

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 921** Session of
1989

INTRODUCED BY GRUITZA, McVERRY, KOSINSKI, MAIALE, CHADWICK,
HAGARTY, R. C. WRIGHT, WOZNIAK, HALUSKA AND PICCOLA,
APRIL 3, 1989

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, DECEMBER 4, 1989

AN ACT

1 Amending Title 72 (Taxation and Fiscal Affairs) of the
2 Pennsylvania Consolidated Statutes, exempting spousal
3 transfers from inheritance taxation; providing for the
4 taxation of certain spousal trusts; and making technical
5 changes.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 1707 of Title 72 of the Pennsylvania
9 Consolidated Statutes is amended by adding a subsection to read:

10 § 1707. Transfers subject to tax.

11 * * *

12 (d) Trusts and similar arrangements for spouses.--All
13 succeeding interests which follow the interest of a surviving
14 spouse in a trust or similar arrangement, to the extent
15 specified in section 1712 (relating to trusts and similar
16 arrangements for spouses), are transfers subject to tax as if
17 the surviving spouse where the transferor.

18 Section 2. Sections 1708(b) and 1711(k) and (m) of Title 72

1 are amended to read:

2 § 1708. Joint tenancy.

3 * * *

4 (b) Husband and wife.--[Except as provided in subsection
5 (c), this] This section shall not apply to property and
6 interests in property passing by right of survivorship to the
7 survivor of husband and wife.

8 * * *

9 § 1711. Transfers not subject to tax.

10 * * *

11 (k) Property subject to power of appointment.--Property
12 subject to a power of appointment, whether or not the power is
13 exercised, and notwithstanding any blending of such property
14 with the property of the donee, is exempt from inheritance tax
15 in the estate of the donee of the power of appointment, except
16 as provided in section 1712 (relating to trust and similar
17 arrangements for spouses).

18 * * *

19 (m) Husband and wife.--Transfers of property to or for the
20 use of a husband or wife of the decedent are exempt from
21 inheritance tax. Property owned by husband and wife with right
22 of survivorship is exempt from inheritance tax. [If the
23 ownership was created within the meaning of section 1707(c)(3)
24 the entire interest transferred shall be subject to tax under
25 section 1707(c)(3) as though a part of the estate of the spouse
26 who created the co-ownership.]

27 * * *

28 Section 3. Title 72 is amended by adding a section to read:

29 § 1712. Trusts and similar arrangements for spouses.

30 In the case of a transfer of property for the sole use of the

1 transferor's surviving spouse during the surviving spouse's
2 lifetime, all succeeding interests which follow the interest of
3 the surviving spouse shall not be subject to tax as transfers by
4 the transferor, but rather shall be deemed to be transfers
5 subject to tax by the surviving spouse of the property held in
6 the trust or similar arrangement at the death of the surviving
7 spouse. Such succeeding interests shall be valued at the death
8 of the surviving spouse and taxed at the tax rates applicable to
9 dispositions by the surviving spouse. Any exemption from tax
10 based upon the kind or location of property shall be based upon
11 the kind or location of property held in the trust or similar
12 arrangement at the surviving spouse's death.

13 Section 4. Sections 1716(a)(1) and (2) and (e) and 1730(1)
14 and (2) of Title 72 are amended to read:

15 § 1716. Inheritance tax.

16 (a) Rate of tax.--

17 (1) Inheritance tax upon the transfer of property
18 passing to or for the use of any of the following shall be at
19 the rate of 6%:

20 (i) Grandfather, grandmother, father, mother[,
21 husband, wife] and lineal descendants.

22 (ii) Wife or widow and husband or widower of a
23 child.

24 (2) INHERITANCE TAX UPON THE TRANSFER OF PROPERTY <—
25 PASSING TO OR FOR THE USE OF A HUSBAND OR WIFE SHALL BE:

26 (I) AT THE RATE OF 5% FOR ESTATES OF DECEDENTS DYING
27 ON OR AFTER JULY 1, 1990 AND BEFORE JULY 1, 1991; OR

28 (II) AT THE RATE OF 3% FOR ESTATES OF DECEDENTS
29 DYING ON OR AFTER JULY 1, 1991 AND BEFORE JULY 1, 1992.

30 [(2)] (3) Inheritance tax upon the transfer of property <—

1 passing to or for the use of all persons other than those
2 designated in paragraph (1) OR (2) or exempt under section ←
3 1711(m) (relating to transfers not subject to tax) shall be
4 at the rate of 15%.

5 [(3)] (4) WHEN PROPERTY PASSES TO OR FOR THE USE OF A ←
6 HUSBAND AND WIFE WITH RIGHT OF SURVIVORSHIP, ONE OF WHOM IS
7 TAXABLE AT A RATE LOWER THAN THE OTHER, THE LOWER RATE OF TAX
8 SHALL BE APPLIED TO THE ENTIRE INTEREST.

9 * * *

10 (e) Compromise as to rate of future interests.--If the rate
11 of tax which will be applicable when [a future] an interest
12 vests in possession and enjoyment cannot be established with
13 certainty, the department, after consideration of relevant
14 actuarial factors, valuations and other pertinent circumstances,
15 may enter into an agreement with the person responsible for
16 payment to establish a specified amount of tax which, when paid
17 within 60 days after the agreement, shall constitute full
18 payment of all tax otherwise due upon such transfer. Rights of
19 withdrawal of a surviving spouse not exercised within nine
20 months of the transferor's death shall be ignored in making such
21 calculations.

22 * * *

23 § 1730. Deductions not allowed.

24 The following are not deductible:

25 [(1) The value of assets claimed for the spouse's
26 allowance under 20 Pa.C.S. § 2102 (relating to share of
27 surviving spouse).]

28 (2) Claims of a former [or surviving] spouse, or others,
29 under an agreement between the former [or surviving] spouse
30 and the decedent, insofar as they arise in consideration of a

1 relinquishment or promised relinquishment of marital or
2 support rights.

3 * * *

4 Section 5. Section 1744 is amended by adding a subsection to
5 read:

6 § 1744. Source of payment.

7 * * *

8 (e.1) Trusts for spouses.--In the absence of a contrary
9 intent appearing in the instrument creating the trust or similar
10 arrangement, and in the absence of a contrary direction by the
11 surviving spouse, the inheritance tax, including interest, due
12 at the death of a surviving spouse with respect to a trust or
13 similar arrangement to which section 1712 (relating to trusts
14 and similar arrangements for spouses) is applicable shall be
15 paid out of the principal of the trust or similar arrangement.
16 The payment shall be made by the trustee or other fiduciary in
17 possession of the property and, if not so paid, shall be made by
18 the transferee of such principal.

19 ~~Section 6. This act shall apply to the estates of all~~ <—
20 ~~decedents dying on or after the effective date of this act.~~

21 ~~Section 7. This act shall take effect July 1, 1989, or~~
22 ~~immediately, whichever is later.~~

23 SECTION 6. (A) THE AMENDMENT TO SECTION 4 (SECTION <—
24 1716(A)(2)) SHALL APPLY TO THE ESTATES OF ALL DECEDENTS DYING ON
25 OR AFTER JULY 1, 1990, AND TO INTER VIVOS TRANSFERS MADE BY
26 DECEDENTS DYING ON OR AFTER JULY 1, 1990, REGARDLESS OF THE DATE
27 OF THE TRANSFER.

28 (B) THE REMAINDER OF THIS ACT SHALL APPLY TO THE ESTATES OF
29 DECEDENTS DYING ON OR AFTER JULY 1, 1992, AND TO INTER VIVOS
30 TRANSFERS MADE BY DECEDENTS DYING ON OR AFTER JULY 1, 1992,

1 REGARDLESS OF THE DATE OF THE TRANSFER.

2 SECTION 7. THIS ACT SHALL TAKE EFFECT JULY 1, 1990.