

# **PROBATES, ESTATES AND FIDUCIARIES CODE**

**PROPOSED AMENDMENTS AND COMMENTS—1979**

Including a Study of the Impact of  
Inheritance Taxes on Decedents' Domicile

General Assembly of the Commonwealth of Pennsylvania  
JOINT STATE GOVERNMENT COMMISSION  
Harrisburg, Pennsylvania  
May 1979

---

The Joint State Government Commission was created by act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

---

## Joint State Government Commission, 1979-1980

---

### OFFICERS

Fred J. Shupnik, *Chairman*  
John Stauffer, *Vice Chairman*  
K. Leroy Irvis, *Treasurer*

---

### EXECUTIVE COMMITTEE

#### SENATE MEMBERS

Martin L. Murray  
*President Pro Tempore*

Edward P. Zemprelli  
*Majority Leader*

Henry G. Hager  
*Minority Leader*

Eugene F. Scanlon  
*Majority Whip*

John Stauffer  
*Minority Whip*

James E. Ross  
*Chairman, Majority Caucus*

W. Thomas Andrews  
*Chairman, Minority Caucus*

#### HOUSE MEMBERS

H. Jack Seltzer  
*Speaker*

Matthew J. Ryan  
*Majority Leader*

K. Leroy Irvis  
*Minority Leader*

Samuel E. Hayes Jr.  
*Majority Whip*

James J. Manderino  
*Minority Whip*

Fred C. Noye  
*Chairman, Majority Caucus*

Roland Greenfield  
*Chairman, Minority Caucus*

### MEMBER EX OFFICIO

Fred J. Shupnik, *Commission Chairman*

---

Donald C. Steele, *Research Director*  
Vincent W. Raba, *Associate Director*  
William H. Nast Jr., *Counsel*



**GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA  
JOINT STATE GOVERNMENT COMMISSION**

**ROOM 450 - CAPITOL BUILDING  
HARRISBURG 17120**

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

This report summarizes proposed amendments to the Probate, Estates and Fiduciaries Code (Title 20, Pennsylvania Consolidated Statutes) and presents the official comments of the Advisory Committee on Decedents' Estates Laws. In addition, a staff analysis entitled "Pennsylvania Inheritance Taxes and Decedents' Domicile" is presented as an appendix.

The Commission acknowledges with appreciation the untiring attention of the task force and advisory committee to the advancement of this important field of Pennsylvania law.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fred J. Shupnik".

Fred J. Shupnik  
Chairman

Contents

---

I.	INTRODUCTION . . . . .	1
II.	RECOMMENDATIONS . . . . .	5
	Affidavits to petitions no longer required	
	Surviving spouse; election to take against will	
	Payments in small estates	
	Elimination of bonds for certain personal representatives	
	Court review of certain agreements	
	Distribution to absentees	
	Interest rates	
	Termination or combination of certain trusts	
	Editorial changes	
	APPENDIX . . . . .	11
	Pennsylvania Inheritance Taxes and Decedents' Domicile	

## Decedents' Estates Laws

---

### TASK FORCE

#### Senate Members

Richard A. Snyder, *Chairman*  
George W. Gekas  
Stewart J. Greenleaf

James R. Kelley  
Jeanette F. Reibman

#### House Members

\*Harry A. Englehart Jr., *Vice Chairman*  
R. Harry Bittle  
\*Charles N. Caputo  
Ronald R. Donatucci  
D. Michael Fisher  
\*Samuel W. Morris

Robert W. O'Donnell  
Jeffrey E. Piccola  
Anthony J. Scirica  
Warren H. Spencer  
Hardy Williams  
William H. Yohn Jr.

---

### ADVISORY COMMITTEE

William H. Eckert, Esq., *Chairman*  
George J. Hauptfuhrer Jr., Esq., *Vice Chairman*  
M. Paul Smith, Esq., *Secretary and Chairman*  
*of Drafting Committee*  
Richard L. Grossman, Esq., *Research Consultant*

Honorable Anthony R. Appel  
Thomas A. Beckley, Esq.  
Honorable Hugh C. Boyle  
Honorable W. Walter Braham  
Philip A. Bregy, Esq.  
Norman H. Brown, Esq.  
Paul E. Clouser, Esq.  
Reuben E. Cohen, Esq.  
Robert F. Duguay  
Robert C. Fernandez, Esq.  
Honorable Ethan A. Gearhart  
J. Frederick Gehr, Esq.  
G. Donald Gerlach, Esq.  
William M. Houston, Esq.  
William H. Latimer Jr., Esq.

Robert P. Leiby Jr., Esq.  
Honorable William W. Litke  
Benjamin G. McFate, Esq.  
Honorable Edmund S. Pawelec  
Honorable E. H. Satterthwaite  
James G. Schmidt, Esq.  
Professor John J. Sciullo  
Honorable Louis Sherman  
J. Pennington Straus, Esq.  
Honorable Lee F. Swope  
Honorable Alfred L. Taxis Jr.  
Paul C. Wagner, Esq.  
Donald R. Waisel, Esq.  
Honorable Vincent X. Yakowicz

---

\*No longer a member of the General Assembly.

## I. Introduction

---

This is the fourth biennial report proposing amendments to the 1972 codification of decedents' estates laws into the Probate, Estates and Fiduciaries Code. The legislation reflects the work of the Joint State Government Commission Task Force on Decedents' Estates Laws, chaired by Senator Richard A. Snyder, and a distinguished advisory committee, chaired by William H. Eckert, Esq. A summary of the proposed legislation, along with official comments, is presented in Part II of this report.

Since its enactment on June 30, 1972 as Title 20 of the Pennsylvania Consolidated Statutes, the code has been amended by 21 separate acts. A table showing these amendatory acts appears on page 2. Twelve of these were drafted by the advisory committee, of which 11 were approved and introduced by the task force. Of the other 9 acts, 4 represent editorial changes required by enactments of the General Assembly which reduced the age of majority from 21 to 18, established Title 42 of the Pennsylvania Consolidated Statutes (Judicial Code) and implemented Article I, Section 28, of the Pennsylvania Constitution relating to equal rights. The remaining 5 acts increased monetary limits and provided authority for various banking transactions relating to fiduciary accounts.

In the 1977-1978 Session, the two bills introduced by the task force were enacted into law, with amendments made during the course of legislative action. For a summary of the work of the task force and advisory committee for the 1977-1978 Session, see the Commission's report, Probate, Estates and Fiduciaries Code: Proposed Amendments and Comments--1977.

ACTS AMENDING THE  
 PROBATE, ESTATES AND FIDUCIARIES CODE  
 (1972, P.L. 508, No. 164, effective July 1, 1972)  
 THROUGH 1977-1978 SESSION OF THE GENERAL ASSEMBLY

Citation	Subject
1972, P.L. 1461, No. 331	Change of age of majority
1973, P.L. 62, No. 25	Bank holding companies
1973, P.L. 322, No. 104	Change of age of majority*
1974, P.L. 282, No. 84	Increase monetary limit, § 3101
1974, P.L. 383, No. 130	Increase monetary limit, § 3121*
1974, P.L. 720, No. 242	Deposit of securities; book entry securities
1974, P.L. 816, No. 271	Editorial change in title designation
1974, P.L. 867, No. 293	Omnibus*
1974, P.L. 896, No. 294	Temporary fiduciaries*
1974, P.L. 899, No. 295	Powers of attorney*
1975, P.L. 598, No. 168	Increase monetary limit, § 3101
1976, P.L. 434, No. 105	Self-proved wills**
1976, P.L. 547, No. 134	Multiple-party bank accounts*
1976, P.L. 551, No. 135	Omnibus*
1976, P.L. 562, No. 136	Disclaimers*
1976, P.L. 836, No. 144	Estate plan for incompetent*
1978, P.L. 42, No. 23	Spouse's election*
1978, P.L. 77, No. 37	Omnibus*
1978, P.L. 202, No. 53	Judiciary Act Repealer Act
1978, P.L. 909, No. 173	Equal Rights Amendment
1978, P.L. 1269, No. 303	Illegitimates

\*Drafted by the Advisory Committee and approved and introduced by the Task Force on Decedents' Estates Laws.

\*\*Drafted by the Advisory Committee without official action of the Advisory Committee or Task Force.

It must be stressed that the Probate, Estates and Fiduciaries Code, as amended to date, has supplied Pennsylvania law with the best features of the Uniform Probate Code promulgated by the National Conference of Commissioners on Uniform State Laws, while retaining the nomenclature and procedures which have served the needs of Pennsylvanians for many decades.

The legislation drafted by the task force and advisory committee for introduction in this session of the General Assembly is an omnibus bill which would, if enacted, amend 16 sections of the code. In addition to editorial or clarifying amendments, the proposals essentially relate to the following subjects:

Affidavits--Authorizing verified statements in lieu of affidavits to petitions.

Share of surviving spouse--Increasing the initial share of surviving spouse in an estate to \$50,000.

Payment of funeral expenses--Expediting payment of funeral expenses and authorizing the payment of certain bank accounts to facilitate the administration of small estates.

Nonrequirement of a bond--Removing the requirement of bonds for certain personal representatives.

Information services--Establishing jurisdiction for court review of agreements concerning information provided to potential distributees.

Absentee and additional distributees--Authorizing direct distribution to the Commonwealth of funds due absentees or other unknown distributees.

Interest rates--Increasing certain interest rates to 5 percent.

Trusts--Broadening the court's discretion to terminate trusts.

The advisory committee, through a subcommittee chaired by Richard L. Grossman, Esq., has also undertaken a comprehensive review of the Inheritance and Estate Tax Act of 1961, as amended, with the goal of substantially revising this act to modernize its provisions and incorporate various

changes necessitated by revisions of other laws since its enactment--particularly, revisions in the federal estate tax introduced by recent congressional action. The advisory committee anticipates submitting a draft of the proposed act to the task force in the near future.

In response to concern expressed by members of the advisory committee that many aging Pennsylvania residents acquire domiciles in other jurisdictions with lower death tax rates, the chairman of the task force requested the Commission staff to undertake a review of the various state death tax laws and analyze the effects of Pennsylvania inheritance tax rates. The findings of this study are presented as an appendix.

Any comments or suggestions for revisions in the Probate, Estates and Fiduciaries Code or in the Inheritance and Estate Tax Act of 1961 should be forwarded to the Commission for consideration by the task force and advisory committee.

## II. Recommendations

### 1. AFFIDAVITS TO PETITIONS NO LONGER REQUIRED

Section 761 of the Code is amended to authorize verified statements for affidavits to petitions.

Comment: Since a verified statement subject to the Crimes Code, 18 Pa.C.S. § 4094 (relating to unsworn falsification to authorities) provides sufficient sanction, attaching an affidavit to petitions is no longer necessary.

### 2. SURVIVING SPOUSE; ELECTION TO TAKE AGAINST WILL

A. Section 2102 of the Code is amended to increase the initial share of a surviving spouse from \$20,000 to \$50,000, in the case where a decedent is survived by a parent or issue all of whom are issue of the surviving spouse.

Comment: This amendment conforms the monetary amount to that of the Uniform Probate Code (see UPC § 2-102) and reflects the inflationary trend since the last increase in 1967.

B. Section 2203(a)(6) is amended to clarify provisions added in 1978 relating to the exclusion of certain annual gifts from the assets against which a surviving spouse may elect.

Comment: This clarifying amendment assures that to the extent the aggregate amount of all property conveyed to each donee during the one-year period exceeds \$3,000, that excess amount will be subject to the election. The amendment also clarifies that the date of valuation is the time of conveyance.

C. Section 2204(c) is amended to clarify the computations of the estate against which a surviving spouse may elect.

Comment: This clarifying amendment assures that when an electing spouse retains property in accordance with this subsection, the value of that property is included for purposes of computing the amount of the elective share. In the absence of this amendment, provisions in this chapter might be erroneously construed to give the electing spouse less than was intended.

### 3. PAYMENTS IN SMALL ESTATES

Section 3101 is amended by adding subsections (b) and (c), authorizing payments not exceeding \$1,500 in the former case to the family of the decedent and, in the latter case, payments not exceeding \$1,000 from a facility in which the decedent was a patient to a licensed funeral director. In connection with subsection (b), a former version had been included in omnibus bills submitted to the 1973 and 1975 Sessions of the General Assembly. As pointed out in the Commission's report, Proposed Amendments, Probate, Estates and Fiduciaries Code, Phase II, 1973, p. 7:

This new subsection authorizes payment of bank accounts up to [\$1,500] to a family member without requiring that a personal representative be appointed.

Comment: Since family payments of wages, salaries and employee benefits appear to have successfully expedited small estates without known abuses, it was determined to extend this discretionary authority to banks and savings institutions to pay accounts up to [\$1,500] to family members to facilitate the closing of very small estates with minimal administration expense and delay.

In order to satisfy objections raised during committee hearings on the 1973 and 1975 legislation, a further provision was inserted allowing the financial institution to require a receipted

funeral bill or an affidavit setting forth that arrangements satisfactory to a licensed funeral director have been made for payment for his services.

Subsection (c) was included at the suggestion of the Pennsylvania Association of County Affiliated Homes and the Pennsylvania Funeral Directors Association to facilitate the closing of small estates without the expense and inconvenience required to take out letters. As noted above, the payments under this subsection may not exceed \$1,000.

4. ELIMINATION OF BONDS FOR CERTAIN PERSONAL REPRESENTATIVES

Section 3174 is amended to broaden the class of cases in which a bond is not required prior to certain personal representatives entering into their duties. The amendment furthers and expands the policy of the General Assembly adopted by the enactment of subsection (d), included in the act of April 18, 1978, P.L. 42, No. 23, during consideration in the House of Representatives, which eliminated the requirement of any bond in an estate having less than \$5,000. The task force and advisory committee concluded that an apparent lack of dispute over the administration of the estate was a preferred criterion for determining when a bond should not be initially required rather than a monetary limit per se.

Comment: The requirement that a noncorporate administrator file a bond has been criticized as an unnecessary expense in most instances. A person granted letters in accordance with Section 3155(b) (relating to persons entitled) who is the sole residuary legatee or next of kin, or who is the nominee of all residuary legatees or next of kin who are adult and sui juris, will now be able to serve without a bond. This amendment reflects the policy that expenses such as those necessitated by acquiring a bond should only be imposed when required by the court or when requested by an interested party.

## 5. COURT REVIEW OF CERTAIN AGREEMENTS

Section 3539 is added to provide a statutory basis for court review and adjustment of agreements that inform a distributee of his interest in an estate.

Comment: This new section provides a statutory basis for court review and adjustment of agreements that inform a distributee of his interest in an estate. Since the equities will greatly differ depending upon each case, the formulation of proper standards is left to the discretion of the court.

## 6. DISTRIBUTION TO ABSENTEES

Section 3540 is added to provide for the termination of estates by the distribution of funds held by fiduciaries where the distributee is unknown or cannot be located. For an analysis of the problem addressed, see In re Onyshochenko Estate, 64 D.& C.2d 87, 24 Fid. Rep. 63, (Phila., 1972).

Comment: Since the adoption of the Disposition of Abandoned and Unclaimed Property Act, August 9, 1971 (P.L. 286, No. 74), funds held by fiduciaries for absentees (who are known to have once existed) that had previously been paid to the Commonwealth in accordance with former Section 1314 of The Fiscal Code, act of April 9, 1929 (P.L. 343, No. 176), are instead held for seven years by clerks of courts. Subsection (a) has been added to statutorily authorize the payment of these funds to the Commonwealth through the Department of Revenue without the seven-year holding period. Subsection (b) deals with the problem of potential distributees who would affect the distribution of an estate if they exist but where there is not available proof of their existence. The court is given discretion to award distribution, to require refunding bonds and to set a time limit for presentation of claims.

## 7. INTEREST RATES

Sections 3543 and 7187 are amended to increase the interest rate from 3 percent to a more

realistic 5 percent. This change is consistent with 1978 House Bill 2692, Printer's No. 3622.

#### 8. TERMINATION OR COMBINATION OF CERTAIN TRUSTS

A. Section 6102 is amended to broaden the court's discretion in terminating or combining trusts.

Comment: The court's discretion in terminating trusts or making allowances from trusts is expanded from a limited class of income beneficiaries to all beneficiaries. Since the court may authorize distributions from principal only after it finds that the original purpose of the conveyer cannot be carried out or is impractical of fulfillment, the monetary limitation is repealed.

B. A companion amendment is provided for Section 7192.

Comment: The amendment affirms the decision in Miller Estate, 467 Pa. 193, 355 A.2d 577 (1976), authorizing a court to combine trusts that are identical except for remote contingencies.

C. Section 6109 is repealed as its subject matter will now be covered under Section 7192, as amended.

#### 9. EDITORIAL CHANGES

A. In addition to the clarifying amendments made to Sections 2203 and 2204, an editorial change is provided for Section 3133.

Comment: Section 3133 is amended to conform the time limit with Section 3385 (relating to limitations upon claims) and to conform references to lienholders with Section 3357 (relating to title of purchaser).

B. The reference to hour in Section 3153 is deleted as unnecessary.



## Appendix

---

### PENNSYLVANIA INHERITANCE TAXES AND DECEDENTS' DOMICILE

Responding to widespread interest on the part of members of the advisory committee on Decedents' Estates Laws, Senator Snyder, chairman of the task force, requested the staff of the Joint State Government Commission to review inheritance tax policies in Pennsylvania with a view to determining whether or not relatively high death tax rates have an effect on the choice of domicile of older persons. This analysis is concerned solely with the inheritance and estate taxes in Pennsylvania and other states, and the revenue gain or loss which might be experienced if the tax rates were reduced. It does not deal with any indirect effects of such tax rate changes on other tax revenues, business and professional activities or on such matters as joint ownership, community property, marital deductions, etc.

All states, except Nevada, levy one or more types of death taxes upon decedents whose domicile was in the state or who owned real property within the state. Some states, like Pennsylvania, levy inheritance taxes upon the transfer of shares of an estate to designated heirs. Rates are usually graded according to the degree of relationship of the heir to the deceased and may be graduated as well. Many states--e.g., New York and California--tax the entire estate, net of any permissible exemptions or deductions, at either flat or graduated rates, which also may vary for different classes of beneficiaries. All taxing states, including Pennsylvania, utilize a "credit estate tax" which automatically levies a tax sufficient to use up the maximum credit for state death taxes permitted under the federal estate tax law. Florida, Georgia and to a great extent Arizona utilize only the credit estate tax law.

#### Inheritance Tax Revenue Productivity

Pennsylvania death taxes are relatively high, whether measured by the overall revenue yield in contrast with other jurisdictions or by the amount of taxes on representative estates in various jurisdictions.

Table 1 shows death tax collections for the three most recent fiscal years for Pennsylvania and selected other states. Pennsylvania collections approximately equal tax yields in New York, even though total gross estates reported for federal estate tax purposes are twice as large in New York as in Pennsylvania. California, which has a relatively high graduated estate tax, realizes about twice as much as New York in death taxes even though total gross estates reported for federal tax purposes are only 18 percent higher in California. A recent study published by the National Institute of Education of the U.S. Department of Health, Education and Welfare lists Pennsylvania as the third highest state (exceeded only by Minnesota and Oklahoma) in terms of the revenue performance (tax effort) of death taxes.<sup>1</sup>

Table 1

INHERITANCE, TRANSFER AND/OR ESTATE TAX REVENUES  
SELECTED STATES, 1976-1978  
(in millions)

State	Fiscal year ending June 30		
	1976	1977	1978
Arizona	\$4.5	\$4.7	\$4.3
Florida	37.9	49.3	45.8
Georgia	5.8	15.3 <sup>a</sup>	8.1
New Jersey	79.4	77.0	95.7
Pennsylvania	139.4	146.5	162.6
New York	147.6	199.3	162.5
California	304.2	302.8	349.9

a. One unusually large estate.

SOURCES: U.S. Bureau of the Census, State Government Tax Collections in 1978, Series GF-78 No. 1; State Tax Collections in 1976, Series GF-76 No. 1. U.S. Government Printing Office, Washington, D.C.

1. D. Kent Halstead, Tax Wealth in Fifty States (Washington, D.C.: U.S. Government Printing Office, 1978), pp. 248-249.

Following is a breakdown of Pennsylvania death tax collections for fiscal 1978 (levied at the rate of 6 percent on transfers to spouses, parents and lineal descendants and at the rate of 15 percent on transfers to all other heirs):

1978 PENNSYLVANIA INHERITANCE AND ESTATE TAXES

<u>Tax or rate</u>	<u>Amount collected</u>	<u>Percent</u>
6%	\$75,013,000	50.3%
15%	71,022,000	47.6
Credit estate tax	<u>3,090,000</u>	<u>2.1</u>
Identified source subtotal	149,125,000	100.0
Adjustments and paid on account	<u>13,462,000</u>	
Total	162,587,000	

In 1973 the Pennsylvania Bankers Association commissioned Coopers & Lybrand, a public accounting firm, to conduct a comparative study of death taxes in 13 states. The results of this study have been furnished the staff and parts of it are included on pp. 20-22. The staff has surveyed the tax laws of the 13 states included in the Coopers & Lybrand study and concluded that the validity of the study is not impaired by changes in the tax laws which have occurred since 1973. One table (taxable estates of \$500,000) is omitted since the federal estate tax of 1976 reduced the amount of the credit estate tax for several states. Accordingly, the 1973 summary of Coopers & Lybrand reasonably reflects the present situation as to the level of death taxes in the 13 states and is presented below.

---

GENERAL COMMENTS  
CONCERNING THE THIRTEEN STATE STUDY\*

1. Florida and Georgia do not impose an inheritance tax. Their estate tax equals the federal state tax credit in each instance. Therefore, Florida and Georgia are the most favorable states in which to be resident at time of death since there is no excess death tax under any circumstances.
2. The Arizona tax equals the federal state tax credit except where jointly-held property is excluded from the federal taxable estate in which case an excess state tax results. After Florida and Georgia, Arizona is the next most favorable state in which to be a resident at time of death. If the decedent holds no jointly-owned property, Arizona is on a par with Florida and Georgia since there would be no excess state death tax.

3. In Maryland and Pennsylvania there is no inheritance tax on jointly-held property but an estate tax is imposed not to exceed the federal state tax credit. Therefore, in Maryland and Pennsylvania it is beneficial to hold property on a joint basis as opposed to individual ownership. Theoretically, if all of a decedent's property were jointly owned, there would be no excess Maryland or Pennsylvania death tax. However, this approach would seriously impede federal estate tax planning and lead in many, if not most cases, to a higher overall death tax cost even though there would be no Maryland or Pennsylvania excess death tax.
4. Except for jointly-held property, Pennsylvania ranks among the states which impose the highest excess death taxes for estates up to \$1,000,000.
5. As to taxable estates over \$1,000,000, Pennsylvania although exacting a high excess death tax, is generally lower than the states of California, Connecticut and New Jersey but higher than the states of Maryland, New York, Ohio, Virginia and West Virginia.
6. The only situation in which all 13 states are equally comparable, that is no excess tax in any case, is the instance where the estate is left 100 percent to charity.

---

\*As presented in a study by Coopers & Lybrand, Certified Public Accountants, Philadelphia, Pa., 1973, for the Pennsylvania Bankers Association. Note that in the context of the comments, "jointly-held" property refers to marital property.

### Estate Size

For Pennsylvania and most other states, the only detailed information on the size distribution of estates is contained in the Internal Revenue Service publications analyzing the information supplied on federal estate tax returns. The most recent data of this type are shown on Table 2 for the United States, Pennsylvania and Florida. It may be observed that Pennsylvania's size distribution of estates very closely approximates the distribution for the nation as a whole, whereas the size distribution for Florida is skewed toward larger estates.

### Effect of Tax Rate Change on Revenue Productivity

Data from the 1973 federal estate tax publication illustrate the drastic revenue loss which Pennsylvania would experience were it to attempt to compete with the states of Florida, Georgia and Arizona in levying only an estate tax equal to the maximum credit for state death taxes allowed on federal estate tax returns. Federal estate tax returns filed in 1973 for Pennsylvania decedents contain approximately \$25 million in state death tax credits, or 18.7 percent of the \$135 million in death tax revenues collected by the Commonwealth.

Table 2

## ESTATE TAX RETURNS FILED IN 1973

Size of gross estate	Number of returns	Gross estate	
		Amount (000's)	Percent of total
<u>United States</u>			
Under \$100,000	65,036	\$5,138,314	13.2%
\$100,000 under \$200,000	67,338	9,274,843	23.9
\$200,000 under \$300,000	18,951	4,583,450	11.8
\$300,000 under \$500,000	12,278	4,665,099	12.0
\$500,000 under \$1,000,000	7,284	4,950,266	12.7
\$1,000,000 or more	<u>4,028</u>	<u>10,253,292</u>	<u>26.4</u>
Total	174,915	38,865,262	100.0
<u>Pennsylvania</u>			
Under \$100,000	2,809	222,618	11.4
\$100,000 under \$200,000	3,215	447,362	22.8
\$200,000 under \$300,000	992	238,958	12.2
\$300,000 under \$500,000	608	229,775	11.7
\$500,000 under \$1,000,000	406	275,020	14.0
\$1,000,000 or more	<u>202</u>	<u>546,470</u>	<u>27.9</u>
Total	8,232	1,960,203	100.0
<u>Florida</u>			
Under \$100,000	2,371	189,765	7.5
\$100,000 under \$200,000	4,184	573,433	22.7
\$200,000 under \$300,000	1,076	265,277	10.5
\$300,000 under \$500,000	818	309,397	12.3
\$500,000 under \$1,000,000	474	321,230	12.7
\$1,000,000 or more	<u>295</u>	<u>864,207</u>	<u>34.3</u>
Total	9,218	2,523,308	100.0

SOURCE: U.S. Department of the Treasury, Internal Revenue Service, Statistics of Income--1972, Estate Tax Returns, Table 14.

Since the 1976 tax reform act reduced the amount of death tax credits by eliminating the federal tax on certain estates under \$500,000, the current ratio of state death tax credits to Pennsylvania collections is about 10 percent smaller--an estimated 16.8 percent rather than the 18.7 percent which prevailed in 1973. The revenue yield for Pennsylvania in 1978 would, therefore, have been reduced to approximately \$27 million (16.8 percent of \$162 million) if Pennsylvania levied only the credit estate tax. On the extreme assumption that this level would attract all of the death tax revenues garnered from the estates of individuals who died in Florida, Georgia and Arizona, the total collections would reach about \$85 million, still \$77 million short of actual collections under the existing inheritance and estate taxes.

#### Effect of Tax Rate Change on Choice of Domicile

The net out-migration of older Pennsylvanians may be calculated by contrasting the number of persons over 65 currently residing in the state with the comparable age cohort 20 years earlier. Table 3 shows this calculation for the United States, all regions and selected states.<sup>2</sup> It may be observed that 67.7 percent of the United States population aged 45 to 64 in 1957 was still living in 1977. This calculation ignores net in-migration for the nation which, however, for older persons is trivial. The disparity among states and regions in the percent of the states' 1957 population aged 45 to 64 still living in the same state in 1977 is striking. The Sun Belt states clearly have attracted a considerable number of older residents, and the Middle Atlantic and East North Central states have been the largest net losers of aged population.

If the Pennsylvania experience had followed the national average, Pennsylvania would have reported an additional 8.2 percent of the 1957 population aged 45 to 64, or approximately 197,000 individuals over age 65 in 1977. Inspection of data in Table 3 taken in conjunction with the previously discussed variations in death tax levels indicates that there is no correlation between low death taxes and high attraction of aged persons. For example, New York with a greater net out-migration of aged persons than Pennsylvania, has significantly lower death taxes. Georgia levies the lowest possible tax--the credit estate tax--yet has no more aged persons than the national average. In 1977 about 430,000

---

2. The data in Table 3 are based upon sample surveys by the U.S. Bureau of the Census. As a check upon the reliability of the samples, a calculation has been made of the 1970 census population 65 years and over as a percentage of the 1950 population aged 45 to 64. The results for Pennsylvania in contrast to the national average are practically identical to the results of Table 3.

Table 3

1977 POPULATION (65 YEARS OF AGE AND OVER)  
AS A PERCENTAGE OF 1957 POPULATION AGE 45 TO 64 INCLUSIVE  
BY REGION AND SELECTED STATES

Region or state	Population (000's)		Percentage
	1957	1977	
New England	2,178	1,421	65.2%
Middle Atlantic	7,445	4,321	58.0
New York	3,768	2,082	55.3
New Jersey	1,269	808	63.7
Pennsylvania	2,408	1,432	59.5
East North Central	7,250	4,240	58.5
West North Central	3,178	2,107	66.3
South Atlantic	4,429	3,834	86.6
Florida	756	1,444	191.0
Georgia	664	456	68.7
Delaware	82	53	64.6
Maryland	557	359	64.5
East South Central	2,221	1,510	68.0
West South Central	3,095	2,225	71.9
Mountain	1,092	918	84.1
New Mexico	124	98	79.0
Arizona	173	250	144.5
Pacific	3,711	2,845	76.7
California	<u>2,797</u>	<u>2,185</u>	<u>78.1</u>
Total Continental U.S.	34,598	23,422	67.7

SOURCES: U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States: 1978 (99th edition), Table 30; Statistical Abstract: 1959 (88th edition), Table 22.

more aged persons resided in California--where there are exceedingly high estate taxes--than if the proportion of the age cohort 20 years earlier had followed the national trend. Clearly, if the level of death taxes were a compelling factor in motivating the choice of domicile of older persons, California would have fewer and Arizona more residents age 65 and older in relation to the 1957 age cohort.

The data in Table 3 clearly imply that the potential for inheritance tax rate reduction by Pennsylvania as a migration inducement is seriously limited. On the assumption of equal mortality experience,<sup>3</sup> the net out-migration of aged persons between 1957 and 1977 was 197,000, or about 13.8 percent of the 1977 population age 65 and over. Two adjustments are necessary to convert this estimate of population loss to an estimate of inheritance tax revenue loss. The 1973 federal estate tax data show that approximately 80 percent of all federally taxable estates are attributable to decedents age 65 or over and the Pennsylvania tax experience should not differ drastically. From the same source, the following average size of gross estates has been calculated for selected states:

1973 AVERAGE GROSS ESTATE

United States	\$222,212
Florida	273,737
Pennsylvania	238,119
California	237,893
New York	227,038
Arizona	206,638

The highest average gross estate is reported for Florida decedents--\$273,700 or about 15 percent greater than the average gross estate of \$238,100 reported on behalf of Pennsylvania decedents.

If it is assumed that persons who left Pennsylvania would have had average estates of about 15 percent higher than those who remained, the estimated revenue shortfall of Pennsylvania death taxes attributable to

---

3. While the death rates for Pennsylvania and the U.S. differ (10.2 deaths per thousand population for Pennsylvania but only 8.9 for the U.S.) almost all of the difference in rates is accounted for by the different age distributions of the population. Despite the migration of aged persons from Pennsylvania over the past 20 years, the percentage of Pennsylvania population over age 65 is still higher than that of the U.S.--12.1 percent in contrast to 10.9 percent. The age-adjusted death rate for Pennsylvania, therefore, is 9.06 in comparison with the 8.9 rate for the country as a whole.

the out-migration is about 12.7 percent. This calculation ( $13.8\% \times .8 \times 1.15$ ) shows that Pennsylvania could have expected 12.7 percent more in death tax revenues if all 197,000 Pennsylvanians over 65 had remained in the state. Additional revenue of 12.7 percent would support a rate reduction for direct heirs from 6 percent to 5.3 percent and for collateral heirs from 15 percent to 13.3 percent. It is practically inconceivable that a large number of persons could be induced to change their domicile by such relatively small changes in tax rates.

These data lead to only one conclusion: Any reduction in Pennsylvania death tax rates would produce a proportionate reduction in tax revenues with practically no offset from the induced retention or in-migration of older persons.

Exhibit A

STATE INHERITANCE/ESTATE TAXES  
IN SELECTED STATES  
TAXABLE ESTATE OF \$250,000(1)

State of Residence of Decedent	1/2 to Wife and 1/4 to Each of Two Children - No Other Survivors (2)		100% to Wife - No Other Survivors - All Property Is Jointly Owned With Wife (3)		No Survivors Except a Brother and a Sister - 1/2 to Each (2)		No Survivors - 1/3 to Each of 3 Strangers (2)		No Survivors - 100% to Charity (2)	
	Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax	
	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.
Arizona	200	None	200	200	2,400	None	2,400	None	None	None
California	4,700	4,500	3,950	3,950	26,780	24,380	33,909	31,509	None	None
Connecticut	7,215	7,015	2,925	2,925	17,069	14,669	30,173	27,773	None	None
Florida	200	None	None	None	2,400	None	2,400	None	None	None
Georgia	200	None	None	None	2,400	None	2,400	None	None	None
Maine	4,679	4,479	2,897	2,897	17,890	15,490	25,448	23,048	None	None
Maryland	2,492	2,292	None	None	15,353	12,953	15,353	12,953	None	None
New Jersey	5,650	5,450	3,300	3,300	27,500	25,100	37,500	35,100	None	None
New York	3,050	2,850	1,375	1,375	7,800	5,400	8,000	5,600	None	None
Ohio	7,550	7,350	2,600	2,600	8,850	6,450	8,850	6,450	None	None
Pennsylvania	15,000	14,800	None	None	37,500	35,100	37,500	35,100	None	None
Virginia	3,249	3,049	2,050	2,050	8,976	6,576	13,503	11,103	None	None
West Virginia	8,210	8,010	1,638	1,638	10,282	7,882	21,564	19,164	None	None

- (1) Consists of cash and marketable securities - amount is before \$50,000 Federal exemption and before any marital deduction which may be available - assume no estate liabilities or expenses.
- (2) All property was the separate property of the decedent, derived from his own separate earnings in a noncommunity property state.
- (3) One-half of each item of property (\$125,000 ) was derived from separate earnings of each spouse while resident in a noncommunity property state.

SOURCE: From study commissioned by Pennsylvania Bankers Association in Coopers & Lybrand, CPA's, Philadelphia, Pa., 1973, Appendix B (reproduced).

Exhibit B

STATE INHERITANCE/ESTATE TAXES  
IN SELECTED STATES  
TAXABLE ESTATE OF \$1,000,000(1)

State of Residence of Decedent	1/2 to Wife and 1/4 to Each of Two Children - No Other Survivors (2)		100% to Wife - No Other Survivors - All Property Is Jointly Owned With Wife (3)		No Survivors Except a Brother and a Sister - 1/2 to Each (2)		No Survivors - 1/3 to Each of 3 Strangers (2)		No Survivors - 100% to Charity (2)	
	Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate	
	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Availab as Cred Against Fed. E.
Arizona	10,000	None	10,000	7,600	33,200	None	33,200	None	None	None
California	35,200	25,200	30,500	28,100	155,760	122,560	177,909	144,709	None	None
Connecticut	54,665	44,665	26,650	24,250	98,319	65,119	150,423	117,223	None	None
Florida	10,000	None	2,400	None	33,200	None	33,200	None	None	None
Georgia	10,000	None	2,400	None	33,200	None	33,200	None	None	None
Maine	32,975	22,975	19,882	17,482	74,944	41,744	107,512	74,312	None	None
Maryland	10,000	None	2,400	None	54,728	21,528	54,728	21,528	None	None
New Jersey	46,400	36,400	26,800	24,400	110,000	76,800	150,000	116,800	None	None
New York	19,800	9,800	8,000	5,600	53,800	20,600	54,000	20,800	None	None
Ohio	56,430	46,430	28,100	25,700	58,250	25,050	58,250	25,050	None	None
Pennsylvania	60,000	50,000	2,400	None	150,000	116,800	150,000	116,800	None	None
Virginia	21,405	11,405	11,941	9,541	50,976	17,776	64,554	31,354	None	None
West Virginia	53,096	43,096	9,879	7,479	52,970	19,770	90,159	56,959	None	None

- (1) Consists of cash and marketable securities - amount is before \$60,000 Federal exemption and before any marital deduction which may be available - assume no estate liabilities or expenses.
- (2) All property was the separate property of the decedent, derived from his own separate earnings in a noncommunity property state.
- (3) One-half of each item of property ( \$500,000 ) was derived from separate earnings of each spouse while resident in a noncommunity property state.

SOURCE: From study commissioned by Pennsylvania Bankers Association in Coopers & Lybrand, CPA's, Philadelphia, Pa., 1973, Appendix D (reproduced).

Exhibit C

STATE INHERITANCE/ESTATE TAXES  
IN SELECTED STATES  
TAXABLE ESTATE OF \$5,000,000(1)

State of Residence of Decedent	1/2 to Wife and 1/4 to Each of Two Children - No Other Survivors (2)		100% to Wife - No Other Survivors - All Property Is Jointly Owned With Wife (3)		No Survivors Except a Brother and a Sister - 1/2 to Each (2)		No Survivors - 1/3 to Each of 3 Strangers (2)		No Survivors - 100% to Charity (2)	
	Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax		Combined State Inheritance/Estate Tax	
	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.	Total	Amount Not Available as Credit Against Fed. E.T.
Arizona	138,800	None	138,800	90,400	391,600	None	391,600	None	None	None
California	307,200	168,400	174,300	125,900	955,760	564,160	1,133,910	742,310	None	None
Connecticut	455,065	316,265	226,850	178,450	618,319	226,719	878,423	486,823	None	None
Florida	138,800	None	48,400	None	391,600	None	391,600	None	None	None
Georgia	138,800	None	48,400	None	391,600	None	391,600	None	None	None
Maine	228,600	89,800	121,516	73,116	391,600	None	508,746	117,146	None	None
Maryland	138,800	None	48,400	None	391,600	None	391,600	None	None	None
New Jersey	451,400	312,600	256,800	208,400	660,000	268,400	778,998	367,398	None	None
New York	200,800	62,000	75,500	27,100	541,800	150,200	542,000	150,400	None	None
Ohio	336,430	197,630	161,850	113,450	391,600	None	391,600	None	None	None
Pennsylvania	300,000	161,200	48,400	None	750,000	358,400	750,000	358,400	None	None
Virginia	163,100	24,300	90,630	42,230	391,600	None	391,600	None	None	None
West Virginia	427,950	289,150	89,396	40,996	393,016	1,416	572,688	181,088	None	None

(1) Consists of cash and marketable securities - amount is before \$60,000 Federal exemption and before any marital deduction which may be available - assume no estate liabilities or expenses.

(2) All property was the separate property of the decedent, derived from his own separate earnings in a noncommunity property state.

(3) One-half of each item of property (\$2,500,000) was derived from separate earnings of each spouse while resident in a noncommunity property state.

SOURCE: From study commissioned by Pennsylvania Bankers Association in Coopers & Lybrand, CPA's, Philadelphia, Pa., 1973, Appendix F (reproduced).