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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 6, 2007

Honorable Thomas Wolf, Secretary  
Department of Revenue  
Strawberry Square, 11th Floor  
Harrisburg, PA 17128

Re: Regulation #15-429 (IRRC #2503)  
Department of Revenue  
Realty Transfer Tax Amendments

Dear Secretary Wolf:

At its meeting on November 1, 2007, the Commission considered the report containing the revised final-form regulation. The motion to approve this report failed due to a tie vote. Consequently, the Commission has taken no formal action on this report.

The Commission's time period within which it must act has now expired. Therefore, this report containing the revised final-form regulation is deemed approved in accordance with Section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5.1(e)).

If you have any questions on this matter, please contact me.

Sincerely,

Arthur Coccodrilli  
Chairman

wbg

cc: Honorable Patrick M. Browne, Chairman, Senate Finance Committee  
Honorable John N. Wozniak, Minority Chairman, Senate Finance Committee  
Honorable David K. Levdansky, Majority Chairman, House Finance Committee  
Honorable Steven R. Nickol, Minority Chairman, House Finance Committee  
Andrew Clark, Esq., Office of General Counsel  
Robert A. Mulle, Esq., Office of Attorney General  
Mary Jane Phelps, Director, Legislative Reference Bureau

**REGULATION #15-429 (IRRC #2503)**  
**DEPARTMENT OF REVENUE**  
**REALTY TRANSFER TAX AMENDMENTS**

**Dissenting Statement of Commissioner John F. Mizner**

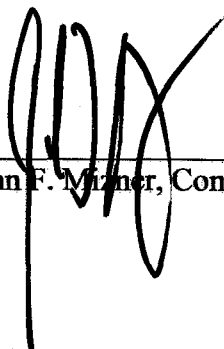
This matter involves a rulemaking order designed to implement the Realty Transfer Tax Act. For the reasons set forth below, I respectfully dissent.

First, this regulation threatens the economic and fiscal health of the Commonwealth. 71 P.S. § 745.5b(b)(1). Implementation may result in significant costs to the Commonwealth, its political subdivisions and the private sector. I agree with commentators who contend that implementation of this regulation will result in a tax structure that puts Pennsylvania at a disadvantage in comparison to other states competing for investment dollars. Moreover, as evidenced by various interpretations submitted by the Department and commentators, this regulation is confusing and fails to supply sufficient guidance to the regulated community. The foreseeable result of such confusion is increased legal, consulting and accounting costs that will be incurred in the public and private sectors.

Second, this regulation fails to meet the standard of clarity, feasibility and reasonableness required by the Regulatory Review Act. 71 P.S. § 745.5b(b)(3). The definitions of "living trust" and "ordinary trust" conflict with definitions of the same terms in the Realty Transfer Tax Act, 72 P.S. § 8101-C. Additionally, I disagree with Sections 91.153 and 91.168 of the regulation to the extent they allow the Department the latitude to tax like-kind exchanges and sale-leaseback transactions multiple times.

Third, this regulation represents a policy decision of such a substantial nature that it requires legislative review. 71 P.S. § 745.5b(b)(4). In the preamble to this regulation, the Department indicates it developed Section 91.132 "to address the court decision in Allebach v. Commonwealth, 546 Pa. 146, 683 A.2d 625 (1996)." Rather than heed the Pennsylvania Supreme Court's admonition in Allebach, the Department chose to violate the General Assembly's dictate that taxing statutes be strictly construed. If indeed there is a problem to be fixed, then that fix must come from the General Assembly because the current statutory framework does not provide the Department with the necessary statutory authority.

Therefore, I respectfully dissent.



John F. Mizner, Commissioner

