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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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FINANCE, REPUBLICAN CHAIRMAN
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APPOINTMENTS

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TOBACCO SETTLEMENT INVESTMENT
BOARD

October 12, 2007

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

Re: Final Form Regulation – Realty Transfer Tax Amendments – Department of Revenue, Regulation #15-429 (61 Pa. Code, Chapter 91)

Dear Mr. Kauffman:

I am submitting for IRRC's consideration some "final" comments regarding the above-referenced final form regulation pertaining to the realty transfer tax. It has been some time since the existing formal regulations in this area of state tax law have been revised to reflect legislative enactments, court decisions interpreting the law, and Departmental policy and practice. Hopefully, this revision will work to make the administration and application of the realty transfer tax more readily understandable for both tax professionals and the general public. However, the regulations should clearly and unmistakably be grounded in the underlying statutory language and reflect legislative intent before gaining final approval. As Minority Chairman of the House Finance Committee, I would like to tender a few quick observations concerning aspects of these regulations that I believe merit closer IRRC scrutiny as it considers final approval of the regulations.

One of my areas of concern involves proposed changes to the existing regulations at section 91.155 relating to the taxability of transfers of standing timber. Currently, standing timber is considered nontaxable if the agreement calls for its "severance and removal within an immediate ascertainable date." Under the proposed regulation, standing timber would be nontaxable if the agreement calls for its "severance and complete removal at once or as soon as it can be reasonably done." See section 91.155(b). The Revenue Department apparently will make the determination as to what amount of time is "reasonably necessary" to remove the timber.....this strikes me as a totally subjective determination that should not be a part of any taxation regimen. There is no question that determining whether the parties to a timber sale agreement intended the buyer to have an interest in the timber as land or contemplated its removal as personalty might be difficult to ascertain in some situations. However, it seems to me that the Revenue Department is replacing an admittedly less than perfect, but fairly objective standard, with one that is terribly more subjective, that will result in much taxpayer confusion, and that will inappropriately result

in more transactions being subject to tax. I would respectfully urge IRRC to take a close look at section 91.155 in this respect.

Of major interest to me are the proposed regulations on the tax treatment of the transfer of family farm partnership real estate interests. The regulations are being proposed to address the 1994 statutory exclusion of these transfers from the realty transfer tax. There are currently no formal regulations in place. I have two concerns.

First and foremost is the requirement at section 91.221(a)(3) (and reiterated at 91.222(3)) that an entity constitutes a family farm partnership only if the entity is "a general or common law partnership." What is the statutory basis for limiting the family farm partnership exclusion to just general or common law partnerships? The statutory provisions on point in the Tax Reform Code contain absolutely no limiting language.....the statute uses the term "partnership," making no distinction between general, limited, limited liability or other type of partnership. In the Department's response to the public comments elicited at the proposed rulemaking stage, it is stated that the Department believes that the General Assembly intended the term "family farm partnership" to mean just general or common law partnerships. As additional justification for that belief, the response further notes that the definition of the term "association" in the tax law itself distinguishes between partnerships, limited partnerships and other types of business entities, essentially arguing that if the General Assembly had intended to include all partnerships within the context of family farm partnership it would have specifically listed them. I find this argument unpersuasive. The listing of "partnership" and "limited partnership" in the definition of "association," which dates back to 1951 (Act 467), does not mean that use of the term partnership should not include other types of partnerships in other statutory contexts. As I believe the proposed regulation strays from legislative intent, I strongly urge IRRC to give this issue close scrutiny as it considers the final form regulation.

Secondly, the requirement in the proposed regulations at 91.221(a)(2) (and reiterated at 91.222(1)) that a family farm partnership devote at least 75% of the "book value" of its assets to the business of agriculture in order to qualify for transfer tax exemption is not supported by the language in the statute (which simply requires that 75% of partnership assets be so used.....a measurement that arguably could use further specificity). Nonetheless, the statute does not use the term "book value" and any modification to the 75% requirement along those lines probably should be accomplished legislatively, if there is a need to do so. I do not believe the Department has demonstrated that the "determination" of this 75% threshold has become problematical or that there is really a pressing need to make this alteration. The current regulations regarding the exemption for family farm corporations, which also have the 75% asset usage threshold, are also being altered to include this "book value" proviso (see 91.211(a)(1)).

I thank you for your attention to and consideration of the foregoing material. If you have any questions or would wish to discuss any aspect of same, please do not hesitate to contact me.

Sincerely,

Steven R. Nickol
Minority Chairman
House Finance Committee

SRN:dp
cc: Honorable David K. Levdansky
Majority Chairman, House Finance Committee