



**July 13, 2005
(Reissued July 13, 2010)
Pennsylvania Inheritance Tax
No. INH-05-004
Spousal Trust**

ISSUE

Decedent's will established a spousal trust. Is the subsequent distribution to the residual heirs taxable in the decedent's estate or the surviving spouse's estate?

CONCLUSION

The distribution is taxable in the decedent's estate as the trust only gave the spouse an interest in the income and not the principal and therefore, any subsequent distribution would be from the decedent's estate.

FACTS

For purposes of this letter the following designations will be made:

- A. Husband, deceased
- B. Wife, deceased

The facts, as related in your letter, are that A died in 1974. For Pennsylvania Inheritance Tax purposes, his estate was insolvent. No estate was ever raised and no inheritance tax return was filed. ^[1] A's will established a trust that was funded with non-probate assets. The non-probate assets were the proceeds from insurance policies and pension benefits. It is unknown who the beneficiary of the policies was; and for purposes of this letter ruling, it is being assumed that the beneficiary was A's estate. Pursuant to decedent's will, these non-probate assets were placed in a trust. B was given a life estate in the income only; the residuum was to go to certain remaindermen.

Item Three of A's will states:

Residue: I give and devise the residue of my estate to my Trustee to hold IN TRUST and to distribute the income and principal as follows:

- A. During the life of my wife, B, to pay to her at least quarterly the net income therefrom.
- B. On the death of my wife, B, to distribute the principal as follows:
 - 1. The sum of One Thousand (\$1,000.00) Dollars to XYZ Church, to be used for such purpose as the Church Finance Committee may decide.
 - 2. The balance shall be paid as follows:
 - a. Sixty percent thereof to my daughter,
 - b. Twenty percent to my grandson 1,
 - c. Twenty percent to my grandson 2.

You wish to find out if the bequest is included in A's estate or in B's estate.

DISCUSSION

No inheritance tax return was filed by A's estate. Therefore, no election was made to defer

^[1] This information was not included in your letter but was determined upon a review of the Department's computer system.



the tax pursuant to 72 P.S. § 9113. A's will gave B a life estate only in the income of the trust and no rights over the principal. The distribution of the principal is consequently

pursuant to decedent's will and from the decedent's estate. Since the distribution is from the decedent's estate, it was taxable at the time of the decedent's death. Please file a return for the decedent's estate including the asset.