Once a Stepchild Always a Stepchild: The Fallacy of 'Former Stepchildren' and Pennsylvania Inheritance Tax

By Adam T. Gusdorff and Erica A. Russo

Adam T. Gusdorff

Erica A. Russo

The concept of family has changed significantly since Pennsylvania enacted the country's first inheritance tax act more than 150 years ago. Because Pennsylvania imposes inheritance tax at different rates depending on the relationship between the decedent and the beneficiary, defining family relationships is essential to calculate the inheritance tax due at the decedent's death. The General Assembly has attempted to keep up with our evolving culture by periodically incorporating the "modern family" into its inheritance tax laws, including a trend of expanding who are taxed as "lineal descendants." For example, a decedent's "stepdescendants" are included in the statutory definition of "lineal descendants" and, therefore, transfers to stepchildren are taxed at the 4.5% lineal rate. However, in some situations the Department of Revenue has read the statute narrowly and has attempted to characterize certain beneficiaries as "former stepchildren."

The term "former stepchildren," as used by the Department of Revenue, applies in situations in which the stepparent is no longer married to the stepchild-beneficiary's biological parent at the stepparent's death. For example, the biological parent could have predeceased the stepparent or been divorced from the stepparent when the stepparent dies. The situation becomes more complicated when the stepparent remarries after his or her marriage to the stepchild-beneficiary's biological parent ends.

Under these circumstances, the department has taken the position that these individuals are "former stepchildren" who are not "lineal descendants" subject to the 4.5% lineal rate. Instead, the department taxes these transfers at the 15% "collateral" rate.

This is a question that the authors have successfully litigated on behalf of beneficiaries in a case that did not result in a published opinion, and they are aware of the department taking this position in similar cases that were not litigated because of the relatively small amount at issue. In other words, this is an issue that is not likely to go away absent a decision by an appellate court or a legislative fix.

Despite the Department's position, more than a century of inheritance tax cases and statutes demonstrate that *all* stepchildren are, in fact, lineal descendants for inheritance tax purposes, and that the law does not recognize the notion of "former stepchildren" in this context. This article examines the development of the taxation of transfers to stepchildren, through both statutory and case law. Pennsylvania law, for inheritance tax purposes, recognizes that the family relationship between the stepchild-beneficiary and the decedent survives the severance of the marriage bond between the stepchild's natural parent and decedent-stepparent. Because this "step" relationship (i.e., the operative relationship for inheritance tax purposes) remains intact, such stepchildren are

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subject to the 4.5% lineal rate. Simply put, once a stepchild, always a stepchild.

Development of Pennsylvania Inheritance Tax Law

Pennsylvania's Inheritance and Estate Tax Act, 72 Pa. C.S. §§ 9101-9196, provides that inheritance tax shall be at the rate of 4.5% upon the transfer of property to or for the use of a decedent's "[g]randfather, grandmother, father, mother, … and lineal descendants." 72 Pa. C.S. § 9116(a)(1)(i). The term "lineal descendants" is defined to mean "[a]ll children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants *and stepdescendants*." Id. § 9102 (emphasis added).

The fundamental issue addressed in this article is whether the General Assembly intended to distinguish between beneficiaries whose natural parent remained married to the decedent-stepparent at the latter's death, and beneficiaries whose natural parent predeceased or was divorced from the decedent-stepparent at the latter's death. As such, the question in the first instance is one of statutory construction.

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921(a). Statutes imposing taxes shall be strictly construed. Id. § 1928(b)(3); see also *Estate of Carlson*, 388 A.2d 726, 728 (Pa. 1978) (stating that the statute imposing an inheritance tax on lineal descendants "must not only be strictly construed, but all reasonable doubt must be resolved in favor of the taxpayer"). Moreover, official comments to a statute may be treated as evidence of legislative intent when the comments were before the General Assembly at the time of enactment and are appended to the statutory text. *In re Trust under Deed of Kulig*, 175 A.3d 222, 230 (Pa. 2017) (citing 1 Pa. C.S. § 1939).

1826 to 1904: 'Lineal Descendants' Do Not Include Stepchildren.

Pennsylvania enacted the country's first inheritance tax act in 1826. See Act of April 7, 1826, 1826 P.L. 227 (the "1826 Act"). The 1826 Act imposed an inheritance tax on Pennsylvania property passing from a decedent "to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children, and lineal descendants born in lawful wedlock." Id. at § 1. Accordingly, in its initial iteration, Pennsylvania inheritance tax law divided beneficiaries into two classes: the exempt class and the collateral class.[1]

The 1826 Act did not explicitly define "lineal descendants" when including them as members of the exempt class; however, the term was understood to mean "issue." See Richard L. Grossman & M. Paul Smith, Pennsylvania Inheritance and Estate Tax, Part IV, Rate of Tax at 7 (Bisel, 6th ed. 2014). Therefore, parents, children and issue born in lawful wedlock were exempt from the initial inheritance tax.

In 1887, the General Assembly passed a new act, which primarily compiled and re-enacted all of the previous laws in force regarding Pennsylvania inheritance tax. See Act of May 5, 1887, 1887 P.L. 79 (the "1887 Act"). The 1887 Act identified those members of the exempt class as "father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife or widow of the son of the person dying seized or possessed thereof." 1887 P.L. 79, § 1. By adding the latter categories, the General Assembly expanded the exempt class.

1905 to 1960: 'Lineal Descendants' Expanded to Include "Children of a Former Husband or Wife"

A significant change occurred in 1905, when the General Assembly expanded the exempt class of beneficiaries identified in the 1887 Act to include the following: "father, mother, husband, wife, children, and lineal descendants born in lawful wedlock, *children of a former husband or wife*, or the wife or widow of the son of the person dying seized or possessed thereof." Act of April 22, 1905, 1905 P.L. 258, § 1 (emphasis added) (the "1905 Act"). This reference to "children of a former husband or wife" later appeared verbatim in the Act of June 20, 1919, 1919 P.L. 521, § 2 (the "1919 Act"), and the Act of May 15, 1925, 1925 P.L. 806, § 2. As discussed below, several Pennsylvania courts interpreted this amendment to include stepchildren in the exempt class.

In 1909, the Pennsylvania Supreme Court analyzed this language in *Com. v. Randall*, 73 A. 1109 (1909). In *Randall*,

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1 In 1917, the Commonwealth imposed a 2% inheritance tax on the previously exempt class, redefining it as the lineal class. Act of July 11, 1917, 1917 P.L. 832.

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the testatrix devised property to her stepson, being her husband's son by a former wife. Id. at 1109. The stepson argued that under the new language of the 1905 Act, he should be included in the class of exempt beneficiaries. The Court recognized that the 1905 Act added "children of a former husband or wife" to the exempt class. Id. In concluding that the gift to the stepson was exempt from taxation, the Court provided the following reasoning:

> The act of 1905 disregards the distinction [between lineal and collateral kindred] and allows the exemption to stepchildren. The reasons for this particular legislation were not so cogent as those which prevailed to exempt property passing to husband and wife, yet the distinction here observed has still a basis in the marital and family relation, and it is upon this relation that the whole scheme of classification rests.

Id. at 1110. The justification that the exemption derives from the "family relation" between the decedent and the stepchild receiving the testamentary gift has been cited by later court decisions.

The Dauphin County Orphans' Court applied that interpretation in *In re Seltzer's Estate,* 19 Pa. D. 1070 (O.C. Dauphin 1910). In *Seltzer*, the testator gave property to his stepdaughter, i.e., the daughter of his deceased wife by a former husband. Id. at 1070. The court construed "children of a former husband or wife" as follows:

> It is suggested by petitioner that a stepchild is not within the meaning of this term. It is difficult to understand whom it embraces if not stepchildren. Manifestly, the purpose of the Act of 1905 was to add to the class of those exempt from the tax. If the term means the child of a former wife or of a former husband of the decedent, it would mean no more than the decedent's child, for whom exemption was already provided in the general Act of 1887. To give the Act of 1905 any effect the term must necessarily mean the child of a former husband of the decedent's wife, or of a former wife of the decedent's husband, and such child would be the decedent's stepchild.

Id. The court followed the precedent set by Randall and concluded that "there is no doubt as to the meaning of the term or as to the purpose of the Act of 1905 to exempt from the tax an estate passing from a stepparent to a stepchild." Id. Importantly, the fact that the testator was predeceased by the stepdaughter's natural mother, to whom the testator was married until her death, did not affect this conclusion. Stated otherwise, there was no discussion of whether one could become a "former stepchild" of the decedent.

In *In re Butcher's Estate*, 110 A. 163 (Pa. 1920), the Pennsylvania Supreme Court expanded on its interpretation of the 1905 Act by noting that the exempt class includes a stepchild whose stepparent was divorced from his or her natural parent at the time of the stepparent's death. In *Butcher*, the testatrix left her entire estate to her stepdaughter despite being divorced from the stepdaughter's natural father at the time of her death. Id. at 163. The stepdaughter's natural mother was the testatrix's sister, to whom the natural father was married until her death. The Commonwealth argued that the beneficiary's identity as the testatrix's niece trumped her identity as stepdaughter and, therefore, she should be subject to the collateral inheritance tax. The Court disagreed, holding that the stepdaughter's identification as a child of the testatrix's former husband prevailed. Id. The fact that the testatrix was divorced from the stepdaughter's natural father did not affect this conclusion. Again, there was no discussion of whether one could become a "former stepchild." To the contrary, the trial court's adjudication had observed that "in common parlance the term stepchild is still used, *after the divorce as well as after the death of the parent*, to describe the relationship that arose by the remarriage of the parent." *Butcher's Estate*, 29 Pa. D. 109, 109 (O.C. Phila. 1920) (emphasis added).

In *In re Belosevich's Estate*, 29 Pa. D. & C. 682 (O.C. Wash. 1937), which interpreted the 1919 Act, the Washington County Orphans' Court considered the Commonwealth's position that legacies "to three stepchildren, children of the [decedent's] widow by a former marriage" were subject to tax at the collateral rate. Id. at 682. The court noted that "[i]t is conceded [by the Commonwealth] that … the words 'children of a former husband or wife' included in the class subject to the lineal tax of 2% means, in general, stepchildren." Id. The issue before the court was whether the phrase "children of a former husband or wife" requires that the former husband or wife must have predeceased the decedent-stepparent. The court held that no such condition applied. Id. at 684-85. Citing *Randall*, the court noted that the "marital and family relation" between the decedent and the stepchild is the basis of the distinction and such relation is the same regardless of

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the natural parent being alive or dead. Id. at 684.

In *In re Balthaser's Estate*, 40 Pa. D. & C. 322 (O.C. Berks 1941), the Berks County Orphans' Court considered whether the children of a *surviving* spouse are synonymous with the children of a *former* spouse for Pennsylvania inheritance tax purposes. Id. at 324. The testator gave his wife a life estate in his real and personal property and named her seven children as the remainder beneficiaries. Id. at 323. Four of these children were the testator's natural children and three were his stepchildren (i.e., children of his surviving wife by a former husband). Id. The executors paid inheritance tax at the lineal rate for all remainder beneficiaries; however, the register of wills filed a transfer tax appraisement applying the collateral rate to the stepchildren. Id. at 323-24. The Commonwealth argued that the words "children of a former husband or wife" only applied to those children whose natural parent predeceased the decedent-stepparent or whose natural parent divorced the decedent-stepparent, thus distinguishing a "surviving spouse" from a "former spouse." Id. at 324. The court held that "only such stepchildren as are the children of a former husband or wife, deceased or divorced at the beginning of tax liability, fall within the class subject to the [lineal tax rate]." Id. at 325. However, because the testator's stepchildren did not receive their testamentary gifts until their natural mother's death, at which point she became the testator's "former wife," such stepchildren were subject to the lineal inheritance tax rate. Id.

In *In re North's Estate*, 67 Pa. D. & C. 201 (O.C. Jeff. 1949), the Jefferson County Orphans' Court considered whether a transfer made to the decedent's stepdaughter within one year of death should be taxed at the lineal rate or the collateral rate under the 1919 Act, as amended. Id. at 202. The court rejected the Commonwealth's position that to be a "child of a former husband or wife" required the child's natural parent to be dead or divorced from the decedent at the decedent's death. Id. at 205. Noting Randall's statement about the "marital and family relationship" being the basis for the tax exemption, the court found that "[u]nquestionably there is a closer knit family relationship existing between a stepfather and stepdaughter during the time the mother and stepfather are living together in happy harmony as husband and wife than would exist between the stepfather and stepdaughter after the dissolution of such marriage." Id. at 205-06. Furthermore, the *North* court held that under the Commonwealth's restrictive interpretation, the stepchild "would be the tax victim because of the dissolution by death of the happy family relationship existing between her mother and stepfather." Id. at 206. Therefore, the court clarified that the phrase "children of a former husband or wife" is synonymous with stepchildren, regardless of whether the stepchild's natural parent is alive or dead at the time of the decedent-stepparent's death. Id. This is consistent with the Supreme Court's ruling in *Randall* and other cases cited above.

In *Zipperlein's Estate*, No. 492 of 1949 (O.C. Dela., Nov. 30, 1949), the Delaware County Orphans' Court followed *North*. In *Zipperlein*, the testatrix left her entire estate to her stepson and his wife as tenants by the entireties. The testatrix was predeceased by her husband, the natural father of the stepson. The court noted that, although the 1919 Act, as amended, "does not use the term 'stepson' or 'stepchildren,' it has been held that the phrase 'children of a former husband or wife' refers to stepchildren, and that an inheritance by a stepson is therefore taxable at the rate of 2%. It has also been held that it is immaterial whether the former marriage was terminated by death or divorce, the two percent rate being applicable to children of such previous marriage in either event." Id. (citations omitted). The court ruled that the entire gift was taxable at 2%. On appeal, the Supreme Court confirmed the assessment of tax against the stepson's one-half undivided interest at the 2% lineal rate, but reversed and remanded to have the wife's one-half undivided interest taxed at the 10% collateral rate. *Zipperlein Estate*, 80 A.2d 817 (Pa. 1951) (stating that if the gift "had been made to the stepson alone it would have been subject only to a 2% direct inheritance tax by virtue of the clause 'children of a former husband or wife'").

1961 to 1981: Change in Language from 'Children of a Former Husband or Wife' to 'Stepchildren' but No Change to Substantive Law

In 1961, the General Assembly passed the Inheritance Tax Act of 1961, which not only provided a definition for "lineal descendants" but also changed the classification of beneficiaries for inheritance tax purposes to include Class A and Class B beneficiaries. See Inheritance and Estate Tax Act of 1961,1961 P.L. 373, §§ 102(13), 403, 404 (the "1961 Act").

Under § 403 of the 1961 Act, Class A beneficiaries were subject to an inheritance tax rate of 2%, and Class B beneficiaries were subject to an inheritance tax rate of 15%. Id. §§ 403, 404. Class A beneficiaries included the decedent's grandfather, grandmother, father, mother, husband, wife, lin-

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eal descendants, and wife, widow, husband or widower of a child. Id. § 403. Class B beneficiaries included all others. Id. § 404. Section 102(13) of the 1961 Act provided the following definition of "lineal descendants":

> "Lineal descendants" includes children and their descendants, adopted descendants and their descendants, stepchildren, illegitimate descendants of the mother and their descendants, and children and their descendants of the natural parent who are adopted by his spouse. It does not include descendants of stepchildren, illegitimate children of the father and their descendants or adopted children and their descendants in the natural family, except as above set forth.

Id. § 102(13). Thus, the 1961 Act expanded who are lineal descendants by adding certain adoptees. The 1961 Act also distinguished between stepchildren (Class A) and descendants of stepchildren (Class B). In acknowledging this distinction, the official comment to Section 403(1) states that "[s]tepchildren are taxable at the lower rate under existing law (Act of 1919, P.L. 521, §2), and the taxation of transfers to descendants of stepchildren at the higher rate also conforms with existing law." Id. § 403, Jt. St. Govt. Comm. Comment. Pointing out the change in the statutory categories, the official comment also notes that "'Class A' is substantially the same as 'lineals' and 'Class B' is substantially the same as 'collaterals.'" Id. The Appendix to the Pennsylvania House of Representative's Legislative Journal for the Session of 1961 includes these comments. As such, the comments "were published or generally available prior to the consideration of the statute by the General Assembly" and may be considered when interpreting the 1961 Act. 1 Pa. C.S. § 1939.

These comments indicate that the General Assembly did *not* intend the change in language from "children of a former husband or wife" to "stepchildren" to result in a substantive change regarding the application of inheritance tax rates. Instead, as the comments to the 1961 Act make clear, the General Assembly was merely rewording existing law. Moreover, the 1961 Act could be considered to have codified the common law, as set forth in *Randall*, et al., with respect to the 1905 Act and the 1919 Act. Considering the many disputes regarding the language "children of a former husband or wife," as noted in the several cases discussed above, the General Assembly presumably intended to clarify that "children of a former husband or wife" was synonymous with "stepchildren."

The official comment to Section 403(1) that "[s]tepchildren are taxable at the lower rate under existing law (Act of 1919 P.L. 521, § 2)" evidences this intent. 1961 Act § 403, Jt. St. Govt. Comm. Comment. Section 2 of the 1919 Act includes the language "children of a former husband or wife" to identify stepchildren as members of the lineal class. See 1919 Act § 2. Therefore, by saying that "stepchildren" are taxable at the lower rate under the 1919 Act, which refers only to "children of a former husband or wife," it is apparent that the 1961 Act was intended to simplify the often-interpreted language of the 1919 Act.

In the 1961 Act and the comments thereto discussed above, the General Assembly was acknowledging that it did not intend to change the law, and it was necessarily aware of the line of cases interpreting the prior acts, beginning with *Randall*. There is nothing in any statute, comment or case to indicate that the General Assembly intended to narrow the class of lineal descendants by its 1961 definition.

1982 to Present: 'Lineal Descendants' Expanded to Include Stepdescendants.

In 1982, the General Assembly added Chapter 17, regarding Inheritance and Estate Taxes, to Title 72 (Taxation and Fiscal Affairs) of Pennsylvania Statutes. Section 1702 defined lineal descendants as follows:

> All children of the natural parents and their descendants, adopted descendants and their descendants, stepchildren and their descendants and children and their descendants of the natural parent who are adopted by his spouse. Except as otherwise specifically provided in this definition, lineal descendants do not include descendants of stepchildren or adopted children and their descendants in the natural family.

72 Pa. C.S. § 1702 (repealed). Thus, the General Assembly once again expanded the classes of individuals who would be taxed at the lineal rate rather than at the higher collateral rate by now including descendants of a stepchild.

In 1991, the General Assembly repealed Chapter 17 and added the Inheritance and Estate Tax provisions as Article XXI of the Tax Reform Code of 1971. At that time, the General Assembly again amended the definition of lineal descendants to mean "[a]ll children of the natural parents and their descendants, whether or not they have been adopted by

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others, adopted descendants and their descendants and stepdescendants." 72 Pa. C.S. § 2102 (repealed). This remains the current language under 72 Pa. C.S. § 9102. In none of the above-cited statutes, or the official comments thereto, did the General Assembly indicate that it intended to change the law by excluding the "children of a former husband or wife" from the definition of "lineal descendants." As demonstrated by the comment to the 1961 Act, the General Assembly instead intended to maintain the status quo as it related to such individuals.

In a case interpreting the current language of 72 Pa. C.S. § 9102, the York County Orphans' Court held that "stepdescendants" includes descendants of a decedent's former spouse, regardless of whether the marriage bond was broken by death or divorce and regardless of whether the decedent remarried. *Hartenstein-Weaver Estate*, 1 Fid. Rep. 3d 309 (O.C. York 2011). In *Hartenstein-Weaver*, the decedent made a testamentary gift to the grandchildren and great-grandchildren of her late husband. Id. at 311. The gifts were made to "the grandson of my late husband" and the "great-grandchild of my late husband." Id. at 319. Following the death of her husband, the decedent remarried. Id.

The court framed the issue as follows:

> Are the grandchildren and great-grandchildren of a decedent's former spouse the decedent's "lineal descendants" (specifically including "stepdescendants") for inheritance tax purposes when after her former spouse's death, decedent remarried another person and remained married to that new spouse until decedent's death? This is an issue of first impression in Pennsylvania. *More simply, the issue could be stated: Once a stepchild, is that person always a stepchild for inheritance tax purposes?*

Id. at 313 (emphasis added).

The court first considered whether the death of the decedent's husband had terminated the status of his children as the decedent's stepchildren. The court noted that "death of the natural parent does not positively terminate the step relationship between the stepparent and the stepchild for inheritance tax rate purposes." Id. at 318 (quoting *Zipperlein*, No. 492 of 1949, supra); see also *Butcher*, 29 Pa. D. at 109-10 ("The relationship, however, is not between the decedent and the parent, but between the decedent and the child, and as this relationship is not dissolved by the death of a parent, by a parity of reasoning, a divorce can have no greater effect.").

The court then considered whether the remarriage of the decedent terminated the step-relationship between the stepparent and the stepchild. The court held that it did not. Id. at 329-30. The court found persuasive support for its position in *Depositors Trust Company of Augusta v. Johnson*, in which the Maine Supreme Court opined that the remarriage of a stepparent "would not appear to have any compelling significance for inheritance tax purposes requiring the adoption of a different rule." 222 A.2d 49, 52 (Me. 1966).

Furthermore, the York County Orphans' Court noted that "this issue of whether a beneficiary is a stepdescendant for imposition of rate of inheritance tax will only arise when a testator has provided for those 'step' beneficiaries by will." *Hartenstein-Weaver,* 1 Fid. Rep. 3d at 331. By including a bequest to a stepchild in the will, the testator indicates that the step-relationship between the testator and the beneficiary remained intact beyond the marriage that initially created the relationship from the testator's perspective. Id. at 331-32. For the foregoing reasons, and because a court must strictly construe any ambiguity in a tax statute in favor of the taxpayer, the court held that the testamentary gift to the decedent's stepdescendants should be taxed at the lineal rate of 4.5%. Id. at 331-33; see also *Carlson*, 388 A.2d at 728 (stating that the statute imposing an inheritance tax on lineal descendants "must not only be strictly construed, but all reasonable doubt must be resolved in favor of the taxpayer").

The case litigated by the authors resolved in the beneficiaries' favor by order of the Montgomery County Orphans' Court in 2018. The case involved a woman (decedent) who died in 2015 and had made testamentary gifts to the children of her former husband, whose death in 1986 ended their 23-year marriage. Decedent subsequently remarried in 1990,

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and her surviving spouse was her executor. Decedent's will, which she executed in 2012, included specific gifts totaling $2 million to the children of her predeceased former husband.

The executor took the position that these specific legatees were "stepchildren" and paid $90,000 tax at the 4.5% lineal descendants rate. The Department of Revenue issued a Notice of Inheritance Tax Appraisement, Allowance or Disallowance of Deductions and Assessment of Tax, in which it assessed tax on the transfers to the stepchildren at the 15% rate (the "assessment"), thus increasing the tax by $210,000, not including interest. The executor filed a formal protest of the assessment with the Department's Board of Appeals, which upheld the assessment.

On appeal to the Montgomery County Orphans' Court, the executor relied on the statutory and case law set forth above and prevailed, with the Orphans' Court concluding that the transfers should be taxed at the 4.5% rate. The department did not pursue the matter further.

Department of Revenue's Positions

Both in *Hartenstein-Weaver* and in the case litigated by the authors, the Department of Revenue sought to impose tax at the 15% collateral rate on gifts to "former stepchildren" but did not cite to any tax statute or tax-based court decision to support its contention. In *Hartenstein-Weaver*, the department relied solely on a will interpretation statute relating to the time for ascertaining a class of beneficiaries, 20 Pa. C.S. § 2514(5), and a case addressing whether an individual was a beneficiary for purposes of distributions from a trust, *Borie Estate*, 74 Pa. D. & C.2d 441, 26 Fid. Rep. 347 (O.C. Phila. 1976). Neither references inheritance tax or tax rates.

The Department's Board of Appeals relied on the same two authorities in the authors' case. Before the Montgomery County Orphans' Court, the department cited five cases that do not involve inheritance tax, two of which are unpublished and only one of which was decided by a Pennsylvania state court. See *J.C. Penney Life Ins. Co. v. Wons*, 2001 WL 327127 (E.D. Pa. 2001) (unpublished decision involving rights of a stepchild in an insurance policy); *Brotherhood of Locomotive Firemen & Enginemen v. Hogan*, 5 F.Supp. 598 (D. Minn. 1934) (rights of a stepchild in an insurance policy); *Hays v. Hays*, 946 So.2d 867 (Ala. Civ. App. 2006) (adult adoption); *D.O. v. M.O.*, 2017 WL 4390420 (Del. Fam. Ct. 2017) (unpublished decision involving the right to a protection from abuse order).

The only Pennsylvania state court cited by the department in the authors' case found that a stepparent is not liable for the support of a stepchild after the termination of the marriage to the natural parent. *McNutt v. McNutt*, 496 A.2d 816 (Pa. Super. 1985). However, it should be apparent that the public policy behind not requiring a stepparent to *involuntarily* make support payments is completely different than the issue presented here, in which inheritance tax is being imposed on a *voluntary gift* made by the stepparent to the stepchild.

Conclusion

With the prevalence of blended families in today's society, the Department of Revenue's distinction between stepchildren and "former stepchildren" can affect the tax planning of many families. However, this distinction is absent from the legislative history and case law regarding Pennsylvania inheritance tax dating back to 1905. Furthermore, Pennsylvania courts have consistently ruled that the fact that a stepchild's natural parent predeceased, or was divorced from, the decedent-stepparent had no impact on the stepchild's status as a "lineal descendant" within the meaning of the inheritance tax act then in effect. The reason, going back to *Randall* in 1909, is that the "family relationship" between the stepchild and the decedent is the operative relationship for inheritance tax purposes, and what greater evidence can there be of such a relationship than the decedent making a provision for the stepchild in his or her will?

Pennsylvania courts have unfailingly ruled that the 4.5% lineal descendant rate applies to stepchildren in the multitude of circumstances presented in this article. As such, these cases demonstrate that, for inheritance tax purposes, once a person is a stepchild of a decedent, he or she is always a stepchild.

Adam T. Gusdorff is a partner at Heckscher, Teillon, Terrill & Sager PC in West Conshohocken and focuses his practice on Orphans' Court litigation involving trusts, estates, nonprofit corporations, guardianships and other fiduciary matters.

Erica A. Russo is an associate at Heckscher, Teillon and focuses her practice on estate planning and the administration of trusts and estates.