SUPREME COURT OF PENNSYLVANIA

George D. Fish, Stephen Hrabrick, and Jonathan A. Briskin v. Township of Lower Merion

633 Pa. 705 (Pa. 2015) · No. No. 29 MAP 2015 · Decided December 21, 2015

SUMMARY

The Supreme Court of Pennsylvania held that the Local Tax Enabling Act does not prohibit Lower Merion Township from applying its general business privilege tax to businesses whose income consists solely of rental payments from leased real property. The court distinguished a tax imposed directly on leases or lease transactions from a general tax on the privilege of doing business, measured by gross receipts. The court reversed the Commonwealth Court and remanded for reinstatement of the common pleas court's order dismissing the complaint.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Saylor; Justice Eakin; Justice Baer; Justice Todd; Justice Stevens
JURISDICTION	Pennsylvania
DECIDED	December 21, 2015
DOCKET	No. 29 MAP 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Township appealed by allowance from a Commonwealth Court order that reversed in relevant part the Montgomery County Court of Common Pleas' judgment on the pleadings in favor of the Township.
STANDARD OF REVIEW	Plenary and de novo review of the statutory-interpretation issue.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Township of Lower Merion v. George D. Fish, Stephen Hrabrick, Jonathan A. Briskin

TOPICS

state and local tax · tax · municipal law · statutory interpretation · appellate procedure

PRACTICE AREAS

state and local tax | municipal law | statutory interpretation | real estate

QUESTIONS PRESENTED

1. Whether the Local Tax Enabling Act's prohibition on municipal taxation of leases or lease transactions bars application of Lower Merion Township's general business privilege tax to businesses whose sole income consists of rental payments.
2. Whether a business privilege tax measured by gross receipts from leasing is a tax on leases or lease transactions, or instead a permissible tax on the privilege of doing business.

HOLDINGS

1. The LTEA does not bar Lower Merion Township from applying its general business privilege tax to businesses whose sole income consists of rental payments, because the tax is imposed on the privilege of doing business rather than directly on leases or lease transactions.
2. The LTEA's prohibition on taxes on leases or lease transactions does not encompass a general business privilege tax merely because the taxpayer's receipts derive exclusively from leasing.
3. Lynnebrook remains controlling insofar as a tax directed specifically to lease transactions is prohibited, but it does not invalidate the general business privilege tax at issue here.

KEY QUOTATIONS

> *"In light of this precedent, it is established law in Pennsylvania that business privileges and transactions are separate and distinct subjects of taxation."* ([J-55-2015] - 9)

> *"To the extent such dicta conflicts with Dale and our present holding, it is disapproved."* ([J-55-2015] - 11)

FACTUAL BACKGROUND

The Lessors owned parcels of real estate in Lower Merion Township and leased them to tenants. The Township treated leasing real property as a business subject to its annual business privilege tax, calculated as a percentage of gross receipts, and based the tax on the Lessors' rental proceeds. The Lessors' rental activities generated their income at issue solely from lease payments.

PROCEDURAL HISTORY

The Lessors sought a declaratory judgment that the Township's business privilege tax could not be applied to rental proceeds from leased real property under the Local Tax Enabling Act. The Montgomery County Court of Common Pleas granted the Township's motion for judgment on the pleadings and dismissed the complaint. An en banc panel of the Commonwealth Court reversed in relevant part, and the Supreme Court of Pennsylvania granted further review, reversed the Commonwealth Court, and remanded for reinstatement of the common pleas court's order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for reinstatement of the Montgomery County Court of Common Pleas' order dismissing the complaint.

CASES CITED

- Lynnebrook & Woodbrook Associates, L.P. v. Borough of Millersville, 600 Pa. 108, 963 A.2d 1261 (2008)
- In re D.L.H., 606 Pa. 550, 2 A.3d 505 (2010)
- Fischer v. City of Pittsburgh, 383 Pa. 138, 118 A.2d 157 (1955)
- School District of Scranton v. Dale & Dale Design & Development, Inc., 559 Pa. 398, 741 A.2d 186 (1999)
- Gilberti v. City of Pittsburgh, 511 Pa. 100, 511 A.2d 1321 (1986)
- F.J. Busse Co. v. City of Pittsburgh, 443 Pa. 349, 279 A.2d 14 (1971)
- Blauner's, Inc. v. City of Philadelphia, 330 Pa. 342, 198 A. 889 (1938)
- Cheltenham Township v. Cheltenham Cinema, Inc., 548 Pa. 385, 697 A.2d 258 (1997)
- Shelly Funeral Home, Inc. v. Warrington Township, 618 Pa. 469, 57 A.3d 1136 (2012)
- Commonwealth v. Eastern Motor Express, Inc., 398 Pa. 279, 157 A.2d 79 (1959)
- Middletown Township v. Alverno Valley Farms, 105 Pa. Cmwlth. 311, 524 A.2d 1039 (1987)
- In re School District of Hampton Township, 362 Pa. 395, 67 A.2d 376 (1949)
- Pittsburgh Railways Co. v. City of Pittsburgh, 211 Pa. 479, 60 A. 1077 (1905)
- Allfirst Bank v. Commonwealth, 593 Pa. 631, 933 A.2d 75 (2007)
- Fish v. Township of Lower Merion, 100 A.3d 746 (Pa. Cmwlth. 2014) (en banc)