



**March 26, 2004 (Reissued March 27, 2009)
Pennsylvania Inheritance Tax
No. INH-04-002
Property Held in Trust (Gasoline Station)**

ISSUE

Whether an interest in real estate is subject to Pennsylvania inheritance tax in the estate of the Decedent where the property was conveyed by Decedent to Decedent's Wife in trust as per a property settlement agreement executed three years before the Decedent's date of death, but where the Decedent maintained control of the interest as trustee?

CONCLUSION

An interest in real estate conveyed three years before Decedent's date of death through a property settlement agreement is not subject to Pennsylvania Inheritance Tax where the property is conveyed for full and adequate consideration and the Decedent maintained nominal control over the interest after execution of the agreement.

FACTS

During his lifetime, Decedent owned a sixty percent interest in commercial real estate and a corresponding lease to a commercial gasoline service station of the premises. Decedent and Wife entered into a Property Settlement Agreement on July 27, 2000 in an effort to settle the marital estate as per the divorce action of the parties. The terms of the Agreement stated in relevant part:

Husband by the execution hereof agrees to assign to the Wife the Husband's interest in and to the property and the Lease. The Wife acknowledges that in order to accommodate the Husband's partner, the Husband's name shall remain on the property and the partnership and the Wife's interest therein shall be held in trust by the Husband for the benefit of the Wife. The Husband shall remit to the Wife the Husband's monthly income from the Lease within five (5) days of Husband's receipt of same. The Husband shall not do any thing which shall otherwise alter, diminish or change the Wife's interest in and to the Property and Lease. Any changes to the Lease or sale, transfer, mortgage or exchange of the Property shall require the Wife's prior written consent. The Wife and Husband shall execute and record a memorandum of Wife's interest in and to the Lease and Property, which shall be recorded in the Recorder of Deeds Office, Pennsylvania.

After execution of said Agreement, Husband began to remit all income on a regular basis to Wife and Wife duly reported said income on her federal and state income tax returns. Husband reported no interest in said Lease or Property on any tax returns. Husband and Wife failed to record said Agreement with the Recorder of Deeds after execution.

DISCUSSION

The Inheritance and Estate Tax Act of 1991 states that any transfer of property made by a resident during his lifetime are subject to tax to the extent that they are made without valuable and adequate consideration in money or money's worth at the time of transfer. 72 P.S. § 9107(c)(3).

Here, based upon a review of the Agreement as well as supporting documentation it appears that the Decedent transferred the Property and Lease for valuable and adequate consideration in money or money's worth at the time of execution of the Agreement. Additionally, despite the language of the Agreement that leaves the property in the control of the Decedent as trustee after execution, Decedent's control of the property was at best, nominal.

Decedent could not alter or amend Wife's rights to the Property and Lease without her express consent. As such, Wife effectively controlled the disposition of the Property and Lease after the execution of the Agreement, and Decedent's limited interest as "trustee" to the property was insufficient to subject the property to inheritance tax in his estate.