



REALTY TRANSFER TAX BULLETIN 2024-01

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Transfers from a Decedent's Estate

I. Purpose

The Department of Revenue ("Department") is issuing this Bulletin to address the application of the Pennsylvania Realty Transfer Tax ("RTT") to transfers from a decedent's estate where consideration is exchanged.

II. In General

The RTT is a documentary stamp tax imposed on the value of real estate transferred by deed, instrument, long-term lease, or other writing. See 72 P.S. § 8102-C (imposing the tax); and 72 P.S. § 8101-C (defining "document"). RTT is due on every document unless a specific statutory exemption makes the document nontaxable.

III. Estate Exemption

The RTT law provides an exemption for "[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." 72 P.S. § 8102-C.3(7); see also 61 Pa. Code § 91.193(b)(7). For purposes of this bulletin, this exemption is referred to as the "estate exemption." This exemption has two components:

1. The transfer must be for no or nominal actual consideration; and
2. The transfer must be from the personal representative of the decedent's estate to the decedent's devisee or heir.



A. Consideration

The estate exemption only applies if the transfer is for “no or nominal actual consideration.” It must be a donative transfer. There can be nothing of value given in exchange for the transfer of the real estate.

Pennsylvania’s Commonwealth Court has held that the estate exemption does not apply when there is a sale from an estate. In *Meridian Trust*, a decedent’s daughter was granted an option in the decedent’s will to purchase real estate for \$1,731,191.00, which she exercised. *Meridian Trust*, 613 A.2d 654 (Pa. Cmwlth., 1992). In holding that the purchase of the real estate was taxable, the Commonwealth Court noted that:

The plain language of Section 1102C.3(7) exempts from taxation *only those transfers from a personal representative to a decedent's devisee or heir which are made for no or nominal consideration*. In the appeal before us the actual consideration for the three parcels of real estate was \$ 1,731,191. That sum is not nominal and this Court is not free to engraft additional verbiage upon a Section that is clear and unambiguous. *Black v. Billy Penn Corp.*, 72 Pa. Commonwealth Ct. 628, 457 A.2d 192 (1983).

Id. at 657 (emphasis added).

Consideration is not limited to cash consideration. It can be anything of value. It also includes liens or encumbrances on the real estate, such as a mortgage, that are not removed before the transfer. For RTT purposes, the taxable value of real estate in a bona fide sale is “the amount of the actual consideration therefor, paid or to be paid, **including liens or other encumbrances thereon existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed.**” 72 P.S. § 8101-C (definition (1) of “Value”)(emphasis added). Consequently, if a personal representative transfers a parcel of real estate for any consideration, the estate exemption does not apply.

The exemption is not applicable even if the transfer is made to a decedent’s heir for consideration. If the heir pays anything of value to the estate to receive the real estate, the exemption is not applicable.



("family exemption") applies to transfers from a decedent's estate when the heir is a family member. However, that is not the case. The Pennsylvania Commonwealth Court has held that the decedent's estate is not the decedent. *Meridian Trust*, 613 A.2d at 656. Therefore, the family exemption is inapplicable to the transfer of real estate to an heir.

An exception to the above rule is when a family member, prior to death, enters into a binding agreement to sell real estate to another family member. In those instances, the personal representative of the estate is obligated to finalize the sale and transfer the real estate, initiated during lifetime, from the decedent to the family member. Because the agreement was executed while the decedent was alive, the Department will allow the family exemption to apply to the transfer after death from the decedent's estate to the family member.

V. Examples

Example 1:

A dies intestate. B, C, D, and E are all children of A, and are A's only heirs. At the time of her death, A owned Blackacre, a farm with an appraised value of \$2,000,000. B, C and D decide that they do not want to own Blackacre. However, E decides he wants the real estate. E takes a 1/4 of Blackacre as his distributive share of A's estate and purchases the other 3/4 of Blackacre from A's estate for \$1,500,000 (\$2,000,000 appraised value, less E's share). The 1/4 distributive share of Blackacre is a nontaxable distribution from the estate to an heir and the 3/4 purchase from the estate is taxable. RTT is due on the \$1,500,000 sale price.

Example 2:

F dies testate. G and H are children of F, and his only heirs. At the time of his death, F owned Whiteacre, a piece of commercial real estate that F managed. At the time of F's death, Whiteacre has an appraised fair market value of \$2,000,000. According to F's last will and testament, G and H are to share in F's estate equally. Also, according to the will, G has an option to purchase Whiteacre for the appraised value. G exercises the option and purchases the Whiteacre from F's estate for \$2,000,000, the appraised value. RTT is due on the purchase price of \$2,000,000. The estate exemption does not apply because the transfer was a sale for consideration.



Example 3:

X dies testate. Y is X's only child and is the personal representative of the decedent's estate. Y is also the only heir under the will. At the time of his death, X owned a parcel of real estate that served as the decedent's personal residence. Y lived at the residence with X. At the time of X's death, the real estate has a value of \$250,000. The real estate is encumbered by a mortgage in X's name with a balance of \$80,000. There are no other estate assets or debts. Y conveys title to the real estate to himself, and he continues to live in the house and pay the mortgage. RTT is due on mortgage balance of \$80,000. The estate exemption does not apply to the portion of the real estate subject to the mortgage. The remaining value is considered an exempt transfer pursuant to the estate exemption.

Example 4:

D dies testate. B and S are D's brother and son, respectively. D had many debts when he died. All of D's cash and personal property has been used to pay the estate debts. The only asset left is D's personal residence with a date of death value of \$300,000. The estate still has debts of \$250,000. The real estate will have to be sold to satisfy the creditors.

S does not want the house. So, he disclaims all interests in D's estate.

B, on the other hand, has a sentimental interest in D's real estate because it was his family homestead while growing up and he doesn't want the real estate to be sold. B agrees to pay off the remaining creditors so that he can obtain the real estate from the estate.

RTT is due on \$250,000 that B paid to get the real estate from the estate. The remaining value is considered an exempt transfer pursuant to the estate exemption.

Example 5:

D dies testate and leaves her residuary estate to her two children, A and B. D's residuary estate consists of: (1) a residence with a value of \$500,000, with no mortgage; and (2) \$500,000 in liquid assets. A wants the house, but B would prefer to get cash, so the personal representative transfers the house to A and the liquid assets to B.



No RTT is due in this scenario. Instead of each child taking their respective share of each asset, each child took a distribution-in-kind representing their distributive share of the estate. Therefore, there is no tax due.

Example 6:

D dies testate. Under the terms of D's will, D's residence is to be sold and the proceeds distributed equally to D's two children, A and B. A wants the residence, and elects to buy the home for its fair market value of \$500,000.

RTT is due on the \$500,000 purchase price that A paid to get the real estate from the estate. The estate exemption does not apply because the transfer was a sale for consideration.