



A Division of Ohio Bar Title Insurance Company

A First American Company

TITLE ALERT

DATE: 03/24/11

RE: Title Alert 2011-02 Federal Estate Tax

Purpose:

This bulletin provides underwriting guidelines for insuring title when the property is being sold by a decedent's estate or when a decedent is in the chain of title within the last 10 years.

Background:

On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 was signed into law. Among other things, the Act reinstated federal estate tax for decedents dying in 2010, with an "opt out" provision and set exemption amounts for 2011 and 2012. (Refer to Addendum). For those who thought there was no estate tax for decedents dying in 2010, do not be alarmed by the reinstatement of the tax. For decedents dying in 2010, the estate has a choice: pay tax over the exemption amount of \$5,000,000.00 or elect to opt out of paying estate tax altogether. Most estates will either fall under the exemption threshold or opt out, so it should have little or no effect on title. (Why would anyone pay tax when they can elect not to? When an estate opts out of paying estate tax, the heirs/beneficiaries receive a modified carryover basis on the assets inherited, which affects their capital gains when they sell those assets.)

With the passage of this Act, we thought it a good time to remind everyone about federal estate tax and how it affects the issuance of title insurance:

Federal estate tax is levied on the privilege of transferring property to a person's heirs upon death; it is not a tax on the property itself. The tax is imposed on the value of the decedent's taxable estate which is calculated by subtracting allowable deductions from the decedent's gross estate. The gross estate consists of all property owned by the decedent at death, all property in which the decedent had an interest, certain gifts made within three (3) years prior to decedent's death, and life insurance on the decedent's life.

If the estate is subject to federal estate tax, the return must be filed and tax paid within nine (9) months of the decedent's death, unless an extension is requested and granted. Although an extension might be granted, interest will accrue during the extension period.

Unpaid federal estate tax is a “silent” lien on all property of the estate. The silent lien continues for a period of ten (10) years from the decedent’s death.

Federal estate tax is not due in every estate. Federal estate tax is owed only when the estate’s value is greater than a certain threshold exemption amount (i.e., unified credit), which has varied over time. (A list of such exemption amounts since 2000, including the amounts created in the aforementioned Act, is attached hereto.) In addition, spouses enjoy an unlimited deduction (i.e., the marital deduction) to offset assets inherited from a deceased spouse. Therefore, regardless of the size of the estate, the surviving spouse can take the marital deduction on the estate tax return and not be required to pay any federal estate tax on the property inherited from the decedent.

Best Practice Guidelines:

If a decedent’s estate is selling property, or if a joint tenant has died and the survivor is selling or giving a mortgage on the property, or if there is an estate or decedent in the chain of title within the last 10 years, you should examine the estate records to determine if Estate Tax is due the United States of American by the Estate. If so, list same as an item on your Preliminary Report on Title.

Also, because certain gifts made by the decedent within three (3) years prior to his/her death are included in the taxable estate, if the search shows a deed for nominal consideration within the last ten (10) years, you should examine the deed and related documents to determine if said conveyance was made in contemplation of death or if there is evidence that a bona fide consideration was paid for the subject property. This too should be reported on your Preliminary paperwork.

It is the responsibility of the Approved Attorney to report on any possible Estate Tax due the United States of America by a decedent’s estate so that a proper requirement can be listed on the Commitment or Instant Policy letter as follows:

“Proof of payment of all open Inheritance Taxes due the Commonwealth of Pennsylvania and Estate Taxes due the United States of America in the Estate of...”

The most obvious way to clear the requirement is to obtain proof that federal estate taxes were paid, preferably in the form of an Estate Tax Closing Letter issued by the Internal Revenue Service. If the estate provides proof of payment without a Closing Letter being issued yet, contact us to see if such proof is sufficient to clear this requirement.

N.B.: Penn Attorneys will continue its acceptance of the Inheritance Tax Guarantee Letter from an Approved Penn Attorney® in good standing. (Form available on our website.)

In the alternative, the requirement may be fulfilled with a certification by the Approved Attorney on the Final Certificate and Report on Title stating that the value of the decedent's estate is less than the applicable exemption threshold amount (or, in the case of a decedent dying in 2010, that the estate has opted not to pay estate tax). It is critical that the Approved Attorney garner proof in order to make such a certification. Acceptable proof is either in the form of a letter from the estate's attorney or an affidavit signed by the personal representative of the estate. Copies of same should be forwarded to Penn Attorneys along with the Final Report.

Because the surviving spouse enjoys an unlimited marital deduction, we will remove the requirement for federal estate taxes if (1) the property to be insured was owned by a married couple and the surviving spouse is selling or mortgaging it, or (2) the property was owned solely by the decedent and proof is provided that the surviving spouse is the sole beneficiary of the decedent's estate and we are insuring the grantee or mortgagee in an arm's length transaction.

If the requirement cannot be complied with through one of the options set out above, you might need to hold an escrow for federal estate taxes. In that event, you should contact us for assistance in determining the amount to hold.

REMINDER: Federal estate tax is separate from PA inheritance tax and must be handled independently. For more information about how to handle PA inheritance taxes, see Title Alert [2009-07](#).

As always, for questions, comments or concerns, please contact our office.

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

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Addendum to Title Alert 2011-02
Federal Estate Tax

FEDERAL ESTATE TAX EXEMPTIONS

<u>Year</u>	<u>Estate Tax Exemption Equivalent</u>
2000	\$ 675,000.00
2001	\$ 675,000.00
2002	\$1,000,000.00
2003	\$1,000,000.00
2004	\$1,500,000.00
2005	\$1,500,000.00
2006	\$2,000,000.00
2007	\$2,000,000.00
2008	\$2,000,000.00
2009	\$3,500,000.00
2010	\$5,000,000.00**
2011	\$5,000,000.00
2012	\$5,000,000.00
2013	\$1,000,000.00

** Estate can “opt out” of paying estate taxes altogether