

### **How do the 2016 changes in legislation effect Inheritance Tax?**

The agriculture and small business exemptions are affected by the change in legislation. Due to the expanded definition of "members of the same family," transfers made by a second-to-die spouse to relatives of the first-to-die spouse are now included. The deductions for family farms and family businesses are amended, allowing for farm and business trusts whose beneficiaries comprised solely of "members of the same family" to be included. This change applies retroactively to estates with a date of death after December 31, 2012, even if the inheritance tax return has already been filed.

Also the new legislation requires that the inheritance tax return be timely filed to be eligible to claim the agriculture exemption.

### **If the changes to the legislation now make the estate I filed for eligible for the exemption, how can I now claim it?**

If you have previously filed a return that would now qualify for the exemption based on the expanded definition of "members of the same family," you may request an administrative correction. Your request for an adjustment should include the reason the change should be made. The request must be accompanied by Schedule AU, REV-1197 for an agricultural exemption or Schedule C-SB, REV-571 for the qualified business exemption. If the administrative adjustment will result in a credit, a refund may be requested by filing an Application for Refund, REV-1313. Send your correspondence, completed Schedule AU or C-SB, and if applicable, the Application for Refund to:

Post Assessment Review Unit  
Inheritance Tax Division  
Pennsylvania Department of Revenue  
PO BOX 280601  
Harrisburg, PA 17128

### **Does a trust qualify for the agriculture exemption?**

A trust whose beneficiaries are comprised **solely** of "members of the same family" will qualify.

### **If the sole purpose of the business is the management and leasing of real estate, does the business qualify for the exclusion?**

No.

### **Who is considered a "member of the same family" for the "business of agriculture" exemption from inheritance tax?**

The decedent, the decedent's brothers, sisters, aunts, uncles, great aunts, and great uncles, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing. A trust for the sole benefit of "members of the same family" will also qualify. Transfers made by a second-to-die spouse will include any individuals with the above mentioned relation to the first-to-die spouse. Individuals related by the half blood or legal adoption are treated as if they were related by the whole blood.

### **Who qualifies for the "business of agriculture" exemption from inheritance tax?**

In order to qualify for the "business of agriculture" exemption, real estate must be: (1) devoted to the business of agriculture at the time of the decedent's death; (2) transferred to "members of the same family" of the decedent. A trust for the sole benefit of "members of the same family" will also qualify; (3) continue to be devoted to the business of agriculture for a period of seven years after the decedent's date of death; (4) produce annual gross income of at least \$2,000 in the business of agriculture for a period of seven years after the decedent's date of death; and (5) the real estate is reported on a timely filed inheritance tax return.

### **What does it mean to be "timely filed"?**

To be reported on a timely filed return means the real estate must be reported on a Pennsylvania Inheritance Tax return filed within 9 months of the decedent's date of death, or within 15 months of the decedent's date of death *if* the estate or person required to file the return was granted the six-month statutory extension.

### **What documentation is required to maintain the "business of agriculture" exemption?**

Each new owner who owns real estate exempted from inheritance tax pursuant to the business of agriculture exemption must file a certification with the department on an annual basis for a period of seven years after the decedent's date of death. The certification is provided by the department every January for the period of seven years after the decedent's death. The certification is due Feb. 15 each year of the seven year period.

### **Are there any post-death requirements or restrictions on the "business of agriculture" exemption from inheritance tax?**

Yes. For a period of seven years after the date of the decedent's death, the exempted real estate must (1) continue to be devoted to the business of agriculture; and (2) derive an annual gross income of at least \$2,000 per year in the business of agriculture. In addition, an

inheritance tax return must be filed timely and each new owner who owns real estate exempted from inheritance tax pursuant to the business of agriculture exemption must comply with the annual certification requirement.

### **How many inheritance tax exemptions are available pursuant to Act 85 of 2012?**

Act 85 of 2012 created two exemptions, the "business of agriculture" (72 P.S. § 9111(s)) and "farmland - other" (72 P.S. § 9111(s.1)) exemptions. Each exemption has its own requirements and the real estate is reported on a timely filed inheritance tax return.

### **How do I claim the "business of agriculture" exemption from the inheritance tax?**

Individuals and/or estates wishing to take advantage of the "business of agriculture" exemption must file a timely filed inheritance tax return, report the parcel(s) of real estate on either Schedule A, F or G, as appropriate, and claim the exemption by completing Schedule AU and providing the information and explanations as directed on Schedule AU. The failure to complete Schedule AU or provide any information requested by Schedule AU may result in a denial of the exemption. One Schedule AU should be completed for each parcel of real estate for which the business of agriculture exemption is claimed.

### **How do I obtain the "business of agriculture" exemption from inheritance tax annual certification form?**

Once the timely filed inheritance tax return, REV-1500, requesting the business of agriculture exemption is received and approved by the department, the certification form will be mailed to each new owner provided on the Schedule AU each January for a period of seven years after the date of the decedent's death after department approval of exemption. The form must be completed and returned to the department by Feb. 15th of each year by each new owner provided on the Schedule AU.

### **When did the agricultural exemptions from inheritance tax take effect?**

Act 85 of 2012 created the "business of agriculture" (72 P.S. § 9111(s)) and "farmland - other" (72 P.S. § 9111(s.1)) exemptions from inheritance tax. They apply to the estates of decedents whose date of death is after June 30, 2012. Act 84 of 2016 created updates to Act 85 of 2012.

### **What are the requirements to qualify for the "family-owned business" exemption from inheritance tax?**

Effective July 1, 2013, a small business exemption from inheritance tax is available for a transfer of a "qualified family-owned business interest" to one or more "qualified transferees" or to a trust for the sole benefit of "members of the same family" of the decedent; provided that, after the transfer, the family-owned business interest continues to be owned by a "qualified transferee" or a trust for the sole benefit of "members of the same family" of the decedent for a minimum of seven years after the decedent's date of death.

The exemption is limited to "qualified family-owned business interests", defined as having fewer than 50 full-time equivalent employees, a net book value of assets less than \$5 million dollars, and being in existence for at least five years at the decedent's date of death. In addition, the principal purpose of the business must not be the management of investments or income-producing assets of the entity.

In addition, each new owner exempted from inheritance tax pursuant to the family owned business exemption must file a certification with the department on an annual basis for a period of seven years after the decedent's date of death. The certification is provided by the department every January for the period of seven years after the decedent's death. The certification is due Feb. 15 each year of the seven year period.

The exemption does not apply to property transferred to the business within one year of the date of death, unless the transfer is for a legitimate business purpose.

The exemption **MUST** be reported on a timely filed inheritance tax return.

To be reported on a timely filed return means the "qualified family-owned business interest" must be reported on a Pennsylvania Inheritance Tax Return, REV 1500, filed within 9 months of the decedent's date of death, or within 15 months of the decedent's date of death *if* the estate or person required to file the return was granted the six-month statutory extension.

### **Who qualifies for the "family-owned business" exemption from inheritance tax?**

The decedent's husband or wife, lineal descendants, siblings and their lineal descendants, ancestors and their siblings, and trusts for the sole benefit of "members of the same family" as the decedent; provided, however, that all other applicable statutory requirements are satisfied.

**If a “qualified family-owned business interest” is transferred to a trust does it qualify for the “family-owned business” exemption?**

Yes, so long as such trust is solely for the benefit of “members of the same family” as the decedent.