



March 4, 2005
Pennsylvania Realty Transfer Tax
No. RTT-05-005
Realty Transfer Tax and Assessed Value of
Land Subject to Clean and Green

ISSUE

On what value does the landowner pay the real estate transfer tax on land that is subject to the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (Clean and Green)?
72 P.S. § 5490.1, *et seq.*

CONCLUSION

The real estate transfer tax is paid on the value of the land as reflected under the terms of the Clean and Green.

FACTS

The facts as related in your letter are that, A is an individual currently owning approximately 1400 acres of land in Pennsylvania. The land consists of ten parcels, nine of which range in size from 40 to 330 acres. The tenth parcel is six acres and is not subject to the preferred assessment under the Clean and Green Act.[1] The fair market value of the nine parcels is \$639,850.00, and the assessed value under Clean and Green is \$89,735.00.

A wishes to transfer the parcels into B a Pennsylvania limited partnership where A would be a limited partner owning 99% of the partnership and C a Pennsylvania S corporation will be the 1% general partner. A plans to transfer the real estate to B for nominal consideration. A understands that the transfer is subject to the Pennsylvania Realty Transfer Tax but is unclear on the value that should be used to calculate the tax.

DISCUSSION

Pennsylvania Realty Transfer Tax is imposed upon "[e]very person who makes, executes, delivers, accepts or presents for recording any document..., shall be subject to pay for and in respect to the transaction..., a State tax at the rate of one percent of the value of the real estate..." 72 P.S. § 8102-C.

Where the transfer of real estate is for nominal consideration the value is determined:

"2) in the case of a gift, sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the **assessed value of the real estate for local real estate tax purposes** for the common level ratio of assessed values to market values

of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate.” 72 P.S. § 8101-C (Emphasis added.)

The Clean and Green Act, 72 P.S. §5490.1, *et seq.*, allows alternative assessment values,

“ [f]or general property tax purposes, the value of land which is presently devoted to agricultural use, agricultural reserve, and/or forest reserve shall, on application of the owner and approval thereof as hereinafter provided, be that value which such land has for its particular land use category ...”72 P.S. § 5490.3(a).

“The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same value for tax assessment purposes as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value.” 7 PA ADC § 137b.1.

Since the real estate is being transferred for nominal consideration and the real estate is subject to the Clean and Green Act, the value for purposes of this transfer for the Pennsylvania Realty Transfer Tax is the assessed value rather than the fair market value.[2]

[1] This letter ruling request is only for the nine parcels subject to the Preferred Assessment. The tenth parcel is not subject of this ruling.

[2] Your letter suggests an amount of tax that is to be paid. This letter will not address the calculation of the tax. Further this letter again does not address the valuation for the parcel that is not subject to the Clean and Green preferential assessment.