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INSIGHT ■ INNOVATION ■ EXPERIENCE

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>> SALT BRIEFS

Commonwealth Changes Sales Tax Filing and Payment Frequency

Effective June 1, 2011, businesses reporting sales tax of \$25,000 or more in the third quarter of 2010 will be required to remit tax on a semimonthly basis to the Pennsylvania Department of Revenue ("Department") pursuant to the provisions of Act 48 of 2009.

However, the required filing frequency has been changed from semimonthly to monthly consistent with current filing requirements. Although June's first semimonthly prepayment of sales, use and hotel occupancy tax is due June 20, 2011, the respective return and remaining tax liability will not be due until July 20, 2011, which is also the due date for the July prepayment. In essence, on the 20th of each month, expect to both file the previous month's return and submit a prepayment for the current month.

Act 48 requires monthly prepayments to equal either actual sales tax collected for the first half of the month or 50% of the liability from the same month of the previous year with the exception of June 2011. For June 2011, the prepayment should equal 55% of the tax liability from June 2010 or actual sales tax collected for the first half of June.

Finally, since the current month's prepayment is going to coincide with the previous month's return and tax liability, taxpayers should remit each payment separately. The Department is encouraging the utilization of e-TIDES for both filing and payment. ■

FEATURE STORY

COURT DECISION IMPACTS PURELY PUBLIC CHARITY ACT

The Commonwealth Court of Pennsylvania, in an en banc decision, held that a community center owned by a church providing free services for all its programs did not qualify as a purely public charity entitled to exemption for real estate tax purposes. Reversing the decision rendered by the Court of Common Pleas of Delaware County, the Commonwealth Court determined under constraint that the Church of the Overcomer did not meet all characteristics required by the Institutions of Purely Public Charity Act ("Charity Act").

Although the church itself is exempt from real estate taxation and holds a religious exemption from sales and use tax with the Commonwealth, at issue was the validity of a real estate exemption for its community building located on an adjacent parcel. The community center is used to administer multiple social programs, including but not limited to programs to help children of incarcerated individuals; summer camp; a food bank; addictions ministry; youth ministry; and a cyber school.

In seeking the real estate exemption, the church carried the heavy burden of establishing that it met all of the requirements mandated by the Charity Act, which codifies the Hospital Utilization Project ("HUP") case. Under HUP, an entity must possess the following

characteristics:

1. Advances a charitable purpose;
2. Donates or renders gratuitously a substantial portion of its services;
3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
4. Relieves the government of some of its burden; and
5. Operates entirely free from profit motive.

Based on evidence and testimony provided by the pastor and founder, Keith Collins, the court concluded that the church failed to establish that it met the community service requirement, which is an expansion of the second element of the Charity Act. The court also found that the church failed to establish that it made a "...bona fide effort to service those persons who are unable to afford the usual fee or for whom the fee is outside of their financial reach," as required under the third element of the Charity Act. Accordingly, the court reversed the order of the trial court, finding the adjacent property owned by the church did not qualify as a purely public charity for real estate tax purposes.

The opinion by Judge McCullough of the Pennsylvania Commonwealth Court may be viewed in its entirety at www.aopc.org/OpPosting/Cwealth/out/269CD10_3-17-11.pdf. ■

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>> STATE AND LOCAL TAX UPDATES

Michigan Tax Amnesty

The state of Michigan is conducting a tax amnesty program for eligible taxes for periods ended on or before December 31, 2009. The program commenced on May 15, 2011 and will conclude on June 30, 2011. The amnesty does not apply to local taxes, including real and personal property taxes.

For additional information about the current amnesty program, please see our Insight at www.schneiderdowns.com or review the Michigan Department of Treasury's website at www.mitaxamnesty.org. ■

Commonwealth Rules on the Sale of Air

The Commonwealth Court of Pennsylvania ("Court") ruled (*Air-Serv Group, LLC v. Commonwealth of Pennsylvania*, No. 459 F.R. 2008, April 14, 2011) that air dispensed through an air vending machine is not tangible personal property subject to the Pennsylvania sales tax. Additionally, the Court ruled that the process of using a vending machine to pump air is not a taxable service and is not subject to the Pennsylvania sales tax.

The case states that the vending machines do not sell a product that has been changed, altered or bottled but "rather draw air freely from the atmosphere via a compressor." Only the pressure of the air is changed. Additionally, the vendor stipulated that it charges a fee for the right to use the machine for a fixed number of minutes and is not charging customers for the air itself.

Of note is a dissenting opinion from Judge Leadbetter, who holds that the transaction was incorrectly characterized as a sale of air or a nontaxable service instead of a rental or license to use tangible personal property, which is subject to Pennsylvania sales and use tax.

For additional information regarding the *Air-Serv Group* decision, please see our Insight at www.schneiderdowns.com. ■

PENNSYLVANIA CHANGES POLICY CONCERNING FINANCIAL SECURITY FOR COURT APPEALS

The Pennsylvania Department of Revenue ("Department") issued Tax Bulletin 2011-01 concerning new procedures for filing security for court appeals. As of May 2, 2011, if a taxpayer files a petition for review of a Board of Finance and Revenue decision with the Pennsylvania Commonwealth Court ("Court"), the taxpayer must also submit a current financial statement to the Board of Appeals. The Department will review the financial statements to ensure that ultimate collection of any unpaid amount contested is not in jeopardy.

When an appeal is filed with the Court, taxpayers will receive an acknowledgement letter from the Pennsylvania Office of the Attorney General. This letter will include a request that the taxpayer provide a current financial statement within 30 days of filing the appeal.

To comply with the request, taxpayers should submit a copy of the most recent financial statements, including

an income statement, a balance sheet and any notes to the statements. Alternatively, a taxpayer can submit a copy of the most recent federal tax return, including Schedule L and applicable notes. Individuals may be required to submit a personal balance sheet.

The Department will review the submitted documents and notify the taxpayer as to whether or not collection of the unpaid amount under appeal is in jeopardy. If the Department determines that the unpaid amount is not in jeopardy, the Department will not pursue collection action, including the filing of a lien, pending resolution of the appeal even if the taxpayer has not filed the "appropriate security" with the Prothonotary of the Pennsylvania Commonwealth Court ("Prothonotary"). If the Department intends to file a lien or pursue collection action, the taxpayer will be allowed 15 days to file "appropriate security" with the Prothonotary. ■

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