



## Update: Realty Transfer Tax on Assignments of Agreements of Sale

By Lauren W. Taylor

Imagine this scenario: A real estate company enters into an agreement to purchase property in Pennsylvania. Prior to closing, the real estate company forms a special purpose entity (SPE) and assigns the agreement of sale to the SPE. At the closing, the seller conveys the property by deed to the SPE. This is not an unusual situation; however, in light of the recent amendments to the Pennsylvania Realty Transfer Tax Regulations, it has been raising concerns in the real estate community.

The January issue of this *Newsletter* outlined the Pennsylvania Department of Revenue's amendments to the Realty Transfer Tax Regulations, which were issued in December 2007. The amendments provided, among other things, that the realty transfer tax would be imposed on amounts paid for the assignment of a contract to purchase real estate, even where such contract was assigned to a buyer's wholly-owned SPE.

On April 18, 2008, the Department issued a revised bulletin to clarify its position on the taxation of assignments of agreements of sale. While the Department still maintains its stance that the assignment of an agreement of sale is a taxable event, it has relaxed its position by providing a safe harbor under which an assignment of an agreement of sale will not be considered a taxable transaction.

The revised bulletin provides that the realty transfer tax will *not* apply to the assignment of an agreement of sale to a real estate company's SPE so long as the following requirements are met:

- the initial agreement of sale expressly states that the buyer is acting on behalf of a yet-to-be-formed SPE
- the initial agreement of sale expressly states that the buyer has "no intent to obtain legal or equitable title to the real estate"
- the financing for the property must be in the name of the SPE
- the SPE must purchase the property at closing either with funds obtained from financing or with its own assets
- the assignment of the agreement of sale must result in a "repudiation" of the buyer's duties to the seller, and a "novation" on the part of the SPE to the buyer's duties.

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