

[J-70-2012][M.O. – Eakin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CHARLES O. MILLER, JR., AND DOROTHY M. MILLER,	:	No. 43 MAP 2011
	:	
Appellees	:	Appeal from the Commonwealth Court at 757 FR 2007 dated 3/29/11
	:	sustaining in part and overruling in part
v.	:	the exceptions filed to the 4/8/10 order
	:	which reversed the Department of
	:	Finance and Revenue decision at No.
	:	0613343 dated 10/16/07
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Appellant	:	ARGUED: May 9, 2012

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 17, 2013

The majority decision turns on the fact that the Miller Trust is structured so that it is possible that the trust estate may be distributed to beneficiaries prior to the settlor's death. See Majority Opinion, slip op. at 8-9. Thus, facially, the arrangement fails to satisfy the statutory requirement that a "living trust" be one from which "dispositions cannot be made to any beneficiary other than the settlor prior to the death of the settlor." 72 P.S. §8101-C. I agree and, therefore, support the result achieved in the main opinion.

I am circumspect, however, about some of the preceding passages within the majority's analysis, several of which appear to represent dicta. For example, the majority downplays the role of revocability in assessing the circumstances per which a trust may function as a will substitute. See Majority Opinion, slip op. at 6. For my own part, however, I am receptive to the Commonwealth's position -- consistent with

Department of Revenue regulations and the deference which should be accorded to these – that revocability serves a key role. See Brief for the Commonwealth at 16-21 (citing, inter alia, 61 Pa. Code §91.101).

Finally, the majority chooses not to decide the question of whether the transactions in Section 8102-C.3 are excluded or exempted from taxation. See Majority Opinion, slip op. at 4. I would merely note that the issue is a significant one which has attracted an amicus submission by the Philadelphia Bar Association offering its perspective that the issue transcends the present appeal and may be of widespread importance to clientele of Association members. Plainly, the statute, collectively with its heading, fosters material ambiguity as to whether exemption or exclusion was intended for a wide array of disparate transactions. Particularly because the adjudicative process generally focuses on the facts and circumstances of individual cases (and thus each judicial decision may touch on only one of the many impacted transactions), the sort of pervasive uncertainty manifest in Section 8102-C.3 would best be resolved via legislative clarification.