

Veto No. 1990-3

SB 775

October 12, 1990

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, Senate Bill 775, Printer's No. 2485, entitled "An act amending Titles 20 (Decedents, Estates and Fiduciaries) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, reducing the time for advertisement of accounts to two weeks; adding a section providing that documents submitted to the register of wills, except for probate, may be attested to by an affidavit or by a verified statement; broadening the class of property deemed disclaimed when a spouse takes an elective share; avoiding automatic modification of wills and inter vivos conveyances that are made in contemplation of a marriage or divorce; adding a rule of interpretation for wills and conveyances regarding corporate fiduciaries; confirming existing law that a gift to any unfunded trust is valid; adding a chapter relating to contracts concerning succession; authorizing personal representatives to make certain temporary investments; allowing fiduciaries to hold certain securities in book-entry form; further providing for notice to parties in interest; further providing for rights of claimants; authorizing the guardian of the estate of a minor to distribute certain income without court approval; adding the Pennsylvania Uniform Transfers to Minors Act; adding provisions relating to guardians of incapacitated persons; clarifying the jurisdiction of the court to appoint certain temporary guardians; authorizing the court to exercise all rights and privileges under certain contracts which provide for payments to an incompetent or others after the incompetent's death; authorizing the court to modify the estate plan of an incompetent to reflect changes in applicable tax laws; permitting certain powers of attorney to be executed by mark; ensuring the validity of durable powers of attorney; authorizing the court to allow a shorter period of notice to an absentee; providing that as a matter of law divorce revokes any revocable beneficiary designation made in favor of the former spouse; further providing for the annexation of accounts; further authorizing the court to divide trusts; further authorizing the court to grant declaratory relief with respect to certain interests in real property; exempting spousal transfers from inheritance taxation; providing for the taxation of certain spousal trusts; adding conforming amendments to Titles 13, 18, 23 and 42; amending Title 72 to exempt spousal transfers from inheritance taxation; and making technical changes."

This bill makes a variety of changes to the taxation of estates in Pennsylvania, several of which would result in significant revenue losses to the Commonwealth. The most severe revenue impact would be caused by the elimination of the existing six percent tax on transfers to a spouse of property held in only the decedent's name. Under the bill, this tax would phase out over a five-year period, beginning on July 1, 1991. Elimination of this tax would

cost the Commonwealth over \$4 million next fiscal year, increasing to approximately \$62 million in the fifth year of implementation.

In order to fill that kind of revenue gap, the General Assembly would have to either reduce spending in future years or increase other revenues to replace those lost inheritance tax dollars. There are times and circumstances when those hard choices are made easier, when reducing or eliminating a particular tax levy would remove an unfair burden from those who can least afford to pay.

Unfortunately, that is not the case with this particular tax. Contrary to the claims of its proponents, this bill would do very little to help poor widows. Most lower- and middle-income couples own their homes and other assets jointly and, therefore, will pay no inheritance tax when one spouse dies.

In fact, each year, fewer than 5,000 Pennsylvanians die leaving property that is taxable to their spouse. Less than half that number leave small estates valued below \$50,000. All of those small estates added together pay less than five percent of the tax to be eliminated by the bill. The people who pay the bulk of this tax, and the ones who will benefit most by its repeal, are some of the wealthiest people in Pennsylvania.

When fully operational, the bill would provide a \$30 million tax break for about 1,000 of our wealthiest residents. That money has to come from somewhere. It would come from the pockets of working men and women across Pennsylvania in the form of higher taxes or reductions in essential programs. Pennsylvania can ill-afford to be cutting taxes for the rich in the face of growing demands for funding essential programs like special education, higher education, senior citizens' programs, environmental cleanup, health care and other critical human needs.

If this legislation were in reality a benefit designed for poor widows, I would sign it. But, it is not. It amounts to a huge giveaway to the rich, masquerading as a benefit to the poor.

I remain deeply concerned about people who are not wealthy, who lose their spouse and find themselves faced with tax bills as a result.

Therefore, I am asking the legislative leaders to work with all interested groups to craft a law that will provide relief to those people for whom this tax constitutes an unconscionable economic burden at the traumatic time of loss of a spouse. That legislation must not, however, be a windfall for the rich.

This bill contains a number of other changes designed to avoid or defer the payment of inheritance taxes. In particular, the bill would no longer apply the tax to a surviving spouse who inherits a life estate. Such property would only be taxable to those who subsequently inherit it, after termination of the life estate, and the tax would be based upon the value of the property at that time. This provision could have a significant impact upon Commonwealth inheritance tax revenues, particularly in the first year of implementation. While it is difficult to estimate the potential losses with precision, they would certainly exacerbate the revenue drain caused by the proposed repeal of the tax on spousal transfers.

In addition to these tax law changes, Senate Bill 775 would establish new rights for persons alleged to be incapacitated and in need of guardianship services.

Without question, reform of Pennsylvania's antiquated guardianship law is long overdue. I urge the General Assembly to pass new legislation to address the needs of incapacitated persons within the limits of available state funds.

ROBERT P. CASEY