

PREAMBLE

The Department of Revenue (Department), under authority contained in section 1107-C of the Tax Reform Code of 1971 (TRC) (72 P.S. § 8107-C), proposes amendments to 61 Pa. Code, Chapter 91. Realty Transfer Tax, to read as set forth in Annex A.

Purpose of Regulation

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

Explanation of Regulatory Requirements

Three generic changes are proposed throughout the regulation:

(1) "Realty" has been replaced with the term "real estate" to mirror language in the Realty Transfer Tax statute (72 P.S. §§ 8101-C - 8101-D). (2) "Excluded" has been changed to "exempt" in certain situations in order to apply the correct legal terminology. (3) References to § 91.193 throughout this regulation have been updated to reflect major revisions to this section.

Revisions to section 91.101 (relating to definitions) include the following new definitions for terms used in the regulation: "Business trust," "Common level ratio factor" with an example, "Joint trust," "Real party interest," "Straw party" and "Turnkey project." The definition for "Document" has been revised and subparagraphs (i) - (iv) are moved to § 91.193(b). The definition

for "Ordinary trust" has been enhanced. In addition, the following definitions were moved in their entirety from § 91.131 (relating to definitions) in order to consolidate the definitions at section 91.101: "Bona fide sales transaction," "Computed value" and "Grantor's affiliate." The definition for "Computed value" has been enhanced to include real estate with a preferential assessed value under the Pennsylvania Farmland and Forest Land Assessment Act.

Sections 91.132 - 91.137 have been reserved. The majority of the text in these sections has been consolidated under a new § 91.138, "Valuation," as follows:

<u>Current section:</u>	<u>Proposed at § 91.138</u>
§ 91.132. Bona fide sale transactions.	§ 91.138 (1) Bona fide sales. Examples 1 & 2 enhanced.
§ 91.133. Leases.	§ 91.138 (2) Computed value. (viii) and § 91.138(5)(iv)
§ 91.134. Family farm realty and real estate company realty.	§ 91.138 (2) Computed value. (xiii)
§ 91.135 Judicial sales and other transactions.	§ 91.138 (2) Computed value. (i), (ii), (iii), (iv), (v), (vi), (vii) and (xii).
§ 91.136. Appraisal.	§ 91.138 (3) Other valuation methods when there is not a bona fide sale or computed value. (ii)(A)
§ 91.137. Construction contracts.	§ 91.138 (4) Construction contracts and other executory agreements. § 91.138 (5) Special rules related to allocation of value.

Section 91.151 (relating to correctional deed) is amended at Paragraph (3) to correct the term "grantee" to "grantor."

Section 91.152 (relating to confirmatory deed) deletes language in subsection (a) and explains the matter in more detail as new language inserted as subsection (b). The current language at subsection (b) is re-lettered as subsection (c).

Section 91.153 (relating to principal and agent) has been renamed to "Agent and straw party transactions." A new subsection (e), "Agent or straw party conditions," is added to expand on this subject matter that has generated questions from taxpayers.

Section 91.156 (relating to trusts) is revised at subsection (c)(2) with editing changes to make the language consistent with subsection (e)(1). Subsection (h), "Joint trusts," is added.

Section 91.157 (relating to cotenants) is renamed to "Joint estates." New language is inserted at subsection (a) which includes three examples to expand on this subject matter. The current language at subsection (a) is re-lettered to subsection (b) and enhanced with three new paragraphs as well as 4 new examples. The existing language at subsection (b) is re-lettered to subsection (c).

Section 91.160 (relating to exchange of interest in real estate) is revised to remove the reference to § 91.135 (relating to judicial sales and other transactions). In its place, language

is inserted regarding "computed value" which is new to the definition section.

Section 91.162 (relating to turnkey projects) has been improved to eliminate taxpayer confusion on this matter. The existing paragraph has been deleted and replaced with three new subsections: (a) Turnkey conditions; (b) Exemption; and (c) Default.

Section 91.170 (relating to the rule in *Baehr Bros. v. Commonwealth*, 487 Pa. 233, 409 A.2d 326 (1979)) is revised to add clarifying language to Example 1. New language is inserted at subsection (c) regarding "statement of value." The existing language at subsection (c) is re-lettered to subsection (d).

Section 91.172 (relating to leasehold and possessory interests) is a new section with two subsections: (a) Taxable interests; (b) Non-taxable interests. The majority of the language in this new section is relocated from paragraphs in Section 91.193 (relating to excluded transactions).

Subchapter I is renamed from "Excluded Parties and Transaction" to "Exemptions and Exclusions."

Section 91.191 (relating to general applicability of tax) is being reserved. The language is redundant as it already appears in § 91.111(b).

Major revisions are proposed to § 91.193, as well as renaming the section from "Excluded transactions" to "Exemptions and

exclusions." Language is being moved and revised in § 91.193 as follows:

<u>Current § 91.193 location</u>	<u>Proposed location</u>
<u>Subsection (a) moved</u>	§ 91.193(a)(20)
(b) renumbered (a)	§ 91.193(a) Exemptions. (renamed)
(b) (1) (i)-(v)	§ 91.193(a)(1)(i)-(v)
(b) (2) (i)-(iii)	§ 91.193(a)(2)(i)-(iii) (Citation at (a)(2)(i) updated)
(b) (3)	§ 91.193(a)(3)
(b) (4)	§ 91.193(a)(4)
(b) (5)	§ 91.193(a)(5)
(b) (6) (i) (A) (B) (C) (D) (E) (F); (ii); (iii)	§ 91.193(a)(6)(i)(A)(B)(C) (D)(E)(F); (ii); (iii) (Enhanced with additional language & 3 new examples)
(b) (7)	§ 91.193(a)(7)
(b) (8)	§ 91.193(a)(8)
(b) (9)	§ 91.193(a)(9)
(b) (10)	§ 91.193(a)(10)
(b) (11)	§ 91.193(a)(11)
(b) (12) (i) (ii) (iii) (A) (B)	§ 91.193(a)(12)(i)(ii)(iii)(A) (B)
(b) (13)	§ 91.193(a)(13)
(b) (14)	§ 91.193(a)(14)
(b) (15)	§ 91.193(a)(15)
(b) (16)	§ 91.193(a)(16)

<u>Current § 91.193 location</u>	<u>Proposed location</u>
(b) (17)	§ 91.193(a) (17)
(b) (18)	§ 91.193(a) (18)
(b) (19)	§ 91.193(a) (19) (Language added for clarity)
(b) (20)	language deleted as already contained in § 91.202(c); § 91.193(a) (20) now contains language from <u>former</u> § 91.193(a)
(b) (21)	§ 91.193(a) (21)
(b) (22)	§ 91.172(b) - Leasehold and possessory interests
(b) (23)	§ 91.193(b) (3) - under new subsection (b) Exclusions
(b) (24)	§ 91.193(b) (6)
(b) (24) (i)-(iv)	§ 91.172 - Leasehold and possessory interests.
(b) (25)	§ 91.193(b) (7)
(b) (26)	§ 91.172(b) (2)
(b) (27)	§ 91.172(b) (3)
(b) (28)	§ 91.193(b) (5)
(b) (29) & (iii) under definition of "document"	§ 91.193(b) (4)
(b) (30) deleted	Superseded by § 91.170
(b) (31)	Renumbered to § 91.193(a) (22)
(b) (32)	Renumbered to § 91.193(a) (23)
(b) (33)	Renumbered to § 91.193(a) (24)
(b) (34)	Renumbered to § 91.193(a) (25)

Current § 91.193 location

Proposed § 91.193 location

Subsection (b)

New language inserted in (b)
"Exclusions" (renamed)

Paragraph (1) & (2) - moved from
Definition of "document"

Paragraph (3) - moved from
§ 91.193(b)(23)

Paragraph (4) - moved from
Definition of "document" and
§ 91.193(b)(29)

Paragraph (5) - moved from
Definition of "document" and
§ 91.193(b)(28)

Paragraph (6) - moved from
§ 91.193(b)(24)

Paragraph (7) - moved from
§ 91.193(b)(25)

Subsection (c)

First sentence deleted as the rule
appears in subsection (a). Second
sentence is revised for clarity.

Section 91.212 (relating to acquired family farm corporation)
has been amended with clarifying language to be consistent with
§ 91.211 (relating to family farm corporation).

Section 91.233 (relating to transfers by grantor of rented
real estate) has been revised to reflect the Department's policy
on this subject matter. New language has been inserted in this
section, as well as in the corresponding example.

Affected Parties

Any entity transferring an interest in real property could be affected by the regulation.

Fiscal Impact

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

Paperwork

The proposed amendment will require no additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on *November 7, 2011*, the Department submitted a

copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. The Independent Regulatory Review Commission may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

DANIEL MEUSER
SECRETARY OF REVENUE

05/18/11