

## **Reading Really Is Fundamental: A Reminder that Statutory Language Is Important.**

Lawyers are prone to focus on case law. Perhaps it's because our education was focused upon reading cases. Or it may just be that cases are easier to read: even a weak judicial opinion is far better written than the vast bulk of legislation. But we need to remember to focus on statutory language because it is often controlling. A recent local tax case from the Commonwealth Court drives this point home.

In *Giles & Ransome, Inc. v. Whithall Twp.*, No. 645 C.D. 2012 (Pa. Commw. Feb. 11, 2012), the court addressed a dispute over the extra-territorial impact of a business privilege tax. The Taxpayer was in the business of selling heavy equipment, and it had a location in Whitehall Township that was available to three salesmen who covered the surrounding territory of Northampton, Berks and Lehigh Counties. *Id.* slip op. at 6-7. The salesmen would occasionally initiate orders from this facility, but they also spent a significant amount of their time traveling in their territory; all of their orders were approved outside the Township.

The presence of the office in the Township certainly looked like a base of operations, and the parties naturally focused on the Supreme Court's opinion in *Gilberti v. City of Pittsburgh*, 511 A.2d 1321 (1986), which held that a taxpayer with a base of operations in a city could be taxed on transactions occurring outside the city limits.

In *Giles & Ransome*, however, the taxpayer fared far better: the Commonwealth Court sustained his appeal because the relevant ordinance did not purport to reach transactions outside Whitehall Township: "Unlike the ordinance at issue in *Gilberti*, . . . , the Ordinance here delineates the business activities that are subject to business privilege tax and confines the revenue subject to the tax to those activities ("sales made" and "business transactions") that occur within the Township." *Giles & Ransome*. No. 645 C.D. 2012, slip op. at 10.

The court then focused upon the evidence of record, and found little basis to support the Township's tax claim: "the Township seeks to tax merely the irregular presence of persons (the salesmen) in the Township, not transactions that occur in the Township. The Board did not make specific findings as to particular sales, which we view as necessary for its conclusion that the sales at issue are subject to taxation . . . ." *Id.* at 17.

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