



Pennsylvania Tax Reports

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CONSTRUCTION CONTRACTOR NOT SUBJECT TO BUSINESS PRIVILEGE TAX

A panel of the Commonwealth Court held that the Scranton School District and City had no power to impose a Business Privilege Tax on a contractor that performed construction and renovation work in the City of Scranton. *School District of the City of Scranton v. R.V. Valvano Construction Co.*, No. 763 C.D. 2004 (Pa. Cmwlth. Nov. 5, 2004). The case raises an issue that probably will need resolution by the Pennsylvania Supreme Court.

The court held that the City and School District could not impose their business Privilege taxes on a general contractor that worked but did not maintain a place of business, in the jurisdictions. Relying primarily on *Gilberti v. City of Pittsburgh* 511 A.2d 1321 (Pa. 1986), the court held that the Supreme Court has held that a business privilege tax cannot be imposed by a jurisdiction in which the taxpayer does not maintain an office. The court stated that the Supreme Court has established a distinction between a privilege tax and a tax on transactions and that to impose a business privilege tax on business conducted in the jurisdiction when no office is maintained therein is an impermissible mixing of the two forms of tax.

The holding probably is not a correct interpretation of *Gilberti*. In *Gilberti*, the court construed a Pittsburgh ordinance to impose a tax on the privilege of maintaining an office in the jurisdiction. Given that construction of the ordinance, the court held that Pittsburgh could tax gross receipts attributable to the office, even though a portion of the receipts may have related to services performed outside. However, *Gilberti* seems to rest on a construction of the terms of the Pittsburgh ordinance, not on a holding that no business privilege tax, no matter how drafted, can be imposed if the taxpayer does not maintain an office in the jurisdiction. The Local Tax Enabling Act does not authorize or indeed mention a business privilege tax. Rather it authorizes a broad range of taxes on privileges and transactions. Thus, there is nothing in the statute that requires the conclusion that the application of any business privilege tax is limited to a taxpayer maintaining an office in the jurisdiction.

Neither is there anything inherent in the concept of a business privilege tax that would condition imposition on the maintenance of an office in the jurisdiction. For example, the Philadelphia Business Privilege Tax, and the state's Corporate Net Income and Franchise Tax are all business privilege taxes, but none of them requires an office before it can be imposed.