



July 18, 2011
Pennsylvania Realty Transfer Tax
No. RTT-11-001
Exempt Transactions

ISSUE

Whether a deed from an ex-spouse ("Wife") to the executor of her deceased ex-spouse ("Husband" or "Decedent") is exempt from Pennsylvania Realty Transfer Tax as a family transfer?

CONCLUSION

The deed is exempt based upon the facts and explanation below.

FACTS

Taxpayers during their marriage acquired real property as Tenants by the Entirety. A Complaint in Divorce was subsequently filed. Counsel for Husband/Decedent accepted service of the Complaint. Affidavits of Consent were executed by Wife and. The affidavits were filed with the Court. Thus, grounds for divorce had been established before Husband's subsequent death.

Notice of Husband's Death was filed with the Court and a Substitution as Successor was filed. An Order approving the substitution of Executor of the Estate was entered by the Court pursuant to Pennsylvania Rule of Civil Procedure 2352.

During their marriage, Taxpayers entered into a Post-Nuptial Agreement, the terms of which were incorporated into the Marital Settlement Agreement, which was signed by Wife and Executor.

The Court of Common Pleas issued an "Order Approving Marital Settlement Agreement and Terminating Divorce Action" (the "Order").

Under the Post-Nuptial Agreement the parties agreed that upon termination of the marriage, other than by the death of one of the parties, "all property owned by the parties shall be divided as follows: (i). One Third of all such property to [Wife]; and (ii). Two-Thirds of all such property to [Husband]."

The Order provides that ". . . each party acknowledges and accepts that this [Property Settlement] Agreement conforms with the provisions of the Post-Nuptial Agreement. . . ."

The Order approving the Property Settlement Agreement provides for the equitable distribution of marital property including the real property at issue.

DISCUSSION

The Pennsylvania Realty Transfer Tax law provides that transfers of real estate between former spouses are exempt from tax if the transferred real estate was acquired by both spouses, or by either spouse before or during the marriage. 72 P.S. § 8102-C.3(6) and 61 Pa. Code § 91.193(b)(6)(i)(F).

Had the deceased ex-spouse (Husband) lived and the transfer had been made to the deceased ex-spouse during his lifetime, there would be no Realty Transfer Tax due. In this case, the transfer is not to the deceased ex-spouse, but to the deceased ex-spouse's executor.



Under *Meridian Trust Co. v. Commonwealth*, 613 A.2d 654 (Pa. Commw. 1992), the Commonwealth Court held when there was a sale from a decedent's estate, the decedent's estate/personal representative does not stand in the place of the decedent. Despite the holding in *Meridian*, it is the Department's position that if there is a pre-existing legal obligation for the transfer of real estate before the death of a decedent, the decedent's estate/personal representative will be treated as standing in the place of the decedent for purposes of the real estate transfer.

In this case, the surviving ex-spouse was under a pre-existing obligation (pursuant to the divorce and property settlement agreement) to transfer the real estate to the deceased ex-spouse before his death. Further, the Executor is required under Pennsylvania law to complete the divorce action which includes the division of the marital property per the Marital Settlement Agreement. As surviving ex-spouse and Executor were merely satisfying an obligation entered into pre-death by the deceased ex-spouse and the surviving ex-spouse, the Executor may stand in the shoes of the Decedent for purposes of the real estate transfer in this case. Therefore, the deed of transfer is exempt from Pennsylvania Realty Transfer Tax.