SUPREME COURT OF DELAWARE

# Acadia Brandywine Town Center, LLC v. New Castle County

879 A.2d 923 (Del. 2005) · No. No. 449, 2004 · Decided July 21, 2005

## SUMMARY

The Delaware Supreme Court considered whether a reverse merger involving real property was subject to Delaware and New Castle County realty transfer taxes. The court held that the 1986 statutory amendments did not clearly eliminate a 1984 regulatory exemption for mergers without recorded real-estate conveyance documents, and therefore reversed the Superior Court's judgment imposing the tax.

## CASE DETAILS

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| COURT | Supreme Court of Delaware |
| WRITING FOR THE COURT | Steele, Chief Justice; Holland, Justice; Berger, Justice; Jacobs, Justice; Noble, Vice Chancellor |
| JURISDICTION | Delaware |
| DECIDED | July 21, 2005 |
| DOCKET | No. 449, 2004 |
| DISPOSITION | reversed |
| PROCEDURAL POSTURE | Appeal from the Superior Court's grant of summary judgment to the State in an action seeking a declaratory judgment that a reverse merger involving real estate was not subject to Delaware's realty transfer tax. |
| STANDARD OF REVIEW | De novo review of the trial judge's grant of summary judgment based on judicial construction of a statute. |
| PRECEDENTIAL VALUE | published precedential opinion |
| PARTIES | Acadia Brandywine Town Center, LLC, Acadia Market Square, LLC, Acadia Brandywine Holdings, LLC v. New Castle County, State of Delaware, Division of Revenue |

## TOPICS

state and local tax · tax · real estate · statutory interpretation · commercial litigation

## PRACTICE AREAS

state and local taxation | real estate taxation | statutory interpretation | commercial litigation

## QUESTIONS PRESENTED

1. Whether Delaware's 1986 realty transfer tax legislation eliminated the 1984 regulatory exemption for mergers involving real estate when no document transferring title to realty is recorded.
2. Whether the reverse merger at issue was a taxable conveyance or was exempt from Delaware's realty transfer tax.

## HOLDINGS

1. The 1986 legislation and implementing regulations did not clearly repeal or eliminate the 1984 regulatory exemption for mergers involving real estate when no document transferring title to realty is recorded.

## KEY QUOTATIONS

> *"We determine that because the 1986 legislation and its accompanying regulations fail to evidence a clear intent to eliminate mergers as one of the putative abuses of the transfer tax, reverse mergers involving real estate continued not to be subject to the realty transfer tax."* (924)

> *"Thus, if there is doubt regarding the breadth of a taxing statute, we must construe the statute against the taxing authority and in favor of the taxpayer."* (928)

> *"Because of this structural distinction, and the corresponding silence about the current practice, neither the 1986 Amendment nor its implementing regulations give a clear notice that the General Assembly sought to repeal the 1984 merger exemption when it passed the 1986 legislation."* (929)

## FACTUAL BACKGROUND

Acadia Realty and entities controlled by the Rollins family combined their respective limited liability companies through a reverse merger involving shopping-center real estate. The Rollins entities survived the merger and retained title to the property, while the surviving companies assumed the Acadia entities' names; Acadia Realty then cashed out the Rollins family's newly acquired interests, leaving the former Acadia owners as the sole beneficial owners. The Acadia companies paid state and county realty transfer taxes under protest and sought a declaration that the merger was not a taxable conveyance.

## PROCEDURAL HISTORY

The Acadia entities paid Delaware and New Castle County realty transfer taxes under protest and filed a declaratory judgment action in the Superior Court. The parties filed cross-motions for summary judgment, and the trial court granted judgment to the State, concluding that the transaction was properly characterized as a taxable sale of real estate. The Supreme Court of Delaware reviewed the statutory construction issue de novo.

## DISPOSITION

reversed

## CASES CITED

- Acadia Brandywine Town Ctr. LLC v. New Castle County, 2004 WL 2050498
- Acadia Brandywine Town Ctr. LLC v. New Castle County, 2004 Del. Super. LEXIS 286
- Colonial Ins. Co. v. Ayers, 772 A.2d 177, 179 (Del. 2001)
- Director of Revenue v. CNA Holdings, Inc., 818 A.2d 953, 957 (Del. 2003)
- Arbern-Wilmington, Inc. v. Director of Revenue, 596 A.2d 1385, 1388 (Del. 1991)
- United States v. Wigglesworth, 28 F. Cas. 595, 596-597 (C.C.D. Mass. 1842) (No. 16,690)
- Giuricich v. Emtrol Corp., 449 A.2d 232, 239 (Del. 1982)
- DuPont v. DuPont, 87 A.2d 394, 399 (Del. 1952)

## INSTRUCTIONS FOR AN AI ASSISTANT