



TAXATION & WEALTH PLANNING DEPARTMENT

ALERT

ACQUISITION AND INSTALLATION OF MRI AND CT SCAN SYSTEMS *ARE* SUBJECT TO PA SALES TAX PA SUPREME COURT REVERSES COMMONWEALTH COURT

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The Pennsylvania Supreme Court, in a decision issued on December 21, 2011, reversed two July 2009 decisions of the Commonwealth Court of Pennsylvania that held the acquisition and installation of an MRI system and a CT Scan system were **not** subject to Pennsylvania sales tax. In this consolidated appeal of the two earlier cases -- *Northeastern Pennsylvania Imaging Center v. Commonwealth of Pennsylvania*, 978 A.2d 1055 (Pa. Cmwlth 2009) and *Medical Associates of the Lehigh Valley, PC v. Commonwealth of Pennsylvania*, Unpublished Opinion, the high court concluded that purchases of the systems were indeed subject to Pennsylvania sales tax.

The rationale of the Commonwealth Court in reaching that July 2009 decision was that the acquisition and installation of the systems was essentially a “construction contract” relating to real estate structures rather than the sale of tangible personal property. Where a “construction contract” is involved, the vendor/contractor has a duty to remit use tax on its cost of the cited equipment. If the facts supported the sale of tangible personal property, Pennsylvania sales tax was due on the acquisition and installation price of the equipment. The Commonwealth Court cited a non-sales tax case – *In re Appeal of Sheetz*, 657 A.2d 1011 (Pa. Cmwlth. 1995), involving a real estate assessment issue – as the basis for its holding.

In August 2009, we issued a tax alert regarding the Commonwealth Court decision that contained a “caveat” relating to the possible appeal to the state Supreme Court. The Pennsylvania Department of Revenue, through its counsel, the Office of the Attorney General, did appeal.

Interestingly enough, although the Commonwealth Court and the parties to the case agreed the test in the *Sheetz* case was applicable and the only issue was the application of the test, the Pennsylvania Supreme Court disagreed. Likewise, the parties further agreed that the decision in *Commonwealth v. Beck Electric Construction, Inc.*, 403 A.2d 553 (Pa. 1979), did not apply and, as such, the Commonwealth Court did not discuss it. In its decision, the high court believed the principles laid down in *Beck Electric* should apply.

In reviewing the statute and regulation promulgated thereunder, the Supreme Court distinguished between situations where a sales tax versus a use tax is applicable. The court found the statute’s plain language imposes a sales tax on the purchaser where tangible personal property is sold and imposes a use tax on the contractor when tangible personal property is used as or becomes part of real estate or a real estate structure. In reaching its decision, the high court believed the test in *Beck Electric* rather than in *Sheetz* should apply. In *Beck Electric*, the distinction between sales and use taxes was squarely dealt with by the high court, which had considered whether an electrical construction contractor was a “user”

of goods subject to use tax or a “vendor” entitled to claim the “resale” exemption on goods purchased for sale to the Commonwealth of Pennsylvania. The Supreme Court had found some of the activities involved installation, which was an integral part of the building’s electrical system and, as such, represented a “construction contract” versus other activities that represented a “sales activity” because the equipment involved could be relocated – or, in other words, did not become a permanent part of the real estate structure. Applying the test in *Beck Electric* to MRI and CT Scan systems, the high court concluded the equipment was more akin to x-ray machines and although some of the equipment was bolted to the floor, the equipment would become obsolete and need to be periodically replaced. As such, the equipment is not intended to be

permanently affixed to the real estate. Since the court concluded the equipment was not intended to be permanently affixed to the real estate, the acquisition and installation of the equipment constituted a “sales activity” subject to sales tax.

Since the Commonwealth Court did not address certain constitutional claims made by the taxpayers, the cases were remanded to the Commonwealth Court for disposition of those issues.

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