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BANK SHARES TAX CALCULATION MODIFIED

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The Commonwealth Court en banc dismissed exceptions from a panel decision and held that the calculation of Bank Shares Tax must be modified to cure a constitutional defect in the application of the tax to certain post-merger institutions. *Lebanon Valley Farmers Bank v. Commonwealth*, No. 698 F.R. 2005 (Pa. Commw. Aug. 4, 2011). The Bank Shares Tax is calculated generally by averaging six years of capital stock value. If two institutions merge, the capital stock value of the new institution is calculated by combining the premerger values of the merger partners. If a Pennsylvania bank merges with an out-of-state bank, the capital stock value of the out-of-state bank is not included in the calculation, because of the technical wording of the statutory definitions *First Union National Bank v. Commonwealth*, 867 A. 2d 711 (Pa. Commw. 2005), *aff'd,* 901 A. 2d. 981 (Pa. 2006). Similarly, if one of two merger partners has been in existence less than six years, the value of the merged institution is calculated at a lower value than would be the case if the merged institution were valued without six-year averaging. The Lebanon Valley Farmers Bank was the result of the merger of two Pennsylvania banks. The court agreed with the taxpayer that there was an unconstitutional discrimination in the calculation of its taxable value when compared to an institution that resulted from a merger in either of the two situations noted However, the court rejected the taxpayer's argument that in future cases the combination provision in the statute should be stricken. Rather, the court held that six-year averaging should not be used in the two situations. Nonetheless, the court further held that the taxpayer was entitled to meaningful backward-looking relief in its case and directed that the Commonwealth recalculate the Bank Shares Tax to put the taxpayer in a position that was no worse off than would be the case if the taxpayer were a domestic bank merged with an out-of-state bank.

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