ALERT
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TAX
News Concerning Recent Tax Issues

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RECENT PENNSYLVANIA TAX DECISIONS

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EXEMPT SPLIT-OFF INCURS ROLLBACK TAX

A panel of the Commonwealth Court held that a qualifying two acre split-off of land subject to a preferential assessment incurred rollback taxes, notwithstanding a statutory provision that states that a qualifying two acre split-off will not be subject to tax. *Donnelly v. York County Board of Assessment Appeals,* No. 1015 C.D. 2008 (Pa. Commw. July 2, 2009). The decision appears to be incorrect, probably due at least in part to a badly worded statute.

Property enrolled in the preferential assessment program under the Clean and Green Act and devoted to agricultural use, agricultural reserve or forest reserve is assessed at its value in use, not development value. Section 6 of the statute addresses the division of preferentially assessed land. If property is *separated* into two or more parcels, each of which meets the use and other requirements, the preferential assessment continues. 72 P.S. § 5490.6(a.2). If property is *split off*, rollback taxes may be imposed. A split off is a division of property in which one or more tracts does not meet the use or other requirements under the Act. 72 P.S. § 5490.2. Section 6 of the Act then states three rules in the case of a split-off. (1) Generally, a split off of land (as opposed to a separation) will subject the land split off and the entire tract from which the land was split off to rollback taxes. (2) Rollback taxes will not be due if the tract that is split-off generally does not exceed two acres, continues the qualifying use of the property, and does not exceed the lesser of ten acres or 10% of the entire tract. (3) Each tract that has been split off will be subject to rollback taxes. 72 P.S. § 5490.6(a.1). The second and third statements are inconsistent; it cannot both be that rollback taxes will not be due in the case of a qualifying two acre split-off and that every track split off is subject to rollback taxes. The Commonwealth Court held that the third sentence prevails, which reads the second sentence out of the statute. The better interpretation would have been that subsection (2) should be read to mean that any split-off *not specifically exempted* is subject to rollback taxes. That would give effect to all language in the statute. In *Donnelly,* the court agreed that the tract split off met the two acre requirements. Thus, the taxpayer was denied the exemption specifically provided for in the statute.

TEMPLE UNIVERSITY NOT A STATE AGENCY

The Commonwealth Court determined that Temple University is not a state agency and is therefore not immune from the Surplus Lines Tax imposed on certain insurance gross premiums. *Valentine Co. v. Commonwealth,* No. 562 F.R. 2006 (Pa. Commw. June 8, 2009). A producing broker is required to collect from an insured a 3% premiums tax on surplus lines insurance. 40 P.S. § 991.1621(a). Surplus lines insurance is issued by an unlicensed insurer designated by the Pennsylvania Insurance Commissioner to provide insurance not otherwise available in Pennsylvania. 40 P.S. § 991.1604. Valentine Company was assessed by the Department of Revenue for failure to collect the tax from Temple. Previously, the courts held that Temple University is not a state agency for purposes of the Right To Know Law and was not immune from suit as an agency of the Commonwealth entitled to sovereign immunity. *Mooney v. Temple University Board of Trustees,* 292 A.2d 395 (Pa. 1972); *Doughty v. City of Philadelphia,* 596 A.2d 1187 (Pa. Commw. 1991). The court therefore concluded that Temple was not immune from the Premiums Tax as a state agency, even though it was exempt from the Realty Transfer Tax and Sales and Use Tax. However, the court held that the taxpayer could only be held liable for the tax beginning with the date that it was first notified that the Department was taking the position that Temple University was not immune.

MISSING CHILDREN ASSOCIATION IS NOT A CHARITY

A divided panel of the Commonwealth Court held that a nonprofit association that searches for and recovers missing children was not a Pennsylvania charity because it did not relieve the government of a burden. *American Association for Lost Children, Inc. v. Westmoreland County Board of Assessment Appeals,* No. 1928

C.D. 2008 (Pa. Commw. July 2, 2009). The decision seems incorrect, for the reasons stated in the dissent. The dissent pointed out that federal statutes and agencies make it clear that the government undertakes the burden to find and recover abducted children and prevent abuse. The conclusion seems patently obvious. The court also noted that the trial court found generally credible the testimony that the association attempted to find and recover abducted children. As the dissent pointed out, the majority seemed to require an accounting analysis to show just what dollars were saved for the government. Pennsylvania case law and statute have no such requirement. It should not have been imposed in this case.

NO FEDERAL RELIEF FOR LEVY WITHOUT NOTICE

A federal court dismissed an action for compensatory and injunctive relief against the City of Philadelphia for allegedly depriving the taxpayers of due process by levying on their property without constitutionally adequate, pre-levy notice. *Christian Street Pharmacy v. City of Philadelphia,* No. 09-824 (E.D. Pa. July 15, 2009). The court held that it had no jurisdiction because the Tax Injunction Act prohibits federal courts from issuing an injunction in a state tax case if there is a plain, speedy and efficient remedy available in state court. 28 U.S.C. §1341. The loan was entered under the Self Assessed Tax Liens Act (SATLA), 53 P.S. §§ 7501-7505, with regard to claims for Philadelphia Business Privilege and Wage Tax. The court held that a remedy was available under the Municipal Claims and Tax Liens Act, 53 P.S. § 7184. A taxpayer may bring a writ of scire facias to raise various defenses to a tax levy, including a lien under SATLA. The defenses that may be raised include actual payment, a defective claim for lien, fraud or a lack of process or notice. Since the scire facias remedy was available to the taxpayers, the federal court lacked jurisdiction.

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