

## Elder Law: Inheritance tax questions find answers

Sunday, November 27, 2011  
By Julian Gray & Frank Petrich

Wow, did we stir up some questions with our July column on inheritance taxes. As a result, we wanted to devote this column to trying to provide answers to a few of those questions that we thought would be relevant to other readers.

Before we begin, it's important to note that the Pennsylvania Inheritance Tax is an important source of state revenue. Last fiscal year, for example, the commonwealth generated about \$800 million from this tax. So, it would appear to us that the inheritance tax won't be going away very soon unless those revenues could be made up in some other way. So, on to the questions:

**Question:** You mentioned that when a spouse dies and the assets are held jointly with the other spouse, there is neither state inheritance tax nor even a return due. What happens if a parent owns assets jointly with one of his children, such as a bank account registered jointly in their names or set up as joint tenants with rights of survivorship? Does the same rule apply? Is this a way around the state inheritance tax law?

### Worried in Wilkinsburg

**Answer:** A good and common inheritance tax question and concern. Part of the answer is based on the purpose (often a proof problem/issue) for which the account was established. For example, a parent may set up an account jointly with one of the children because that child is the only child to live near the parent and also is the agent for the parent under a power of attorney (what one would call a "convenience account").

Say the account has a balance of \$25,000 and the parent dies. Does the child get the full \$25,000 and have to pay inheritance tax (4 1/2 percent) on half of the joint account? Most likely, the answer will be "yes." The child will get the full amount as the account passed by operation of law (via the account title) to the child. One of the problems with this type of account is that, with multiple children and with the parent wishing to benefit all children equally at the parent's death, the parent's plan may get thwarted.

**Q:** What is the inheritance tax rate for an aunt who dies and leaves her estate to her nieces and nephews since she had no children? How is it paid?

### Susan in Swissvale

**A:** A simpler answer. The inheritance tax rate would be 15 percent. It's paid either by the estate or by the individuals depending on how the assets were titled.

**Q:** I work with a lot of older adults as a rehabilitation therapist. This question was generated by your column on the state inheritance tax. Many older adults move to other states as they age -- for a warmer climate, to be with family, etc. Is there a "look back" period for the state inheritance tax if one moves his/her legal residence out-of-state? What if the individual's legal residence is out of state and retains property in Pennsylvania.

### Bernice in East Liberty

**A:** There generally is no "look back" regarding inheritance taxes as there is for Medical Assistance.

Real property can be a state-specific issue as to the particular state's treatment of the property for inheritance tax purposes. For example, a Pennsylvania resident moves to Florida and becomes a Florida resident still owning a house in Pennsylvania. The Pennsylvania house would be subject to Pennsylvania inheritance tax.

**Q:** It would be great if you could mention the helpful tax effects of charitable giving in an estate plan.

### Jim in Jeannette

**A:** Leave it to us if you have no one else to leave it to! Many individuals may have no family members or friends whom they wish to favor with their assets upon their demise. These individuals should strongly consider leaving these assets to a charitable organization(s) in which they have an interest. This type of bequest would be free of inheritance tax and could

benefit a good cause or causes. For a searchable list of nonprofit organizations (or to verify if your charity is tax exempt), visit [www.guidestar.org](http://www.guidestar.org).

**Q:** My single, adult daughter lives with me and I want to avoid paying inheritance tax on my house when I die. Should I transfer my house to her?

**Mary in Mt. Lebanon**

**A:** It depends. Yes, you can avoid paying the 4 1/2 percent inheritance tax rate by transferring ("gifting") the house to your daughter and living for one year after the transfer. Let's assume the house is worth \$150,000. So, your estate could save \$6,750 by the gift (less than one month's nursing home cost).

Now, let's assume that after the house transfer, your daughter gets married to a guy you don't like and who doesn't like you and they move into your former house. Then, daughter and son-in-law decide they're tired of having you around, sell the house which you used to own and which your daughter now owns and buy a new one, leaving you behind. Let's further assume that within five years of the gift of the house to your daughter, you have to go into a nursing facility. The value of that house gift could create a period on ineligibility for Medical Assistance nursing facility care. A worst case scenario ... you bet. Has it happened in our practices? You bet.

**Final advice:** Don't let the tax tail wag the planning dog.

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