

REAL ESTATE TRANSFER TAX

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REAL ESTATE TRANSFER TAX REGULATIONS

Preface

The Philadelphia Realty Transfer Tax was imposed by Ordinance of City Council approved 1952 codified as Chapter 19-1400 amended by Bill No. 567 (approved June 5, 1985) and Bill No. 1259 (approved June 11, 1987.) These regulations have been promulgated by the Commissioner of Revenue of the City, by virtue of the authority of Chapter 1-104 of the Philadelphia Code.¹

¹ The entire Realty Transfer Tax regulations were updated and submitted to the Department of Records on December 7, 1988 (effective January 6, 1989). All subsequent amendments are footnoted.

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SUBCHAPTER A. GENERAL PROVISIONS.

Sec. 101. Superseding Provisions and Authority.

- (a) The provisions of this chapter supersede all prior provisions in connection with this chapter. Prior provisions however, shall remain in effect and apply to any document made, executed, delivered, accepted, or offered for recording prior to July 1, 1987.
- (b) The Realty Transfer Tax is a documentary stamp tax imposed on transfers of ownership of real estate situated within the City. The tax is paid by the affixing of documentary stamps to every document by the person making, executing, delivering, accepting or presenting for recording the document. The Department may make such provisions for the sale of stamps as it deems necessary and may appoint the Records Department as its agent.
- (c) Every document presented for the affixing of a stamp shall include the name, current address and Federal Tax Identification Number of both the transferor and transferee.

Sec. 102. Appeal to Tax Review Board.

Any taxpayer dissatisfied with the determination made by the Department of Records or Department of Revenue may file a Petition for Review with the Tax Review Board.

Sec. 103. Definitions.

ASSOCIATION - An unincorporated enterprise owned or conducted by two or more persons, including without limitation a partnership, limited partnership, or joint venture. "Association" does not include an ordinary trust, decedent's estate, tenancy in common, tenancy by the entireties or joint tenancy.

CERTIFICATE OF TRANSFER - An instrument representing the transfer of equitable ownership in real estate situated in Philadelphia. The information included on this certificate shall include the Federal Tax Identification Number of both the transferor and transferee.

CORPORATION - A corporation, joint-stock association, business trust or banking institution.

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

- (1) A will;
- (2) A conventional mortgage or assignment, extension, release or satisfaction thereof;
- (3) 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, where the consideration is payable over a period of time not exceeding 30 years;
- (4) an instrument which solely grants, vests or confirms a public utility easement.

FAMILY FARM REALTY - The term is defined as follows:

- (1) 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.
- (2) 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.

FINANCIALLY INTERDEPENDENT PERSONS – Persons who live together as a single household and who, for at least six months immediately prior to the date of the transfer of real estate between or among such persons have agreed to share the common necessities of life and to be responsible for each other's common welfare. Individuals currently registered as Life Partners pursuant to Philadelphia Code § 9-1106 (and who have not revoked this status) shall be presumed under these regulations to meet this definition.³

FINANCING TRANSACTION - An arrangement where:

- (1) Realty is transferred by the debtor solely for the purpose of serving as security for the payment of a debt;

³ Added by regulations filed March 5, 2010 (effective April 5, 2010) by its terms applies to transfers on or after November 15, 2007.

- (2) No sale or gift is intended; and
- (3) The debtor retains possession and beneficial ownership of the realty transferred.

MEMBERS OF THE SAME FAMILY - For purposes of subchapters F & G, an individual, the individual's brothers and sisters, the brothers and sisters of the individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. Individuals related by half-blood or legal adoption shall be treated as if they were related by whole blood.

PERSON - A natural person, association or corporation.

REALTY

- (1) The term is defined as follows:
 - (i) An interest in lands, tenements or hereditament within this City including without limitation buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with the conveyance of land.
 - (ii) A condominium unit within this City.
 - (iii) A tenant's interest in a cooperative housing corporation, trust or association within this City under a proprietary lease, occupancy agreement or similar document.
- (2) The term does not include permanently attached machinery, equipment, and improvements which are used directly and exclusively in manufacturing as a necessary and integral part of the manufacturing process.

Sec. 104. Recording of Documents.

Except as provided in Sec. 202 (relating to statement of value), no recorder shall accept a document for recording unless the document is accompanied by a completed statement of value in duplicate showing its claimed value or that it is not taxable, or the document sets forth, as part of the writing, its claimed value and no exclusion from tax is claimed.

Sec. 105. 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.

Subchapter B. IMPOSITION OF TAX

Sec. 201. Imposition of Tax on Documents.

Except as provided in subchapter E (relating to exempt parties and excluded 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 such document or on whose behalf such document is accepted or presented for recording is subject to pay a City tax at the current rate of the value of the realty conveyed, transferred, demised, or released by the grantor under the document.

The tax is payable at the time the document is presented for recording unless it is presented for recording more than 30 days after the date of its acceptance. If the document is not presented for recording or is presented for recording more than 30 days after the date of its acceptance, the tax is payable within 30 days of its acceptance.

Except as provided in subchapter E, it is the joint and several legal duty of all 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 this City against all parties thereto.

Sec. 202. Statement of Value.

- (a) General. - Except as provided in the following subsections, a statement of value in duplicate shall be completed and filed with each 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, if any, 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. - Statements of value need not 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. - Statements of value need not 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. 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 nor to 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; and
 - (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 to any transfer where another exclusion from taxation is claimed.
- (e) Mineral leases. - Although statements of value must be filed to claim the exclusion for a lease of coal, oil, natural gas or minerals, it need not indicate the value of the lease.
- (f) Filing - The Recorders of Deeds shall cross- reference on the statements of value filed with them the deed book volume and page where the document is recorded, and shall retain on file in their office for public inspection, a copy of the statement of value accompanying each document.

Sec. 203. Imposition of Tax on Certificate of Transfer.

- (a) A real estate company is subject to pay a City tax at the current rate times the value of the realty held by the real estate company when it becomes an acquired real estate company under Sec. 602 (relating to acquired real estate company). The tax shall be payable within 30 days after it becomes acquired.
- (b) A family farm corporation is subject to pay a City tax at the current rate times the value of the family farm realty held by the family farm corporation when it becomes an acquired company under Sec. 702 relating to a family farm corporation). The tax shall be payable within 30 days after it becomes acquired.
- (c) When a merger or acquisition of an association or corporation occurs, a City tax at the current rate will be imposed on the value of realty situated in the City acquired from the merged association or corporation by the surviving association or corporation.

Example I

Company A merges with Company B and creates a new company, Company C. Realty situated in the City held by Company A and B is transferred to Company C. Tax is due on the actual monetary worth of the real estate transferred by Company A and B to company C.

Example II

Company X merges into Company Y. Company Y is the surviving company. The realty situated in the City held by Company X has been transferred to Company Y. Tax is due on the value of real estate transferred by Company X to Company Y.

Sec. 204. Evidence of Payment.

- (a) Payment of the tax on documents shall be evidenced by the affixation of tax stamps on the document.
- (b) Payment of the tax on Certificate of Transfer shall be evidenced by the affixation of tax stamps on the Certificate of Transfer.

Sec. 205. Functions of Department of Revenue

- (a) The Department shall sell stamps to be used in paying the tax.
- (b) The Department may also designate the Commissioner of Records, or any other person as its agent for the sale of stamps to be used in paying the tax.

Subchapter C. VALUATION

Sec. 301. Definitions. The following words and terms have the following meaning when used in this sub- chapter:

ACTUAL MONEYTARY WORTH - The amount determined by multiplying the assessed value of the realty for local real estate tax purposes by the common level ratio factor of Philadelphia.

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 their own self-interest and with knowledge of the value of the realty transferred.

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: principal; agent; partner; joint adventurer.

Sec. 302. Bona Fide Sale Transactions.

In a bona fide sale of realty, the value of the realty is the total agreed consideration for the sale which is paid or to be paid. This 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, where they also encumber other realty, and the value of contracted-for improvements if required under Sec. 307 (relating to construction contracts).

Example I (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 II (where 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:

$$\$20,000 \text{ (actual consideration)} + 10,000 \text{ (amount of Lien)} \times [\$4,000 \text{ (assessed value of lot sold to B)} / (\$4,000 + \$6,000) \text{ (assessed value of two lots encumbered by lien)}].$$

Sec. 303. Leases.

The value of leased realty is its actual monetary worth. Where 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.

Sec. 304. Family Farm Realty and Real Estate Company Realty.

The value of family farm realty and real estate company realty is its actual monetary worth.

Sec. 305. Judicial Sales and Other Transactions.

The value of realty is its actual monetary worth where the realty is transferred through any of the following:

- (1) By execution upon a judgment or upon foreclosure of a mortgage or pursuant to a judicial sale 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) Pursuant to a transaction other than a bona fide sale;
- (5) Pursuant to a merger of one company into another;
- (6) Pursuant to a liquidation.

Sec. 306. Appraisal.

The value of realty shall be determined by appraisal only when the realty is not the subject of a bona fide sale, cannot be valued under Sec. 207 (relating to leases); and is not separately assessed for local real estate tax purposes.

Sec. 307. Construction Contracts.

The value of realty also includes the value of contracted-for improvements to the realty such as buildings 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 such contractual obligation is effective with the transfer or was effective prior to the transfer and not removed thereby.

Example I:

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 II:

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 III:

D, a developer, 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 IV:

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 V:

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.

Subchapter D. SPECIAL SITUATIONS.

Sec. 401. 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; and
- (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.

Sec. 402. Confirmatory Deed.

A deed made without consideration for the sole purpose of confirming a prior recorded document is not taxable. This exclusion only applies if:

- (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; and
- (3) The grantor of the deed of confirmation had no interest in the property conveyed or held a void or voidable interest in the property conveyed.

Sec. 403. 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 his 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, here 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.

Sec. 404. Documents Involving Corporations, Partnerships, Limited Partnerships and other Associations.

Corporations, joint-stock associations, business trusts, banking institutions, partnerships, limited partnerships, joint ventures and associations are entities separate from their stockholders, shareholders, partners and members. Transfers between such entities and their stockholders, shareholders, partners or 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 the transaction is excludible under Sec. 503(b)(11) or Sec. 503(b)(12).

Sec. 405. Timber, Crops, Coal, Oil, Natural Gas or Minerals.

- (a) Except as provided in subsections (b) and (c), documents transferring interests in standing timber and crops or unremoved coal, oil, natural gas, or minerals are taxable under this chapter.
- (b) Unremoved coal, oil, natural gas or minerals are considered nontaxable personal property where –
 - (1) The document provides for severance and removal thereof within an ascertainable date; or
 - (2) The grantee's right of severance and removal under the document is for a term of years and for as long thereafter as the grantee continues to exercise his right of severance or removal.

- (c) Standing timber and crops are considered nontaxable personal property where the instrument provides for severance and removal within an immediate ascertainable date.

Sec. 406. Trusts.

- (a) Transfers to trusts.

A transfer to a trust is fully taxable, except if the transfer of the same property would be wholly exempt if the transfer were made directly from the grantor to the possible beneficiaries.

Example:

G transfers property 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) Transfers from trusts.

Transfers from trusts are fully taxable except for transfers for no or nominal actual consideration from the trustee to a beneficiary specified in the original recorded trust agreement under which the property was initially conveyed into the trust.

- (c) Transfers of beneficiaries' interest.

Transfers of beneficiaries' interest in a trust which holds realty situated in Philadelphia is an equitable transfer of real estate subject to tax unless the transfer of the same property would be wholly exempt if the transfer were made directly from the beneficiary to the new beneficiary.

Sec. 407. 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.

Sec. 408. 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 property was conveyed to the agency or authority prior to July 1, 1987.
- (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 pursuant to a financing transaction.
- (3) The transaction meets each of 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.

Sec. 409. 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 pursuant to an orphan's court adjudication allocating realty to a widow as part of her exemption or allowance is not taxable under Sec. 503 (b) (7) (relating to excluded transactions) if the document is without consideration or for nominal actual consideration. A transfer made pursuant to 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 Sec. 503(b)(7) (relating to excluded transactions) 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 each heir or devisee is taxable to the extent of the value of the grantor's interest under the will or under intestate law.

Example I:

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 Sec. 503 (b) (5) (relating to excluded transactions), because the value of each party's share is equal to their undivided interest, the property divided passed by will, and the division was accomplished without additional consideration.

Example II:

Assume the same facts as in Example I, except that B and C convey their interest 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 excludible under Sec. 503 (b) (5) or Sec. 503 (b) (7) (relating to excluded transactions). Unless otherwise excludible (familial relationship, etc.), the lots conveyed to A are excludible only to the extent of A's one-third interest under the will. The interest conveyed by A is fully taxable.

- (c) Where 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 such interest or family agreement, the value of the interest disclaimed is not wholly excludible from tax under Sec. 503(b)(5) or Sec. 503(b)(7) (relating to excluded transactions) unless there is no or nominal consideration passing from the grantee to the heir or devisee for such disclaimer or the conveyance is otherwise excludible from tax.

Example:

Assume the same facts as in example I in (b), except that B and C duly disclaim all of 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 Sec. 503(b)(5) and Sec. 503(b)(7) (relating to excluded transactions) are inapplicable. The conveyances would be taxed the same as in Example 2.

Sec. 410. Exchange of Interest in Real Estate.

If parties exchange realty between themselves, the deeds transferring title to each are all subject to tax. The tax shall be computed on the basis of the value of the interest in each realty conveyed under Sec. 305 (relating to judicial sales and other transactions).

Sec. 411. Charitable, Religious and Educational Organizations.

A transfer of realty to or from charitable, religious, educational or other nonprofit organizations is taxable on the same basis as other deeds. See Sec. 503(b)(17) (relating to excluded transactions).

Sec. 412. Turnkey Projects.

A transfer of realty to a developer or contractor who is required by contract to reconvey the realty to the grantor after making contracted-for improvements to the realty is not taxable if no beneficial interest is transferred to the developer or contractor. The reconveyance to the grantor is also not taxable.

Sec. 413. Ground Rents.

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

Sec. 414. Quitclaim Deeds.

A quitclaim deed is taxable upon the same basis as other deeds if there is an actual conveyance of real estate. See Sec. 401 and Sec. 402 (relating to correctional deed and confirmatory deed).

Sec. 415. Reservations or Conveyances of Life Estates.

- (a) Table 1 is used in computing the tax base of a life estate or remainder interest in realty. If the transferor has conveyed only a life estate in realty, while reserving the remainder to himself, the transaction is taxable. The tax base is computed by multiplying the value of the realty as determined under Sec. 302 (relating to bona fide sales transactions) by the life estate factor, based on the age of the life tenant, taken from Table 1.

Example:

L conveys a life estate to T in realty that is valued pursuant to Sec. 304 at \$100,000. T is 50 years old. Life estate factor is: .84743; Value = $\$100,000 \times .84743 = \$84,743$.

- (b) If the transferor of realty has reserved to himself a life estate, while conveying the remainder, the transaction is taxable. The tax base shall be computed by multiplying the value of the realty as determined under Sec. 302 by the remainder factor, based on the age of the life tenant, taken from Table 1.

Example:

L conveys to T realty that is valued pursuant to Sec. 304 at \$100,000 but reserves a life estate for himself. L is 50 years old. Remainder factor is: .15257; Value = $\$100,000 \times .15257 = \$15,257$.

Sec. 416. Life Maintenance.

Conveyance of realty in consideration of life maintenance is a taxable transaction. Tax shall be computed based on the value of the interest in realty conveyed.

TABLE I

| 1 Age | 2 Life Estate | 3 Remainder | 1 Age | 2 Life Estate | 3 Remainder |
|----------|------------------|----------------|----------|------------------|----------------|
| 0 | .97188 | .02812 | 51 | .83874 | .16126 |
| 1 | .98988 | .01012 | 52 | .82969 | .17031 |
| 2 | .99017 | .00983 | 53 | .82028 | .17972 |
| 3 | .99008 | .00992 | 54 | .81054 | .18946 |
| 4 | .98981 | .01019 | 55 | .80046 | .19954 |
| 5 | .98938 | .01062 | 56 | .79006 | .20994 |
| 6 | .98884 | .01116 | 57 | .77931 | .22069 |
| 7 | .98822 | .01178 | 58 | .76822 | .23178 |
| 8 | .98748 | .01252 | 59 | .75675 | .24325 |
| 9 | .98663 | .01337 | 60 | .74491 | .25509 |
| 10 | .98565 | .01435 | 61 | .73267 | .26733 |
| 11 | .98453 | .01547 | 62 | .72002 | .27998 |
| 12 | .98329 | .01671 | 63 | .70696 | .29304 |
| 13 | .98198 | .01802 | 64 | .69352 | .30648 |
| 14 | .98066 | .01934 | 65 | .67970 | .32030 |
| 15 | .97937 | .02063 | 66 | .66551 | .33449 |
| 16 | .97815 | .02185 | 67 | .65098 | .34902 |
| 17 | .97700 | .02300 | 68 | .63610 | .36390 |
| 18 | .97590 | .02410 | 69 | .62086 | .37914 |
| 19 | .97480 | .02520 | 70 | .60522 | .39478 |
| 20 | .97365 | .02635 | 71 | .58914 | .41086 |
| 21 | .97245 | .02755 | 72 | .57261 | .42739 |
| 22 | .97120 | .02880 | 73 | .55571 | .44429 |
| 23 | .96986 | .03014 | 74 | .53862 | .46138 |
| 24 | .96841 | .03159 | 75 | .52149 | .47851 |
| 25 | .96678 | .03322 | 76 | .50441 | .49559 |
| 26 | .96495 | .03505 | 77 | .48742 | .51258 |
| 27 | .96290 | .03710 | 78 | .47049 | .52951 |
| 28 | .96062 | .03938 | 79 | .45357 | .54643 |
| 29 | .95813 | .04187 | 80 | .43659 | .56341 |
| 30 | .95543 | .04457 | 81 | .41967 | .58033 |
| 31 | .95254 | .04746 | 82 | .40295 | .59705 |
| 32 | .94942 | .05058 | 83 | .38642 | .61358 |
| 33 | .94608 | .05392 | 84 | .36998 | .63002 |
| 34 | .94250 | .05750 | 85 | .35359 | .64641 |
| 35 | .93868 | .06132 | 86 | .33764 | .66236 |

| 1 Age | 2 Life Estate | 3 Remainder | 1 Age | 2 Life Estate | 3 Remainder |
|----------|------------------|----------------|----------|------------------|----------------|
| 36 | .93460 | .06540 | 87 | .32262 | .67738 |
| 37 | .93026 | .06974 | 88 | .30859 | .69141 |
| 38 | .92567 | .07433 | 89 | .29526 | .70474 |
| 39 | .92083 | .07917 | 90 | .28221 | .71779 |
| 40 | .91571 | .08429 | 91 | .26955 | .73045 |
| 41 | .91030 | .08970 | 92 | .25771 | .74229 |
| 42 | .90457 | .09543 | 93 | .24692 | .75308 |
| 43 | .89855 | .10145 | 94 | .23728 | .76272 |
| 44 | .89221 | .10779 | 95 | .22887 | .77113 |
| 45 | .88558 | .11442 | 96 | .22181 | .77819 |
| 46 | .87863 | .12137 | 97 | .21550 | .78450 |
| 47 | .87137 | .12863 | 98 | .21000 | .79000 |
| 48 | .86374 | .13626 | 99 | .20486 | .79514 |
| 49 | .85578 | .14422 | 100 | .19975 | .80025 |
| 50 | .84743 | .15257 | | | |

Sec. 417. Deed of Easement.

Except as provided in Sec. 503 (b) (27) (relating to public utility easements), easements represent a taxable interest in real estate. The tax base in such instances is the actual consideration or the actual monetary worth thereof.

Sec. 418. Judicial Sales.

Unless excluded under subchapter E (relating to exempt parties and excluded transactions), realty sold by execution upon a judgment or upon a foreclosure of a mortgage, by judicial sale by a sheriff, marshall or judicial officer or by a tax claim bureau is taxable. The tax on the realty transferred by the sale shall be paid out of the proceeds of the sale by the judicial officer conducting the sale before any other claim. The purchaser at the sale shall be liable for tax only if the sales proceeds are insufficient to pay the entire tax and only to the extent of the tax remaining due.

Sec. 419. Sale and Leaseback Transactions.

If realty is transferred on condition that it be leased back to the transferor:

- (a) The document of transfer is taxable, unless the transaction is an excludible transaction under Section 503 (relating to excluded transactions). See, e.g., Section 503(b)(23).
- (b) The leaseback to the transferee is excludible from tax.

Subchapter E. EXCLUDED PARTIES AND TRANSACTIONS.

Sec. 501. 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.

Sec. 502. Excluded Parties.

- (a) The Commonwealth of Pennsylvania and its governmental subdivisions, instrumentalities, agencies, and other subordinate governmental bodies and the United States of America 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 shall 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.

Sec. 503. Excluded Transactions.

- (a) Excluded parties. A transaction in which all parties are excluded parties pursuant to Sec. 502(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, the Commonwealth or to any of their instrumentalities, agencies or governmental bodies if the transfer is:
 - (i) In lieu or confirmation of a taking by eminent domain (to qualify for the exclusion, the deed must be made pursuant to a prior statute, ordinance, resolution, plan or order for the condemnation, appropriation, or acquisition of the real estate transferred by condemnation or by condemnation or purchase).
 - (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 such reconveyance is made within one year of condemnation.
 - (iv) Pursuant to a judicial sale for the collection of taxes or a levy and seizure of property for the collection of taxes.
 - (v) Pursuant to 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 pursuant to a bankruptcy plan confirmed under 11 U.S.C. 1129 (relating to confirmation of plan) and exempt pursuant to 11 U.S.C. 1146(c) (relating to special tax provisions). To claim this exclusion, a copy of the order directing the transfer must accompany each statement of value.
 - (ii) A transfer pursuant to 45 U.S.C Sec. 1106(a)(1) (relating to transfers of railroad property).
- (3) A conveyance to a local taxing authority pursuant to acquisition by the authority of a tax delinquent property at sheriff sale or tax claim bureau sale.
- (4) A correctional deed or confirmatory deed. See Sec. 401 and Sec. 402 (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 co-tenants. However, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess. See Sec. 409 (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 ascendant (parent, grandparent, great grandparent, etc.) and lineal descendent (child, grandchild, great grandchild, etc.).
 - (C) Children of the same parent (siblings).
 - (D) A lineal ascendant (parent, grandparent, great grandparent, etc.) 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 such 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, provided the transferred realty was acquired by both spouses or by either spouse during their marriage.
- (ii) A subsequent transfer by the transferee within one (1) year shall be subject to tax as if the original grantor was making the transfer to the transferee's grantee.

Example:

A and B, C's parents, transferred two lots to C and D, C's spouse. Within one year of that transfer, C and D conveyed one of the lots to E and P, D's parents, and the other lot to G, C's brother. The transfer to E and F is not excludible, because a direct transfer from A and B to E and F would have been taxable. The transfer to G is excludible, because the transfer between C and D and G is an excludible 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 excludible 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 Sec. 409 (relating to transfers by will or intestate law).

- (8) A transfer for no or nominal consideration to a trustee or an ordinary trust where the transfer of the same property would be excluded if the transfer were made directly by the grantor to all the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. See Sec. 406 (relating to trusts).
- (9) A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust. See Sec. 406 (relating to trusts).
- (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 Sec. 403 (relating to principal and agent or straw party).
- (12) 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 a security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority. See Sec. 408 (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 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.

- (13) A transfer from a nonprofit industrial development agency or authority to an industrial enterprise purchasing directly from it. See Sec. 408 (relating to industrial development authorities and agencies).

- (14) A transfer from a nonprofit industrial development agency or authority of a property conveyed to the authority or agency and in a transaction in effect prior to July 1, 1987.
- (15) A transfer to the original grantor holding the purchase money mortgage in default if the transfer is made in lieu of foreclosure or the transfer is made pursuant to a judicial sale. 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. In order to claim this exemption the statement of value must indicate the mortgage book volume and page where the mortgage is recorded.
- (16) A transfer between religious organizations if:
 - (i) Both the grantor and grantee are either a religious or apostolic association or corporation, or a non-profit 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 Section 501(d) of the Internal Revenue Code (26 U.S.C.A. 501 (c)(3) or (d) (relating to exemption from tax on corporations, certain trusts, etc.).
 - (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.
- (17) A transfer to a conservancy which possesses a tax exempt status under Section 501 (c) (3) (relating to exemption from tax on corporations, certain trusts, etc.) of the internal Revenue Code (26 U.S.C.A. Section 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open space opportunities.

- (18) 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.
- (19) Transfers of interest in a real estate company between members of the same family. See section 602(c) (relating to acquired real estate company).
- (20) A transaction when the true, full, and complete value of the interest in real estate evidenced by the document is \$100 or less.
- (21) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof. See Sec. 405 (relating to timber, crops, coal, oil, natural gas or minerals).
- (22) 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:

In a sale-leaseback transaction, a transfer title to realty to B in exchange for a cash payment. As part of the same transaction, B immediately leases back the property to A for 25 years. A's rental payments under the lease are sufficient to allow B to recoup his entire cash payment to A plus interest on such cash payment. A has the right to repurchase the realty from B for a nominal amount at the end of the lease term.

- (23) A real estate lease or occupancy agreement, unless one of the following applies:
 - (i) The lease or occupancy agreement is perpetual or otherwise approximates a perpetual lease.
 - (ii) The lease or occupancy agreement can be termed a "capital" lease under Generally Accepted Accounting Principles (G.A.A.P.) Accounting for Leases.

G.A.A.P. requires that a capital lease must have one of the following requirements:

1. Title in the real estate is transferred to the lessee at the end of the lease term.

2. The lease contains a bargain purchase option (or other method for lessee to acquire ownership).
 3. The "lease term" is 75% or more of the economic life of the real estate. Lease term includes the time period specified in the lease agreement and the periods covered by renewal options.
 4. The present value of the lease payments is 90% or more of the fair value of the lease and real estate; or
- (iii) The lease does not constitute an excludible lease under Sec. 419 (relating to sale and leaseback transactions).
- (24) 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.
- (25) The rescission, cancellation or abandonment of an existing lease or contract for a deed.
- (26) 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 I:

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 II:

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 creates a capital lease in the premises under the assignment, the assigned lease is subject to tax.

- (27) Transfer of an easement to a person furnishing public utility service, if the easement is used in, or useful for, furnishing public utility services.
- (28) A contract for a deed whereby 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.
- (29) 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.
- (30) A transaction evidenced by a document made, acknowledged and accepted prior to February 15, 1951.
- (31) A transfer of tenant interests in a cooperative if:
 - (i) The cooperative is organized for the transfer of interest in property on a not-for-profit basis in accordance with guidelines set forth in Section 213 of Title II of the National Housing Act as amended from time to time.
- (32) A transfer for no or nominal actual consideration of property conveyed pursuant to the provisions of Chapter 16-1400 of the Philadelphia Code.
- (33) A transfer pursuant to the Urban Redevelopment Law of 1945 for no or nominal actual consideration or for a consideration which is substantially less than value.
- (34) A transfer to or from a non-profit housing corporation incorporated by officials of the City for the purpose of promoting the development of low cost housing in the City of Philadelphia. If the transfer is to a for profit grantee or to a person who does not qualify as a low to moderate income person as defined by the Housing and Community Development Act of 1987, as amended, then the transfer is subject to tax.
- (35) A transfer between financially interdependent persons, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the granter were making such transfer, and provided such persons file a sworn affidavit with the Records Department, an

agent of the Revenue Department, certifying their status as financially interdependent persons.⁴

- (i) The status of individuals as financially interdependent persons is one of fact. That is, the relationship between or among individuals responsible to one another for the common necessities of life (i.e. food, clothing, shelter etc.) as well as each other's common welfare (i.e. emotional well-being) must be genuine and not for the sole purpose of claiming this exclusion from the tax.
- (ii) The Records Department will look to the preponderance of actual evidence in order to determine the validity of the status of individuals as financially interdependent persons. This evidence includes (but is not limited to) the following:
 - Relationships such as aunt, uncle, nephew, niece, cousin, son/daughter/sister/brother-in-law, step father/mother/sister/brother/son/daughter, common-law marriage, domestic partners etc.;
 - Household bills held or paid jointly;
 - Jointly-owned investment/savings/bank accounts;
 - Beneficiary designation on life insurance policies or retirement benefits;
 - Designation as executor/executrix or beneficiary in a will, trust or other estate planning tool;
 - Individual is or was the legal guardian of another;
 - The presence of the same address on legal documents such as driver's licenses, voter registration cards, tax returns, etc.;
 - Common ownership of a motor vehicle;
 - Appointment as a medical or financial power of attorney or health care agent.
- (iii) If the Records Department or Revenue Department finds that the individuals are not Financially Interdependent Persons and assesses the Realty Transfer Tax, an appeal of the decision may be filed with the City of Philadelphia's Tax Review Board pursuant to Philadelphia Code § 19-1702.

⁴ Added by regulations filed March 5, 2010 (effective April 5, 2010) by its terms applies to transfers on or after November 15, 2007.

Sec. 504. Statement of Value.

Except for the exclusion for public utility easements in Sec. 503(b) (27) and the exclusion for familial transactions in Sec. 503(b) (6), in order to exercise any 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 such document is not subject to tax.

Subchapter F. REAL ESTATE COMPANY.

Sec. 601. 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 of which comprises 90% or more of its entire tangible asset holdings, exclusive of tangible assets which are freely transferable and actively traded on an establish 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 is 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 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.

Sec. 602. 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 three (3) years, has the affect 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 his ownership interest;
 - (2) A member's withdrawal or the addition of a new member; or
 - (3) An issuance or cancellation of stock.

Example I:

A and B are equal partners in their partnership. Over a period of two 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 two 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 II:

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 III:

C and D each own 50 shares or 50% of the stock of a corporation. C and D transfer all of their stock to E, C's son, over a three 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) Reacquisition. 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 three 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.

Sec. 603. Certificate of Transfer.

Within 30 days of its becoming an acquired real estate company, the company shall present for recording a completed Certificate of Transfer to the Department of Records of the City of Philadelphia. If the company fails to present a completed Certificate of Transfer within 30 days after becoming an acquired company, the company may be liable for penalty. See Section 1002 (relating to penalties).

Subchapter G. FAMILY FARM CORPORATIONS.

Sec. 701. Family Farm Corporation.

- (a) A corporation must meet both of the following requirements to constitute a family farm corporation:
 - (1) At least 75% of the corporation's assets are devoted to the business of agriculture; and
 - (2) At least 75% of each class of stock of the corporation is owned by individuals who are members of the same family.
- (b) For the purpose of (a):
 - (1) To qualify as assets used in the business of agriculture, the assets must be owned and used directly by the corporation claiming the exemption, be principally devoted to the business of agriculture, and be property of the sort commonly used in such business.
 - (2) An asset of a corporation is devoted to the business of agriculture only if the asset is set apart and directly used by the corporation primarily for the 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;
 - (iii) The rearing, feeding, breeding and management of fish or other aquatic animals for use as a food or food product.
 - (3) An asset is not devoted to the business of agriculture if it is set apart and directly used principally in:
 - (i) Recreational activities such as hunting, fishing, camping, skiing, boating, show competition or racing;
 - (ii) Raising, breeding or training of game animals or birds, fish, cats, dogs or of any animal intended to be used in sporting events or for recreational activities;

- (iii) Fur farming;
 - (iv) Stockyard and slaughterhouse operations;
 - (v) Manufacturing or processing operations of any kind;
 - (vi) The business of holding property for rental income.
- (4) For the purposes of (a), the provisions of Sec. 601(b) (relating to real estate company) apply.

Sec. 702. Acquired Family Farm Corporations.

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 any class of stock of the corporation is owned by individuals who are members of the same family.
- (3) The corporation is dissolved.

Sec. 703. Certificate of Transfer

A Certificate of Transfer shall be filed in accordance with Sec. 603 (relating to Certificate of Transfer) with respect to family farm realty held on the date the family farm corporation became acquired.

Subchapter H. CREDITS AGAINST TAX.

Sec. 801. 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 must 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 one 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 |

Sec. 802. Transfer 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 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 must accompany the document. For computation, see the Example in Section 801.

Sec. 803. Transfer 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 must 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 \$1,000,000. 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 |

Sec. 804. 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 must accompany the document. For computation, see the example in Section 801 (relating to transfers by real estate brokers).

Sec. 805. 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 shall be allowed.

Subchapter I. REFUNDS.

Sec. 901. Tax Credits.

- (a) Whenever the amount due upon a determination of tax, redetermination of tax or review is less than the amount paid to the Department on account thereof, the Department will enter a tax credit in the amount of such overpayment to the account of the person who paid the tax.
- (b) Except where there has been a determination of unpaid tax, the Department will administratively review and decide each application for the allowance of a refund and, upon allowance of the application, will enter a credit in the amount of the overpayment to the account of the person who paid the tax.

Sec. 902. Notice of Tax Credit; Refunds.

Except where the taxpayer who made the overpayment is indebted to the City, a tax credit shall be promptly refunded. Otherwise, the Department shall promptly issue a notice of determination of credit. The credit shall be used by the taxpayer to whose account it is entered or by the Department in payment of any tax obligation which may be due to the City; and if all such charges have been fully paid, any remaining credit shall be refunded.

Sec. 903. Application for Refund.

Applications for refund must be made on a "Realty Transfer Tax Application For Refund" form provided by the Department and mailed to the Department of Revenue's Refunds Unit, Municipal Services Building, Room 320, Philadelphia, Pa. 19102. Applications for refund must be received by the Department within three years of the payment for which a refund is requested.

Sec. 904. Appeals.

If the taxpayer is dissatisfied with the Department's action on his application for refund or if a determination of unpaid tax has been made, then the taxpayer may petition the Tax Review Board. Petitions must be filed with the Board within sixty days of notice of the Department's action.

Subchapter J. DETERMINATIONS.

Sec. 1001. Determination of Additional Tax.

The Department is authorized to make a determination of additional tax if a person fails to pay tax.

Sec. 1002. Penalty.

The Department is authorized to include in its determination:

- (1) An amount equal to 50% of additional tax if any part of the underpayment of tax imposed by this chapter results from the willful false representation or willful concealment of a material fact on a statement of value or declaration of acquisition.
- (2) In the case of failure to record a certificate required under Sec. 603 or Sec. 703 on the date prescribed, an amount equal to 5% of the total tax paid and additional tax, unless it is shown that such failure is due to reasonable cause. If the failure is for more than one month, an additional 5% for each additional month or fraction thereof during which such failure continues shall be added, but not exceeding 50% of the total tax.

Sec. 1003. Notice of Tax.

The Department shall promptly send a copy of its determination to the person against whom it is made.

SUBCHAPTER K. LIENS

Sec. 1101. Liens.

- (a) Additional tax, interest, and penalties determined to be due and remaining unpaid after demand for payment shall be a lien in favor of the City upon all property of the taxpayer.