and maintained by, and devoted to the interest of, a religious sect or a trustee holding property for the use of a religious sect and both possess tax exempt status under section 501(c)(3) or (d) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3) or (d)).

(ii) The grantor may not have used the property transferred for commercial purposes. Property of a kind which is commonly used by commercial enterprises for the production of income, such as health care, educational and day care facilities, camp or burial grounds, museums and parks, and farm land, and bakery, kitchen, parking or publication facilities is rebuttably presumed to be used for commercial purposes, unless the income produced from the use of it is merely incidental and nominal and sufficient to defray only the cost of operating the facility, grounds, museum, park or farm.

(18) A transfer to a conservancy, a transfer from a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions, or a transfer from a conservancy if the real estate is encumbered by a perpetual agricultural conservation easement as defined by the Agricultural Area Security Law (3 P. S. §§ 901—915) and the conservancy has owned the real estate for at least 2 years immediately prior to the transfer.

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

(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).

(21) A transaction when the true, full and complete value of the interest in real estate evidenced by the document is \$100 or less.

(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 realty.

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

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

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

(c) Documents that convey or evidence the transfer of real estate between the parties involved in the transactions enumerated in subsection (b) are excluded from tax. Subsection (b) has no application to acquisitions of real estate companies as provided in § 91.202 (relating to acquired real estate company).

Authority

The provisions of this § 91.193 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.193 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears on serial pages (263914) and (233377) to (233382).

Cross References

This section cited in 61 Pa. Code § 91.154 (relating to documents involving corporations, partnerships, limited partnerships and other associations); 61 Pa. Code § 91.156 (relating to trusts); 61 Pa. Code § 91.159 (relating to transfers by will or intestate law); 61 Pa. Code § 91.161 (relating to charitable, religious and educational organizations); 61 Pa. Code § 91.167 (relating to deed of easement); 61 Pa. Code § 91.168 (relating to salt and lease back transactions); 61 Pa. Code § 91.170 (relating to rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979)); 61 Pa. Code § 91.171 (relating to transfers by operation of law); and 61 Pa. Code § 91.194 (relating to statement of value).

§ 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 for familial transactions in § 91.193(b)(6), in order to exercise an exclusion provided in this subchapter, the true, full and complete value of the transferred realty 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.

Authority

The provisions of this § 91.194 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.194 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.195. State-related universities and public charities.

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

(1) Lincoln University.

(2) The Pennsylvania State University and its affiliate, the Pennsylvania College of Technology.

(3) Temple University and its subsidiaries, Temple University Hospital, Inc. and Temple University Children's Medical Center.

(4) The University of Pittsburgh.

(b) Transfers to the institutions enumerated in subsection (a) by gift or dedication are excluded transactions.

(c) Transfers of real estate to an institution enumerated in subsection (a) other than by gift or dedication and all transfers by those institutions are taxable upon the same basis as other transfers to or from excluded parties.

(d) Transfers by gift, dedication or otherwise to or from public charities are taxable upon the same basis as transfers between private parties.

Authority

The provisions of this § 91.195 adopted under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.195 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

Subchapter J. REAL ESTATE COMPANY

Sec.

- 91.201. Real estate company.
- 91.202. Acquired real estate company.
- 91.203. Declaration of acquisition.

§ 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 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.
- (2) Holds realty, 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.

(b) For the purpose of subsection (a), the following apply:

- (1) The current monetary worth of assets is used in determining whether an enterprise meets the asset test.
- (2) Interests in an enterprise owned by another corporation, or by a partnership, limited partnership or other association are not considered owned by the individuals who comprise the stockholders of the other corporation or partners or members of the partnership, limited partnership or other association.
- (3) Interests in an enterprise owned by a trust are considered owned proportionately by the remaindermen.
- (4) Interests in an enterprise owned by a decedent's estate are considered owned by the specific devisee, or by the residuary devisee where there is no specific devise.
- (5) The gross receipts test shall be applied with respect to the last completed fiscal year of the enterprise immediately preceding the valuation date.
- (6) When, as part of its original capitalization, a newly formed corporation or association has contracted to sell a preorganization subscription, the subscribers to the preorganizational subscription shall, upon organization of the corporation or association, be considered the owners of the interests to which they subscribed.

Authority

The provisions of this § 91.201 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.201 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.211 (relating to family farm corporation).

§ 91.202. Acquired real estate company.

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

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

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

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

Example 1:

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

Example 2:

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

(c) A transfer of ownership interest between members of the same family is not considered a change in ownership interest.

Example: C and D each own all of the stock of a corporation in equal shares. C and D transfer their stock to E, C's son, over a 3-year period. As C and E are members of the same family, the transfer between C and E is not a change in

ownership interest. Thus, the stock transfers have the effect of transferring only 50% of the total ownership interest in the corporation and the corporation is not acquired.

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

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

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

Authority

The provisions of this § 91.202 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.202 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233383) to (233384).

Cross References

This section cited in 61 Pa. Code § 91.113 (relating to imposition of tax on declarations of acquisition); and 61 Pa. Code § 91.193 (relating to excluded transactions).

§ 91.203. Declaration of acquisition.

Within 30 days of its becoming an acquired real estate company, the company shall present for recording a completed declaration of acquisition with the recorder of a county in which it held real estate on the date it became an acquired real estate company. If the company fails to present a completed declaration of acquisition within 30 days after becoming an acquired company, the company may be liable for penalty.

Authority

The provisions of this § 91.203 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.203 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.213 (relating to declaration of acquisition).

**Subchapter K. FAMILY FARM CORPORATION AND
FAMILY FARM PARTNERSHIP**

Sec.	
91.211.	Family farm corporation.
91.212.	Acquired family farm corporation.
91.213.	Declaration of acquisition.
91.221.	Family farm partnership.
91.222.	Acquired family farm partnership.
91.223.	Declaration of acquisition.

§ 91.211. Family farm corporation.

(a) A corporation shall meet the following requirements to constitute a family farm corporation:

(1) In the aggregate, the book value of the corporation's assets that are primarily devoted to the business of agriculture continuously comprise at least 75% of the book value of all of the corporation's assets.

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

(b) To qualify as an asset devoted to the business of agriculture for the purpose of subsection (a), the assets must be:

(1) Owned and either used directly by the corporation claiming the exemption or leased to, and used directly by, a member of the same family that owns at least 75% of each class of stock of the corporation claiming the exemption.

(2) Principally devoted to the business of agriculture or used by the member for agricultural purposes.

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

(4) Used by the member principally for agricultural purposes or set apart and directly used by the corporation primarily for commercial:

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

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

(iii) Raising and harvesting of orchards and vineyards.

(iv) Beekeeping.

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

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

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

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

- (3) Fur farming.
 - (4) Stockyard and slaughterhouse operations.
 - (5) Manufacturing or processing operations.
 - (6) The business of holding property for rental income.
- (d) For the purposes of subsection (a), § 91.201(b) (relating to real estate company) applies.
- (e) For the purposes of this section, the business of agriculture includes a leasing of property to a member of the family having the ownership of at least 75% of each class of its stock if the property is used by the member directly and principally for an agricultural purpose.

Authority

The provisions of this § 91.211 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.211 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096; amended December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516. Immediately preceding text appears at serial pages (233385) to (233386).

Cross References

This section cited in 61 Pa. Code § 91.221 (relating to family farm partnership).

§ 91.212. Acquired family farm corporation.

A family farm corporation holding family farm realty becomes an acquired family farm corporation when:

- (1) Because of the acquisition or transfer of a corporate asset, less than 75% of its total assets are devoted to the business of agriculture.
- (2) Because of the issuance, cancellation or transfer of corporate stock, less than 75% of a class of stock of the corporation is owned by individuals who are members of the same family.
- (3) The corporation is dissolved.

Authority

The provisions of this § 91.212 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.212 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.113 (relating to imposition of tax on declarations of acquisition).

§ 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 held on the date the family farm corporation became acquired.

Authority

The provisions of this § 91.213 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.213 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.221. Family farm partnership.

(a) An entity constitutes a family farm partnership only for so long as the following requirements are satisfied:

(1) In the aggregate, the book value of the partnership's assets that are primarily devoted to the business of agriculture continuously comprise at least 75% of the book value of all of the partnership's assets.

(2) At least 75% of the shares of the profits and surplus of the partnership are continuously owned by members of the same family.

(3) The entity is a general or common law partnership.

(b) Whether an asset is devoted to the business of agriculture shall be determined using the same rules as apply to the assets of family farm corporations. See § 91.211(b) (relating to family farm corporation).

Authority

The provisions of this § 91.221 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.221 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

§ 91.222. Acquired family farm partnership.

A family farm partnership becomes an acquired family farm when one of the following occurs:

(1) Because of the acquisition or disposition of a partnership asset (including a transfer to a family member), the book value of the partnership's assets that are primarily devoted to the business of agriculture becomes less than 75% of the book value of all of the partnership's assets.

(2) Because of the assignment of an interest in profits or surplus or the death, retirement, bankruptcy, expulsion or addition of a partner, less than 75%

of the shares of the profits and surplus of the entity is continuously owned by members of the same family.

(3) The partnership voluntarily or involuntarily dissolves or otherwise ceases to operate in the form of a general partnership or common law partnership.

Authority

The provisions of this § 91.222 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.222 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

§ 91.223. Declaration of acquisition.

A declaration of acquisition shall be filed in accordance with § 91.203 (relating to declaration of acquisition) with respect to family farm real estate held on the date the family farm partnership became acquired.

Authority

The provisions of this § 91.223 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.223 adopted December 14, 2007, effective December 15, 2007, 37 Pa.B. 6516.

Cross References

This section cited in 61 Pa. Code § 91.113 (relating to imposition of tax on declarations of acquisitions).

Subchapter L. CREDITS AGAINST TAX

- Sec.
91.231. Transfers by real estate brokers.
91.232. Transfers by builder of residential housing.
91.233. Transfers by grantor of rented real estate.
91.234. Tax paid on land contract.
91.235. Application of credits.

§ 91.231. Transfers by real estate brokers.

If a licensed real estate broker transfers residential property, which was transferred to the broker within the preceding year as consideration for the purchase of other residential property, the tax paid on the initial transfer shall be credited

toward the tax due upon the subsequent transfer. To claim the credit, a statement of value shall accompany the document.

Example:

A transfers his residence to B, a licensed real estate broker, who allows A \$50,000 on the purchase of other residential property. Within 1 year of the transfer by A to B, B sells the residence to P for a consideration of \$75,000. The computation of the tax is as follows:

Tax on transfer to P	\$750
Tax on transfer to B	<u>- 500</u>
Tax due on transfer to P	\$250

Authority

The provisions of this § 91.231 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.231 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

Cross References

This section cited in 61 Pa. Code § 91.232 (relating to transfers by builder of residential housing); and 61 Pa. Code § 91.234 (relating to tax paid on land contract).

§ 91.232. Transfers by builder of residential housing.

If there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due on the transfer. To claim the credit, a statement of value shall accompany the document. For computation, see the example in § 91.231 (relating to transfers by real estate brokers).

Authority

The provisions of this § 91.232 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.232 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 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, a credit for the amount of tax paid at the time of the rental shall be given to the grantor toward the tax due upon the transfer. To claim the credit a statement of value shall accompany the document.

Example:

A leases real estate to X for a 50-year term and tax is paid in the amount of \$8,000. A sells the real estate subject to X's lease to P for \$1 million. The computation of the tax is as follows:

Tax on transfer to P	\$10,000
Tax on lease to X	<u>−8,000</u>
Tax to be paid to recorder on transfer to P	\$2,000

Authority

The provisions of this § 91.233 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.233 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.234. Tax paid on land contract.

If there is a conveyance by deed of real estate which was previously sold under a contract for a deed by the grantor, the grantor shall receive a credit for the amount of tax paid on the land contract on the tax due upon the deed. To claim the credit, a statement of value shall accompany the document. For computation, see the example in § 91.231 (relating to transfers by real estate brokers).

Authority

The provisions of this § 91.234 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.234 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

§ 91.235. Application of credits.

If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover of the tax credit will be allowed.

Authority

The provisions of this § 91.235 issued under section 1107-C of the Tax Reform Code of 1971 (72 P. S. § 8107-C).

Source

The provisions of this § 91.235 adopted September 9, 1988, effective September 10, 1988, 18 Pa.B. 4096.

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