

May 6, 2016
Pennsylvania Realty Transfer Tax
No. RTT-16-002
Agricultural Conservation Easement

ISSUE:

Is a deed conveying an agricultural conservation easement under the Agricultural Area Security Law from Taxpayer, an individual, to a Commonwealth political subdivision for consideration of one dollar (\$1.00) subject to Pennsylvania Realty Transfer Tax?

CONCLUSION:

The conveyance is a gift to a Commonwealth political subdivision and the deed is exempt under 72 P.S. § 8102-C.3(1).

FACTS:

Taxpayer owns a parcel of real estate located in the Commonwealth (“Real Estate”). Taxpayer intends to convey, by deed, an agricultural conservation easement (“Easement”) over the Real Estate to a Commonwealth political subdivision. The conveyance will be made pursuant to the Agricultural Area Security Law (“AASL”), P.L. 128, No. 43, June 30, 1981, as amended (3 P.S. §§ 901, *et seq.*). The Easement restricts Taxpayer, and Taxpayer’s agents, heirs, executors, administrators, successors and assigns from performing any other activity on the Real Estate other than agricultural production or commercial equine activities as defined in the deed of easement. The Easement is a covenant running with the land and is perpetual in duration. The conveyance will be made for consideration of one dollar (\$1.00).

DISCUSSION:

A document is subject to Pennsylvania Realty Transfer Tax, *see* 72 P.S. § 8102-C, unless an applicable exemption/exclusion applies.

A document is any “deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate in this Commonwealth.” 72 P.S. § 8101-C (definition of “document”).

Title to real estate includes “[a]ny interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including without limitation, an estate in fee simple, life estate or perpetual leasehold.” 72 P.S. § 8101-C (definition of “title to real estate”).

Easements are an interest in real estate that can be subject to tax under the Pennsylvania Realty Transfer Tax law (“RTT law”), 72 P.S. §§ 8101-C, *et seq.*, as evidenced by the definition of value, which provides that “in the case of an easement” the taxable value shall be the actual monetary worth of the interest. 72 P.S. § 8101-C (definition #3 of “value”).

The AASL defines an agricultural conservation easement, in part, as:

An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production. The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity as the equivalent of covenants running with the land.

3 P.S. § 903 (definition of “agricultural conservation easement”).¹

By its definition, an agricultural conservation easement meets the definition of title to real estate for Pennsylvania Realty Transfer Tax purposes because it is a perpetual interest in land. Consequently, a deed conveying an agricultural conservation easement is subject to Pennsylvania Realty Transfer Tax absent an applicable exemption or exclusion.

The RTT law does not contain a specific exemption or exclusion for a document that conveys an agricultural conservation easement.

The only exclusion in the RTT law that specifically relates to easements is the exclusion for a “public utility easement.” 72 P.S. § 8101-C (definition of “document”) and 61 Pa. Code § 91.193(b)(28). That exclusion is not applicable to this case.

The RTT law contains an exemption related to transfers to conservancies which could be applicable to the transfer of an agricultural conservation easement. 72 P.S. § 8102-C.3(18) and 61 Pa. Code § 91.193(b)(18). However, that exemption would only apply if the conveyance was made to a conservancy.² In this case, the Easement is being conveyed to a political subdivision.

¹ This type of easement is known as a “restrictive covenant” (or “negative easement”). Although, historically, there is a legal distinction between a restrictive covenant and a negative easement, both limit a landowner’s permissible use of his land. Restatement 3d of Property: Servitudes, § 1.3. “Covenants are characterized by the nature of the performance called for (the burden of the covenant). Affirmative covenants call for the payment of money, the supply of goods or services, or the performance of some other act, either on or off land owned or occupied by the covenantor. Negative covenants call for the covenantor to refrain from doing some act. If the required performance limits the uses that can be made by the owner or occupier of land, the covenant is usually called a ‘restrictive covenant.’” *Id.* at § 1.3 (Comment (e) “Types of covenants: affirmative, negative, restrictive.”). See Restatement of Property: Servitudes § 1.2, Comment h, for a discussion of the historical development of negative easements and restrictive covenants.

² “Conservancy—An entity which possesses a tax exempt status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3)) and which has as its primary purpose, the preservation of land for historic, recreational, scenic, agricultural or open space opportunities.” 61 Pa. Code § 91.101 (definition of “conservancy”).

Political subdivisions do not qualify as conservancies. Although a political subdivision may acquire real estate for preservation purposes, the purpose of a conservancy is much narrower in scope than a political subdivision. Thus, a political subdivision does not qualify as a conservancy.

The AASL authorizes the Department of Agriculture, the State Agricultural Land Preservation Board and other political subdivisions to purchase agricultural conservation easements. 3 P.S. § 914.1. Although such government entities are considered exempt parties for Pennsylvania Realty Transfer Tax purposes, the exempt status of a party to a transfer of title to real estate does not relieve the other non-exempt parties to the transfer from the entire tax due. 61 Pa. Code § 91.192(b); *see also* Wilson Partners, L.P. v. Board of Fin. & Revenue, 737 A.2d 1215 (Pa. 1999). In the Department's experience, most agricultural conservation easements are purchased by an exempt government entity from individuals for a negotiated purchase price. As a result, the document of transfer is taxable for Pennsylvania Realty Transfer tax purposes based upon the sale price, and the individual grantor is responsible for the entire tax liability.

This case is slightly different from the standard agricultural conservation easement conveyance. In this case, Taxpayer has agreed to transfer the Easement for one dollar (\$1.00). The Department considers this conveyance as a transfer for no or nominal consideration, or a gift. The RTT law contains an exemption for transfer by gift to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions. 72 P.S. § 8102-C.3(1) and 61 Pa. Code § 91.193(b)(1)(ii). This exemption applies to this case because Taxpayer is making a gift of the Easement to a Commonwealth political subdivision.