

Pennsylvania Commonwealth Court Holds Township Is Prohibited From Taxing Lease Income

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An important development for commercial and residential property landlords came by way of a recent Pennsylvania appellate court decision, which impacts the way in which lessors are taxed at the local level. In *Fish v. Township of Lower Merion*, 1940 C.D. 2013 (Commw. 2013), the Commonwealth Court of Pennsylvania addressed the question of whether a political subdivision was empowered to levy a business privilege tax on gross lease receipts. The court found that it was not, as such a tax is in violation of state law, namely, the Local Tax Enabling Act. The court found, however, that offering properties for rent constituted a “business,” which could be subject to other township registration and fee payment requirements.

Certain lessors who own and lease property in Lower Merion Township commenced a declaratory judgment action in the Montgomery County Common Pleas Court based on the township’s interpretation of the local business privilege tax. The township sought to impose the tax, included in the township’s municipal code, on all lease income received in connection with any properties leased within the township. However, the enabling legislation that allows political subdivisions such as the township to create local tax schemes, specifically excludes the power to tax lease income. Thus, through the declaratory judgment action, the lessors asked the court to rule that the township was prohibited from imposing the business privilege tax on their lease income. The lessors similarly sought relief from a registration requirement also included in the municipal code, which required any person engaging in a “business, trade, occupation or profession” within the township to annually register with the township and pay a \$20 fee for each business location.

The township argued the application of the business privilege tax was not, in fact, a tax on lease income, but rather a tax on the privilege of conducting business within the township. In particular, the township pointed to the fact that the tax was imposed not on each individual lease, but rather on the aggregate gross receipts for all property leased within the township. Similarly, the township rebuffed the lessor’s contention that they were exempt from the annual registration requirement because each clearly engaged in business within the township.

The trial court found in favor of the township, upholding both the township’s interpretation and application of the business privilege tax





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and the requirements regarding annual registration. The lessors appealed, and the Commonwealth Court reversed as to the application of the business privilege tax, but affirmed as to the annual registration requirement. The Commonwealth Court found the township's reliance on the fact that the tax was imposed on the total lease receipts rather than on individual leases to be unavailing; regardless of how the tax was structured, the Local Tax Enabling Act prohibited the imposition of "any tax" on leases or lease transactions. Thus, the township could not tax such income in any form. However, the Commonwealth Court agreed with the lower court that the offering of properties for rent constituted the operation of a business and thus a registration requirement and flat fee for each property offered was an appropriate exercise of the taxation authority of the township, and the lessors could not avoid such requirements. ▲

