



Pennsylvania Tax Reports

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TAX APPEAL WAS COLLATERALLY ESTOPPED

A panel of the Commonwealth Court held that a taxpayer was collaterally estopped from relitigating the claim that a golf course was a common facility under the Uniform Planned Community Act and that the course therefore was exempt from real estate tax. *Hershey Mill Homeowner's Assn. v. Chester County*, No. 280, C.D. 2004 (Pa. Cmwlth, Nov. 22, 2004). Four years previously, the Court had held that the golf course was not a common facility of the homeowner's association, and therefore could be separately assessed and taxed. If the golf course had been a common facility, it could not have been separately assessed; rather, its value would be included in the value of each unit. *Hershey's Mill Homeowner's Assn. v. Chester County Board of Assessment Appeals*, 2535 C.D. 1999 (Pa. Cmwlth, Nov. 9, 2000), *appeal denied*, No. 896 MAL 2000 (Pa. June 27, 2001). The taxpayer claimed that under a subsequent decision, the golf course should be treated as a commonwealth facility, citing *Saw Creek Estates Community Assn., Inc. v. County of Pike*, 808 A.2d 322 (Pa. Cmwlth 2002), *petition for appeal granted*, 816 A.2d 1104 (2003). The Commonwealth Court adopted the law of collateral estoppel as set out in *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591 (1948), a federal income tax case. Since each tax year raises the possibility of a new liability and a separate cause of action, a decision in a prior year is not res judicata against a taxpayer in a subsequent year. However, the taxpayer is collaterally estopped from raising the same issues in a later year if the controlling facts and applicable legal rules remain unchanged. The Commonwealth Court held that *Saw Creek* did not change the law. *Saw Creek* found that a restaurant and real estate office operated by business entities on property owned by an association were common facilities exempt from separate property taxation. However, the golf course at Hershey's Mill was leased for 99 years to a private business and was available for use by the public. Therefore, *Saw Creek* had no application and the Hershey's Association was collaterally estopped from relitigating the issue.