
TAX - PENNSYLVANIA

Upper Moreland Township v. 7 Eleven, Inc.

Commonwealth Court of Pennsylvania - April 13, 2017 - A.3d - 2017 WL 1365591

Taxpayer, a Texas corporation that maintained a regional corporate office in the township for division of its franchise convenience stores that operated inside and outside of Pennsylvania, appealed township's assessment of business privilege tax.

Following a bench trial, the Court of Common Pleas invalidated assessment. Township appealed.

The Commonwealth Court held that:

- Taxpayer demonstrated that charges paid by Pennsylvania franchise stores resulted from interstate activities, and thus were subject to apportionment under Commerce Clause;
- Trial court acted within its discretion in admitting taxpayer's organizational chart; and
- Proper remedy was remand to township for constitutional assessment of business privilege tax, rather than invalidation of assessment.

Taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, demonstrated that charges Pennsylvania franchise stores paid to taxpayer in exchange for various services resulted from interstate activities, and thus were subject to apportionment under Commerce Clause in township's assessment of business privilege tax. Taxpayer presented evidence that many services provided to Pennsylvania franchise stores were product of interstate commerce, including that marketing department which managed nationwide advertising and information systems department were located in Texas and that employee in Massachusetts was responsible for providing technology to all stores in division, including Pennsylvania stores.

Trial court acted within its discretion in admitting organizational chart of taxpayer, which was Texas corporation that maintained regional office in Pennsylvania for corporate and franchised convenience stores, in taxpayer's appeal challenging township's assessment of business privilege tax on charges paid by franchise stores, though chart was not identified in discovery or produced until after pre-trial conference; trial court admitted chart to aid in understanding of testimony by taxpayer's division vice president regarding company's operations, and vice president was subject to cross-examination about chart by township.

Proper remedy following trial court's determination that township violated Commerce Clause in its assessment of business privilege tax by failing to apportion charges paid to taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, by franchise stores in Pennsylvania that resulted from interstate commerce, was remand to township for constitutional recalculation of the assessment, rather than invalidation of assessment. Township could constitutionally tax the charges, provided that the taxed receipts were validly apportioned, taxpayer had not paid those taxes, and remand for recalculation was in interest of fairness to other taxpayers in township.

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