

Tax Committee Notes
October 22, 2013

Panel:

Suzanne Tarlini, Division Chief
Laurel Fulmer, Supervisor
Tom Gohsler, Deputy Chief Counsel
John Brenner, Deputy Chief Counsel – Realty Transfer

Discussion:

General Introductions:

- New Division Chief – Suzanne
- Office of Chief Counsel – Tom
 - There are 20 attorneys assigned to the department of revenue, 4 in inheritance tax, who are divided by counties
 - Contact Information
 - Tom’s Direct #: 717-783-7539
 - General Office #: 717-787-1382
 - TGohsler@pa.gov (prefers emails)
- Office of Chief Counsel - Realty Transfer - John
 - Contact Information
 - John’s Direct #: 717-705-3906 (prefers calls)
- Dept of Revenue - Inheritance Tax Division – Laurel
 - Contact information
 - General #: 717-787-8327

Inheritance Return Filings - Laurel

- General:
 - Currently it takes between 2 ½ to 3 months from filing to assessment
- 15 Month Policy
 - Starting in Nov. 2011, the 15 month policy was implemented on property values
 - Old policy was to keep the estate in suspension until property was sold
 - New Policy is that the Department won’t adjust the value of property after 15 months
 - Ex: Value of property is \$200k based upon formal appraisal, Sold for \$180k, 20 months later. The Dept won’t change it. However, if the property sold for \$180k, 14 months later, the department will accept the new sales price
 - The Department does not require a formal appraisal – will accept tax assessed value as property value. This is the assessment times the common ratio
 - Philadelphia County Reassessment Project
 - If the decedent died in 2012, but 2013 there is now a higher value, the department will probably accept the lower value

Sole Use Trust

- History: Philadelphia Bar Probate & Trust Section wrote a letter asking to reconsider policy and the Department decided to stay with the policy as written
- Currently:
 - Panel does not believe that the Department is going to make changes to the policy as it is now
 - There are no pending cases that they are aware of that deal with Sole Use Trust Terminations
- What they are getting:
 - Seeing old schedule O's, seeing new schedule O's, and seeing protection future interest compromise forms
 - They have accepted old schedule O's up until this point, but that is not a guarantee going forward
 - They may accept old schedule O's for timely filing purposes but that doesn't necessarily mean it will be fully accepted

Oil & Gas Interests

- Generally
 - Policy is stated in the Inheritance Bulletin and Realty Transfer Tax Bulletin
 - Client who have this must file a Schedule E
- Valuation According to Inheritance Bulletin
 - Prefer for the property to be privately valued, but understand that a client may not want to and therefore see the Bulletin for further guidance
 - If it's leased and producing property, then take all amounts decedent received 12 months prior to death and multiply by 2 and this will be taxed
 - If it's leased and non producing, then project any future payments to decedents (ex: find this amount in contract) and reduce this amount to present value and this will be taxed
 - If it's not leased and non producing, then and only then is the value 0
- Valuation According to Realty Transfer Tax Bulletin
 - Either sale price or actual monetary worth – look at comparable sales
 - If it's speculative then you could default and follow inheritance tax bulletin guidelines, but if you put a 0 value, you will be an investigation if it's in Marcellus Shale area and you better have backup for the 0 value

Board of Appeals Compromises

- Taxpayer can request a compromise at the Court of Appeals and makes a compromise offer to the board of appeals
 - Instructions can be found on the Board of Appeals website
- The Compromise decision is issued before appeals decision, therefore put in compromise request with appeal paperwork

Business Valuations

- History: Used to be hot topic years ago with FLP's and discounting. The Department won many cases- mostly with marketable securities
 - IRS allows 35% to 40% discounts, so the Department would probably allow the same
- Department can't litigate the minor % differences because they don't have the man power
- Less concerned about the actual % and more concerned about the business purpose

Realty Transfer Residuary Heirs

- Exemption if testamentary transfer and there is no restriction on who the testamentary beneficiary may be (LLP v. Individual doesn't matter)
- This is very form oriented, therefore follow the form!
- 1 year look back is only 2 family transfers in a row. If 1 deed is from the estate, then that's not a family transfer, it's a testamentary transfer

Real Estate in Living Trust

- Miller Case – arguments were made over a year and a half ago without any decision being made
 - Issue: if living trust, then it doesn't matter because you don't look to the beneficiaries when the settlor is still living, but it's an irrevocable trust, not a "living trust", which was meant as a will substitute
 - Actual living trust – haven't really transferred
 - Irrevocable Trust – transferred and therefore look to the beneficiary
- What is Settlor is disabled or incapacitated and the trustee can distribute for settlor's benefit and settlor's spouse's benefit?
 - Is it the settlor's legal obligation to provide for spouse and therefore same as providing for settler?
- Notes:
 - Even if real estate is to be transferred to charity, there is still a realty transfer tax
 - See RTT Bulletin 04-020 for more information

Small Business Exemption

- Using Net Book Value, not Net Market Value
- Planning Opportunities
 - Could have holding company holding all vacation homes, etc
- Doesn't currently include spouses as qualified transferees, but probably going to eventually allow this
- Doesn't cover the assets per se, just the interest in the business
- No forms available yet

Subject to Inheritance Tax

- PA TAP – exempt from inheritance tax
- Non-PA Tap – not exemption from inheritance tax
- Roth IRA's – subject to PA inheritance tax