



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
CARVEL STATE BUILDING  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801

**DIVISION OF REVENUE  
TAX RULING 90-1**

**April 24, 1990**

**REALTY TRANSFER TAX - CONVEYANCES TO REVOCABLE TRUSTS**

Questions have been raised regarding the application of the realty transfer tax to conveyances of real estate to revocable trusts.

30 Del.C. §5401(1)j excludes from the definition of "document," and therefore from the application of the realty transfer tax:

Any conveyance (a) to a trustee, nominee or straw party for the grantor as beneficial owner, (b) for the beneficial ownership of a person other than the grantor where, if such person were the grantor, no tax would be imposed upon the conveyance pursuant to this chapter, or (c) from a trustee, nominee or straw party to the beneficial owner;

It is the position of the Division of Revenue, notwithstanding §§3.2(j) and 4.2(c) of the Delaware Realty Transfer Tax Regulations or any prior private letter ruling issued by the Division, that the grantor of any trust shall be considered the sole beneficial owner (within the meaning of 30 Del.C. §5401(1)j) of any real estate conveyed to such trust by the grantor so long as the grantor retains a power to revoke such trust that would cause the grantor to be treated as the owner of such real estate under §676 of the Internal Revenue Code. Any relinquishment or lapse of such power to revoke shall be deemed to be a transfer of the real estate to the trust at the time of such relinquishment or lapse, and the determination of whether any realty transfer tax is payable as a result of such deemed transfer shall be made by reference to the facts existing at the time of such relinquishment or lapse. However, no realty transfer tax shall be due if such relinquishment or lapse occurs solely by reason of the death of the grantor.

The application of this ruling is illustrated by the following examples:

**Example 1.**

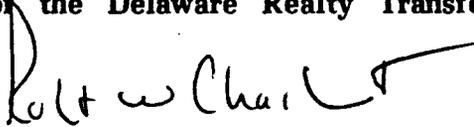
A is the grantor of a trust whose governing instrument requires that all income of the trust be paid to A's wife, B, during B's life, and that upon B's death the trust terminate and its corpus be distributed to A's brother, C. The governing instrument of the trust also provides that A reserves the right to revoke the trust at any time and thereby re-vest in himself title to all property held in the trust. A conveyance of Delaware real estate by A to the trust is exempt from realty transfer tax pursuant to §5401 (1)(a).

**Example 2.**

The facts are the same as in Example 1, except that the trust becomes irrevocable as a result of the death of A. A is survived by both B and C. The trust remained fully revocable up to the time of A's death. No realty transfer tax is payable as a result of A's death. See 30 Del. C. §5401(1)a.

**Example 3.**

The facts are the same as in Example 1, except that two years after A conveys the real estate to the trust A relinquishes his power to revoke the trust. At the time of the relinquishment of the power to revoke, both B and C are living. The relinquishment of the power to revoke the trust is deemed to be a transfer of the real estate by A to the trust on the effective date of the relinquishment. Since a direct conveyance of an interest in the real estate by A to B (A's wife) would be exempt under 30 Del. C. §5401(1)g, no realty transfer tax is payable pursuant to 30 Del. C. §5401(1)(b) with respect to the value of the life estate interest deemed transferred to the trust for the beneficial ownership of B. Realty transfer tax is payable, however, at the time of the relinquishment of the power to revoke with respect to the value of the remainder interest in the real estate deemed transferred by A to the trust for the benefit of C. The valuation of the taxable and non-taxable interests in the real estate is made by reference to the valuation tables promulgated by the Internal Revenue Service for federal estate-tax and gift-tax purposes, B's age on the date of the relinquishment of power to revoke and the fair market value of the real estate on such date. See §2.1(f) of the Delaware Realty Transfer Tax Regulations.



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