

Township “Flat Tax” on Business Upheld

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The Commonwealth Court, in an unreported opinion, has affirmed a decision of the Court of Common Pleas of Bucks County, which held that a business privilege “flat tax” ordinance passed by Warrington Township did not violate the Local Tax Reform Act or the Uniformity Clause of the Pennsylvania Constitution.

The tax in question was imposed on only those businesses with gross receipts in excess of one million dollars. A consortium of local businesses filed a facial challenge to the ordinance, on the ground that the “flat tax” was in reality a gross receipts tax that carved out all businesses that did not exceed one million dollars in gross receipts, in violation of the prohibition on new gross receipts taxes under the Local Tax Reform Act. The consortium also argued that the tax violated the Uniformity Clause of Pennsylvania’s Constitution (on the ground that the tax unfairly targeted those businesses that exceeded the one million dollar threshold) and improperly taxed receipts generated in 2008 prior to the passage of the ordinance.

The Commonwealth Court rejected these arguments, and explained that the tax was not a gross receipts tax, but a “flat tax,” which was clearly permitted under prior precedent. There was also no Uniformity Clause violation, as the township, in passing the ordinance, had taken into account the ability to produce revenue and found that those businesses with gross receipts in excess of one million dollars generally consumed a larger percentage of the township’s resources. Finally, the Court found that the ordinance did not improperly tax receipts generated prior to its passage, as the tax was a flat tax on the privilege of doing business, and merely consulted 2008 receipts to determine whether the tax applied. The consortium has filed notice of its intent to appeal the decision to the Pennsylvania Supreme Court. *Shelly Funeral Home, et al. v. Warrington Twp.*, No. 769 C.D. 2009, December 31, 2009.

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