



November 29, 2010
Pennsylvania Inheritance Tax
No. INH-10-003
Irrevocable Trust

ISSUE

Whether an irrevocable trust established by a decedent more than one year from the decedent's date of death, that allows for the decedent to alter the disposition of certain trust property up to the decedent's date of death is subject to Pennsylvania Inheritance Tax?

CONCLUSION

An irrevocable trust that expressly permits the decedent to alter the disposition of trust assets up until death is subject to Pennsylvania Inheritance Tax.

FACTS

On or about December 18, 2008, the decedent created the Trust. This Trust was created as an irrevocable trust, with the decedent serving as trustee. The decedent's daughter and grand-daughter served as Trust Protectors. The stated purpose of the trust was "to manage the donor's assets and provide for the donor's family."

Section 1.3 of the Trust expressly stated that the donor may not revoke or amend the agreement. However, the donor retained the right to change paragraph 3.1(b) of the Trust. Section 3.1(b) of the Trust provided for the distribution of the corpus of the Trust on the donor's death. Further, Section 3.1(a) allowed the donor to alter provisions of the Trust that govern the disposition of real estate on the death of the donor.

Section 2.1 provided for distributions of principal and income to the Protectors but specifically prohibits distributions of income to the donor during his lifetime.

DISCUSSION

The Inheritance and Estate Tax Act of 1991 plainly states that any transfer made a decedent prior to death for less than adequate consideration is subject to Pennsylvania Inheritance Tax when said transfer contains either an express or implied reservation of the right to income from the property or the right either alone or in conjunction with any person not having an adverse interest, to designate the persons who shall possess the transferred property. 72 P.S. § 9107(c)(5). Here, while the Trust may be considered irrevocable, and the donor had no right to income, he retained the rights as specified in paragraph 1.3. As such, the corpus of the trust remains subject to Pennsylvania Inheritance Tax.