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2007 NOV -7 AM 10:46

October 30, 2007

INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Proposed Amendments to 61 Pa Code, Chapter 91 (relating to realty transfer tax) ("Draft Regulations")

Dear Mr. Kaufman:

We do a great deal of real estate business in Pennsylvania and are very concerned about the Draft Regulations the Department of Revenue has promulgated revising the realty transfer tax regulations. These regulations in certain instances are contrary to the law and also are bad public policy. They will discourage real estate transactions in Pennsylvania. Among the significant issues raised by the Draft Regulations are:

- realty transfer tax would be imposed on the assignment of a contract to purchase real estate. Taxing this type of transaction is contrary to the law under the Pennsylvania Supreme Court's holding in the Allebach case;
- like kind exchanges may well be subject to **four** transfer taxes because these regulations provide, contrary to the Federal law, that neither a "qualified intermediary" nor an "exchange accommodation title holder" are agents of the taxpayer. Pennsylvania would be the only state in the country where exchanges would be subject to such multiple realty transfer taxes; and
- in contrast to the existing regulations, in a sale leaseback transaction, if the lease term (including most options to renew) is 30 years or more, both the sale and the lease will be subject to realty transfer tax unless the transaction is a financing, as narrowly defined by the DOR. Thus, many sale leaseback transactions will be subject to two realty transfer taxes on the initial sale and leaseback, and a **third** realty transfer tax if the property ultimately is conveyed back to the seller.

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For these reasons, we urge the Independent Regulatory Review Commission to reject these regulations and request the DOR to issue regulations that comply with the law and are good public policy. Thank you for your consideration.

Very truly yours,



Kathy D. Miller, VP – Tax
Regency Centers

cc: Gregory C. Fajt, Chief of Staff