

[20 Pa.C.S. § 301](#)

Pa.C.S. documents are current through 2023 Regular Session Act 1; P.S. documents are current through 2023 Regular Session Act 1

Pennsylvania Statutes, Annotated by LexisNexis® > *Pennsylvania Consolidated Statutes (§§ 101 — 9901)* > *Title 20. Decedents, Estates and Fiduciaries (Chs. 1 — 88)* > *Chapter 3. Ownership of Property; Legal Title and Equitable Estate (§§ 301 — 305)*

§ 301. Title to real and personal estate of a decedent.

(a) Personal estate. — Legal title to all personal estate of a decedent shall pass at his death to his personal representative, if any, as of the date of his death.

(b) Real estate. — Legal title to all real estate of a decedent shall pass at his death to his heirs or devisees, subject, however, to all the powers granted to the personal representative by this title and lawfully by the will and to all orders of the court.

History

Act 1972-164 (S.B. 1225), P.L. 508, § 2, approved June 30, 1972, eff. immediately.

Annotations

[20 Pa.C.S. § 2102](#)

Pa.C.S. documents are current through 2023 Regular Session Act 1; P.S. documents are current through 2023 Regular Session Act 1

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes (§§ 101 — 9901) > Title 20. Decedents, Estates and Fiduciaries (Chs. 1 — 88) > Chapter 21. Intestate Succession (§§ 2101 — 2114)

§ 2102. Share of surviving spouse.

The intestate share of a decedent's surviving spouse is:

- (1) If there is no surviving issue or parent of the decedent, the entire intestate estate.
- (2) If there is no surviving issue of the decedent but he is survived by a parent or parents, the first \$ 30,000 plus one-half of the balance of the intestate estate. Notwithstanding the foregoing, in the case of a decedent who died as a result of the terrorist attacks of September 11, 2001, a surviving spouse shall be entitled to 100% of any compensation award paid pursuant to the Air Transportation Safety and System Stabilization Act (Public Law 107-42, 115 Stat. 230).
- (3) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the first \$ 30,000 plus one-half of the balance of the intestate estate.
- (4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.
- (5) In case of partial intestacy any property received by the surviving spouse under the will shall satisfy pro tanto the \$ 30,000 allowance under paragraphs (2) and (3).

History

Act 1972-164 (S.B. 1225), P.L. 508, § 2, approved June 30, 1972, eff. immediately; Act 1978-23 (S.B. 1000), P.L. 42, § 1, approved Apr. 18, 1978, eff. in 60 days; Act 1980-118 (S.B. 768), P.L. 565, § 2, approved July 11, 1980, eff. in 60 days; [Act 2003-26](#) (H.B. 89), P.L. 175, § 1, approved Oct. 3, 2003, eff. immediately.

Annotations

[20 Pa.C.S. § 2103](#)

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Pennsylvania Statutes, Annotated by LexisNexis® > *Pennsylvania Consolidated Statutes (§§ 101 — 9901)* > *Title 20. Decedents, Estates and Fiduciaries (Chs. 1 — 88)* > *Chapter 21. Intestate Succession (§§ 2101 — 2114)*

§ 2103. Shares of others than surviving spouse.

The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall pass in the following order:

- (1) Issue.** — To the issue of the decedent.
- (2) Parents.** — If no issue survives the decedent, then to the parents or parent of the decedent.
- (3) Brothers, sisters, or their issue.** — If no parent survives the decedent, then to the issue of each of the decedent's parents.
- (4) Grandparents.** — If no issue of either of the decedent's parents but at least one grandparent survives the decedent, then half to the paternal grandparents or grandparent, or if both are dead, to the children of each of them and the children of the deceased children of each of them, and half to the maternal grandparents or grandparent, or if both are dead to the children of each of them and the children of the deceased children of each of them. If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, the half which would have passed to them or to their children and grandchildren shall be added to the half passing to the grandparents or grandparent or to their children and grandchildren on the other side.
- (5) Uncles, aunts and their children, and grandchildren.** — If no grandparent survives the decedent, then to the uncles and aunts and the children and grandchildren of deceased uncles and aunts of the decedent as provided in section 2104(1) (relating to taking in different degrees).
- (6) Commonwealth.** — In default of all persons hereinbefore described, then to the Commonwealth of Pennsylvania.

History

Act 1972-164 (S.B. 1225), P.L. 508, § 2, approved June 30, 1972, eff. immediately; Act 1978-23 (S.B. 1000), P.L. 42, § 1, approved Apr. 18, 1978, eff. in 60 days.

Annotations

[20 Pa.C.S. § 3155](#)

Pa.C.S. documents are current through 2023 Regular Session Act 1; P.S. documents are current through 2023 Regular Session Act 1

Pennsylvania Statutes, Annotated by LexisNexis® > *Pennsylvania Consolidated Statutes (§§ 101 — 9901)* > *Title 20. Decedents, Estates and Fiduciaries (Chs. 1 — 88)* > *Chapter 31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters (Subchs. A — F)* > *Subchapter D. Grant of Letters (§§ 3151 — 3163)*

§ 3155. Persons entitled.

(a) Letters testamentary. — Letters testamentary shall be granted by the register to the executor designated in the will, whether or not he has declined a trust under the will.

(b) Letters of administration. — Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

(1) Those entitled to the residuary estate under the will.

(2) The surviving spouse.

(3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.

(4) The principal creditors of the decedent at the time of his death.

(5) Other fit persons.

(6) If anyone of the foregoing shall renounce his right to letters of administration, the register, in his discretion, may appoint a nominee of the person so renouncing in preference to the persons set forth in any succeeding paragraph.

(7) A guardianship support agency serving as guardian of an incapacitated person who dies during the guardianship administered pursuant to Subchapter F of Chapter 55 (relating to guardianship support).

(8) A redevelopment authority formed pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(c) Time limitation. — Except with the consent of those enumerated in paragraphs (1), (2) and (3), no letters shall be issued to those enumerated in paragraph (4), (5) or (8) of subsection (b) until 30 days after the decedent's death.

(d) Death charges. — Notwithstanding the provisions of subsections (a) and (b), the register shall not grant letters testamentary or letters of administration to any person charged, whether by indictment, information or otherwise, by the United States, the Commonwealth or any of the several states, with voluntary manslaughter or homicide, except homicide by vehicle, in connection with a decedent's death unless and until the charge is withdrawn, dismissed or a verdict of not guilty is returned.

History

20 Pa.C.S. § 3155

Act 1972-164 (S.B. 1225), P.L. 508, § 2, approved June 30, 1972, eff. immediately; [Act 1992-24](#) (S.B. 3), P.L. 108, § 4, approved Apr. 13, 1992, eff. in 60 days; [Act 2000-118](#) (H.B. 2328), P.L. 838, § 2, approved Dec. 20, 2000, eff. in 60 days; [Act 2006-171](#) (S.B. 665), P.L. 1536, § 1, approved Nov. 29, 2006, eff. in 60 days.

Annotations

[20 Pa.C.S. § 3162](#)

Pa.C.S. documents are current through 2023 Regular Session Act 1; P.S. documents are current through 2023 Regular Session Act 1

Pennsylvania Statutes, Annotated by LexisNexis® > *Pennsylvania Consolidated Statutes (§§ 101 — 9901)* > *Title 20. Decedents, Estates and Fiduciaries (Chs. 1 — 88)* > *Chapter 31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters (Subchs. A — F)* > *Subchapter D. Grant of Letters (§§ 3151 — 3163)*

§ 3162. Advertisement of grant of letters.

(a) Notice generally. — The personal representative, immediately after the grant of letters, shall cause notice thereof to be given in one newspaper of general circulation published at or near the place where the decedent resided or, in the case of a nonresident decedent, at or near the place where the letters were granted, and in the legal periodical, if any, designated by rule of court for the publication of legal notices, once a week for three successive weeks, together with his name and address; and in every such notice, he shall request all persons having claims against the estate of the decedent to make known the same to him or his attorney, and all persons indebted to the decedent to make payment to him without delay.

(b) Proofs of advertisement to trustee. — A personal representative who has advertised the grant of letters and received the notice required by section 7780.3(c) (relating to duty to inform and report) shall promptly send copies of the proofs of that advertisement to the trustee.

History

Act 1972-164 (S.B. 1225), P.L. 508, § 2, approved June 30, 1972, eff. immediately; Act 1978-37 (S.B. 1001), P.L. 77, § 3, approved Apr. 28, 1978, eff. in 60 days; [Act 2010-85](#) (S.B. 53), P.L. 837, § 4, approved Oct. 27, 2010, eff. in 60 days.

Annotations

20 Pa.C.S. § 3546

Pa.C.S. documents are current through 2023 Regular Session Act 1; P.S. documents are current through 2023 Regular Session Act 1

Pennsylvania Statutes, Annotated by LexisNexis® > *Pennsylvania Consolidated Statutes (§§ 101 — 9901)* > *Title 20. Decedents, Estates and Fiduciaries (Chs. 1 — 88)* > *Chapter 35. Accounts and Distribution (Subchs. A — F)* > *Subchapter E. Rights of Distributees (§§ 3541 — 3546)*

§ 3546. Determination of title to decedent's interest in real estate.

(a) Applicability.— This section shall apply if:

- (1) A person dies leaving an interest in real estate within this Commonwealth.
- (2) Either of the following occurs:
 - (i) No letters testamentary or letters of administration have been granted on the estate of the decedent in this Commonwealth and one year has expired since the decedent's death.
 - (ii) A personal representative has been appointed but has not filed an account within six years of the decedent's death.
- (3) There is a conflict between this section and either section 2103(6) (relating to shares of others than surviving spouse) or Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, with respect to a petition by an entity under subsection (c)(2). The rights granted under this section shall supersede any right of the Commonwealth created under section 2103(6) or Article XIII.1 of The Fiscal Code.

(b) Subject of petition.— A person or entity authorized by subsection (c) may present a petition under this section to:

- (1) terminate an interest in the real estate of other heirs or devisees of the decedent who, after being given proper notice under subsection (f); or
- (2) have declared as void, unenforceable and canceled of record a fraudulent conveyance of the decedent's interest in the real estate and to the extent otherwise authorized by law any lien, title, claim or interest arising in the property by, from or under the fraudulent conveyance, including any subsequent transfers of property following the fraudulent conveyance and any liens to the extent that they have attached to the property as a result of the fraudulent conveyance, after all interested parties have been given proper notice under subsection (f).

(c) Who may petition.— The following persons and entities may petition to establish title to the decedent's real estate:

- (1) A person claiming an interest in the real estate:
 - (i) as an heir or devisee of the decedent;
 - (ii) through the decedent; or
 - (iii) through an heir or devisee of the decedent, when the heir or devisee is deceased or has conveyed all or part of the heir or devisee's interest in the property to the person.

(2) A nonprofit corporation organized for community development purposes under [section 501\(c\)\(3\) of the Internal Revenue Code](#) (*Public Law 99-514, 26 U.S.C. § 1 et seq.*), a municipality in which the real estate is located or a redevelopment authority created and organized under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, having jurisdiction in the municipality in which the real estate is located upon a showing by clear and convincing evidence to the court that:

- (i) No heirs or devisees exist or have taken action with respect to the real estate for at least five years since the decedent's death.
- (ii) The real estate is not occupied by a person claiming rights by adverse possession.

(d) Priority of petitions.— Where there are two or more petitions for the same real estate under subsection (c)(2), the court shall give priority in entering its order to one of the petitioners in the following order:

- (1) The municipality.
- (2) The redevelopment authority.
- (3) The nonprofit corporation.

(e) Where to petition.— A petition under this section shall be filed in the orphans' court division of the county where:

- (1) the letters testamentary or letters of administration have been granted;
- (2) the principal residence of the decedent was located, if no letters testamentary or letters of administration have been granted; or
- (3) any of the real estate is located, if the decedent was a nonresident of this Commonwealth.

(f) Notice of petition.—

(1) Notice shall be given to all persons reasonably identifiable as eligible to file a petition under subsection (c), creditors that do not have liens of record, to the extent known, and all other persons and parties in interest reasonably known to hold or claim a lien, title, claim or other interest in the property in accordance with the Pennsylvania Orphans' Court Rules. Notice shall also be given by:

- (i) publication once a week during three successive calendar weeks in the legal periodical, if any, and in a newspaper of general circulation published at or near the location of the real estate;
- (ii) posting a copy of the petition on the most public part of the property; and
- (iii) such other methods, if any, as the court deems appropriate to give notice.

(2) If letters testamentary or letters of administration have been granted on the estate of the decedent, notice of the petition under this section shall be given to the personal representative of the decedent.

(3) A lis pendens notice shall be given in each county where the real estate is located in the same manner and place as provided in section 3390 (relating to specific performance of contracts) for an action of specific performance.

(g) Order.—

(1) Aided if necessary by the report of a master, the court may enter an order adjudging that the title to the decedent's interest in the real estate is in the petitioner, free of all decedent's debts not then liens of record, and regardless of the provisions of any testamentary writing of the decedent thereafter probated, or an order directing other appropriate relief as the court determines.

(2) A certified copy of the order shall be:

- (i) Recorded in the office of the recorder of deeds of each county where real estate included in the decree or order shall lie.

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- (ii) Indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of each distributee.
- (iii) Registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county.
- (iv) Served by the petitioner upon each party who has entered an appearance in the proceeding.

(h) Parcel number or identifier.—

- (1) A petition filed under subsection (b) and notice of petition given under subsection (f) shall include the county tax parcel number or Uniform Parcel Identifier for each parcel included. A party alleging any failure to comply with the requirements of this paragraph must do so in the manner provided for raising an affirmative defense.
- (2) An order presented for recording under subsection (g) shall comply with section 3 of the act of April 24, 1931 (P.L.48, No.40), entitled "An act requiring the recording of certain written agreements pertaining to real property, and prescribing the effect thereof as to subsequent purchasers, mortgages, and judgment creditors of the parties thereto."

(i) Definition.— For the purposes of this section, "fraudulent conveyance" shall mean a transfer of an interest, lien, title or claim in real estate that occurs as a result of:

- (1) a forgery of the grantor's signature on a document purporting to make such transfer;
- (2) the grantor being induced by fraud, misrepresentation, duress or coercion to sign a document purporting to make such transfer; or
- (3) some other inappropriate means used to obtain the grantor's signature on the document purporting to make such transfer, as determined by a court.

History

Act 1972-164 (S.B. 1225), P.L. 508, § 2, approved June 30, 1972, eff. immediately; [Act 2016-79](#) (S.B. 1104), § 3, approved July 8, 2016, eff. January 1, 2017.

Annotations

§ 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).

§ 91.193. 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).
