

## Other Recent PA Tax Developments

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### Philadelphia Hotel Tax

The Court of Common Pleas of Philadelphia County has upheld the Philadelphia Tax Review Board's ruling that Expedia, an online vendor of discount hotel rooms, is not an "operator" of a hotel, and is not required to remit hotel occupancy taxes on fees charged to its customers exclusive of the hotel room rate. Under the Philadelphia Code, an "operator" of a hotel is defined to mean only those who "maintain, operate, manage, own, have custody of, or otherwise possess the right to rent or lease overnight accommodations in any hotel." The Court found that Expedia merely acted as a middleman between the hotel and the guest, and the hotel reserved all rights with respect to the actual renting of hotel rooms. Consequently, the fees that it charged separate from the hotel rate were not subject to the tax. *City of Philadelphia v. Tax Review Bd.*, No. 00764 (Pa. Com. Pl. January 18, 2011)

### Inheritance Tax

An irrevocable trust that permitted the grantor-trustee to alter the disposition upon the donor's death of the trust assets was subject to Pennsylvania Inheritance Tax. Under Pennsylvania law any transfer by a decedent prior to death for less than adequate consideration is subject to Inheritance Tax, if the decedent retained the right to designate the persons who shall possess the transferred property. Because the irrevocable trust permitted the grantor-trustee to change the beneficiary of the trust assets, it was subject to Inheritance Tax. Pennsylvania Inheritance Tax Ruling No. INH-10-003 (November 29, 2010).

### Charitable Exemption

In an unreported decision just in time for baseball season, the Commonwealth Court has ruled that a baseball field owned by a nonprofit corporation and open to the public qualifies for real estate tax exemption. By reducing the burden on municipalities to maintain public ball fields, the Court held that the field's owner met the requirement under the Pennsylvania Constitution and statute that its activities relieve the government of some of its burden. *State College Baseball Club v. Centre County Board of Assessment Appeals*, No. 402 C.D. 2010 (February 17, 2011) (opinion not reported).

### Local Business Privilege Taxes

Lehigh Valley Senator Pat Browne recently re-introduced legislation (S.B. 405) which would add a "base of operations" requirement to all mercantile and business privilege taxes imposed by local municipalities under the Local Tax Enabling Act. The "base of operations test" would limit the scope of mercantile and business privilege taxes to those businesses that have an actual, physical and permanent place of business in a municipality from which operations are managed, and would apply regardless of whether the tax is on gross receipts or on the privilege of doing business. S.B. 405 is in response to the Pennsylvania Supreme Court's decision in *V.L. Rendina, Inc. v. City of Harrisburg*, 938 A.2d 988 (Pa. 2007), in which the Court overturned prior precedent and held that a "base of operations" is not required in order to impose such a tax.

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