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**State of West Virginia
Department of Tax and Revenue**

Charleston 25305

SECRETARY OF STATE

L. FREDERICK WILLIAMS, JR.

SECRETARY

GASTON CAPERTON
GOVERNOR

January 3, 1991

Michael McThomas
Associate Counsel
Legislative Rule-Making Review Committee
Room M-152, State Capitol
Charleston, WV 25305

Re: **Compromise With Commentators On Agency Approved Regulations, Title 110, Series 13D, 1991, Whereby Regulations Will Be Withdrawn In Order To Give Commentators An Opportunity To Seek Statutory Changes Addressing The Issues In Dispute**
Legal Log 91-332

Dear Mr. McThomas:

This letter discusses the agency approved regulations proposed by this Department entitled: "Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit," Title 110, Series 13D, 1991.

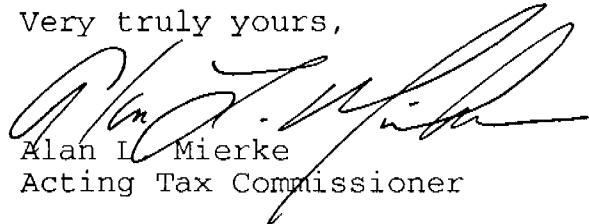
Commentators have protested against certain provisions of the aforesaid regulations in two main areas. First, the commentators contend that the sales and use tax paid on purchases of building materials and other construction costs should be subject to offset by the housing development credit up to the 50% limitation provided by statute. Second, the commentators contend that the sale of a housing unit by a developer of a qualified housing development should not be treated as a "disposition" of the qualified investment property such as to trigger recapture of credit otherwise available on such property. As you know, it has been the finding of our legal staff, and is the position of the Department of Tax and Revenue, that the amendments to the agency approved regulations advocated by the commentators are fundamentally inconsistent with the qualified housing development credit statute.

In view of the fact that the Department of Tax and Revenue was instructed by the Legislative Rule-Making Review Committee to seek

a compromise with the commentators on the above-described regulations, and given that the changes advocated by the commentators would, in the opinion of the Department require a statutory amendment, it is the decision of this Department to withdraw the aforesaid regulations in order to give the commentators an opportunity to seek legislation to effectuate the treatment advocated by the commentators. Therefore, the Department of Tax and Revenue hereby respectfully withdraws its regulations entitled "Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities, and Coal Based Liquids for Synthetic Fuels," Title 110, Series 13D, 1991.

It should be noted that the aforesaid agency approved proposed regulations merely state the administrative policies which have always been applied by this Department in the administration of the tax credits addressed therein. The Department of Tax and Revenue, subsequent to withdrawal of these regulations, will continue to administer the housing development credit and other credits addressed in the aforesaid regulations under the administrative policies which have historically been applied for these credits.

Very truly yours,



Alan I. Mierke
Acting Tax Commissioner

LD:mm/ss

copy: Richard E. Boyle, Jr.
Director, Legal Division