



**July 13, 2004 (Reissued July 14, 2009)**  
**Pennsylvania Inheritance and Estate Tax**  
**No. INH-04-006**  
**Estate of Deceased/Real Property/Life Estates**

**ISSUE**

Whether real property conveyed by Taxpayer to Taxpayer's children with life estates reserved for Taxpayer and Taxpayer's spouse is subject to Pennsylvania Inheritance Tax at the death of Taxpayer?

**CONCLUSION**

Real property conveyed by Taxpayer to Taxpayer's children with life estates reserved for Taxpayer and Taxpayer's spouse is subject to Pennsylvania Inheritance Tax at the death of Taxpayer.

**FACTS**

In 1988, Taxpayer conveyed real property to Taxpayer's children with a life estate reserved for Taxpayer and Taxpayer's wife. Both Taxpayer and his wife continued to reside in the real estate until Taxpayer's death in 2002. His wife died in 2003. No Inheritance Tax returns were filed nor were any estates opened for the couple. At issue is whether the property conveyed is subject to Pennsylvania Inheritance Tax.

**DISCUSSION**

Section 2107(c)(5) of the Inheritance and Estate Tax act of 1991 states that inheritance tax shall be imposed upon any transfer:

Under which the transferor expressly or impliedly reserves for his life or any period which does not in fact end before his death, the possession or enjoyment of, or the right to the income from, the property transferred, or the right, either alone or in conjunction with any person not having an adverse interest, to designate the persons who shall possess or enjoy the property transferred or the income from the property is subject to tax.

72 P.S. § 9107(c)(5).

Thus, any real estate transferred by a decedent prior to his death wherein the decedent expressly reserved the right to possess the real estate, will be subject to tax at the death of the transferor.

Here, Taxpayer expressly reserved a life estate for himself and his wife in 1988 and exercised his right to possess the real estate until his death in 2002. Consequently, the real estate was properly subject to tax at his death in 2002.

Since Section 2107 describes a taxable transfer as one by which a transferor reserves an estate for "his life," it necessarily follows that either life estate holder cannot possess the ability to transfer the entire property. Consequently, only one-half of the property transferred at the death of Taxpayer.

Given that the deed of conveyance characterizes Taxpayer and his wife as "husband" and "wife" grantors and life estate holders, the Department concludes that the one-half of the real estate transferred by Taxpayer on his death in 2002 was transferred to his wife, rather than to the grantees. As the transfer occurred after the Inheritance and Estate Tax Act of 1991 was amended to allow spousal transfers to be taxed at a rate of zero percent, this interest should be reported on a Pennsylvania Inheritance Tax return for Taxpayer, taxed at zero percent of the date of death fair market value. 72 P.S. § 9116(a)(1.1)(ii).

On the death of Taxpayer's wife in 2003, the final life estate ended and the entire property was transferred to the grantees, daughter and son-in-law of the Taxpayer. This interest should be reported on a Pennsylvania Inheritance Tax Return at the fair market value as of the wife's date of death and taxed at the lineal rate of tax. See generally, 72 P.S. § 9116(a)(3).