

## **CONTRACTORS AND OTHER COMPANIES DOING JOBS IN MULTIPLE PENNSYLVANIA JURISDICTIONS MAY HAVE LOCAL TAX REFUND OPPORTUNITIES**

A recent decision issued by the Commonwealth Court of Pennsylvania could lead to a refund for businesses, particularly those in the construction industry, of improperly assessed taxes. Companies that were required to pay a Business Privilege Tax (BPT) in localities other than those in which their principal business is located may be able to recover a refund of such taxes that have been paid within the past three years.

V.L. Rendina, Inc. was a prime contractor on the Keystone Office Building project in Harrisburg from 1999 to 2001. Rendina, whose main office and principal place of business was located in East Hempfield Township, Lancaster County, placed a trailer at the project. In accordance with the Pennsylvania Local Tax Enabling Act, the City of Harrisburg had enacted a BPT measured by gross receipts. Even for companies having a principal place of business outside the city, the city has traditionally levied the BPT upon all activities carried on within the City of Harrisburg. Accordingly, the city levied the BPT on Rendina in excess of \$27,000 over the three years. Rendina filed a protest and sought a refund of the BPT. The City Department of Revenue rejected Rendina's refund request. Rendina then appealed to the Court of Common Pleas of Dauphin County, which again denied the company relief.

Rendina appealed to the Commonwealth Court, the second highest court in Pennsylvania beneath the Supreme Court. Last fall, the court sided with Rendina and held that the BPT could not be imposed because the job trailer was not a "place of business" within the meaning of the BPT ordinance. The court held that Rendina's "place of business" was not in Harrisburg, but was in East Hempfield Township. According to the court, the principal place of business is the place where a company solicits business, conducts meetings, receives mail, stores supplies and performs estimating accounting and other administrative duties. In Rendina's case, this was at its home office in East Hempfield, not its job trailer in Harrisburg. Significantly, the court rejected the City of Harrisburg's argument that because East Hempfield Township did not assess a BPT, the City of Harrisburg should be able to levy the BPT. The court held that whether or not the jurisdiction in which the principal office is located imposes a BPT is irrelevant. (The City of Harrisburg has requested the Pennsylvania Supreme Court to review the decision of the Commonwealth Court. To date, the Supreme Court has not acted on this request).

Shortly after Rendina was decided, a differently comprised three-judge panel of the Commonwealth Court affirmed the rule, which also involved a construction company that temporarily operated in a locality asserting the BPT (*School District and City of Scranton v. R.V. Valvano Construction Company*). Like Rendina, Valvano did not maintain a business office or base of operations within the locality asserting the BPT (Scranton). Instead of a temporary job trailer, Valvano brought in a temporary office with its trucks each day and returned it to its base of operations located outside of the City of Scranton each evening. The court ruled that the City of Scranton could not lawfully impose the BPT.

While county courts have reached inconsistent results, the Commonwealth Court has consistently held that a municipality or school district can only impose a BPT upon a company if it has a permanent office within that taxing jurisdiction. For example, construction trailers and temporary offices generally do not constitute permanent places of business. Therefore, a company that has been paying a BPT in a locality in which it has only a trailer or other temporary office may be entitled to a refund of the amounts paid within the last three years by filing a refund claim.

The Commonwealth Court's decisions have provided a road map of the factors considered in determining whether a contractor's activity rises to the level of being a "place of business." In a reverse fact pattern from Rendina, companies based in BPT jurisdictions can potentially reduce their tax by elevating the level of activities of field offices in exempt jurisdictions to "places of business." In such instances, the receipts attributable to the field offices can possibly be removed from the BPT base of the home jurisdiction.

Companies can often save money by consulting with experienced tax counsel regarding not just the BPT, but sales and use taxes on materials and services, real estate taxes on certain developments and facilities, payroll taxes (including unemployment compensation) and corporate taxes (including the capital stock/franchise tax that is imposed on limited liability companies as well as corporations). As illustrated in this alert, overpayments for most of these taxes are refundable within certain time limitations. With appropriate tax planning and their legal implementation, some of these taxes can be reduced prospectively.

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