



EDUCATION

ALERT

COMMONWEALTH COURT CLARIFIES BURDEN OF PROOF IN TOWNSHIP EXEMPTION CASE

As efforts to preserve open space continue to grow and municipal governing bodies are provided with new opportunities to acquire land that would otherwise be put to private use, a question is raised as to the taxable status of the land acquired by the municipality. While the general rule regarding the taxable status of government-owned property is that the property is presumed tax-exempt, there is conflicting case law addressing the burden of proof in establishing the tax-exempt status of a property.

The burden of proof in a case involving the taxable status of township-owned property was recently addressed by the Commonwealth Court in the case of *Norwegian Township v. Schuylkill County Board of Assessment Appeals, Pottsville Area School District*. In this case, the Commonwealth Court held that the burden of proof in a government-owned property context was upon the taxing authority to prove the taxability of the property. This decision is conflicting with two prior decisions of the Commonwealth Court, *Guilford Water Authority v. Adams County Board of Assessment*, 570 A.2d 102 (Pa. Cmwlth. 1990), and *In Re Township of Middleton*, 654 A.2d 195 (Pa. Cmwlth. 1995), in which the Commonwealth Court held that the burden of proof was on the property owner to prove that property was tax-exempt.

In *Norwegian Township*, the township acquired a parcel of land from Community Banks, N.A. on August 6, 2007. On March 1, 2012, Schuylkill County

notified Norwegian Township that the property would be considered taxable. The township appealed the decision to the Schuylkill County Board of Assessment Appeals, and, by Order dated May 9, 2012, the Board affirmed the tax assessment of the property based upon its fair market value. Thereafter, on June 8, 2012, the township appealed the decision of the Board of Assessment Appeals to the Schuylkill County Court of Common Pleas seeking a tax exemption.

At the hearing before the trial court, the township presented evidence indicating that the township planned to build a playground on the property when funds became available. In fact, since 2007, the township had applied for grant money in each year. The township had been clearing the property and maintaining the property in the same manner as the other township parks. The property was open for public access, and the township had spent considerable sums of money to make the property open for public use.

By Opinion and Order dated August 28, 2012, the trial court held that the property was exempt from real estate taxes. Most importantly, the trial court noted that the taxing authority has the burden of proof when establishing any tax liability for government-owned property. In its decision, the trial court found no evidence to suggest that the land in question had been used for a non-public purpose, but found the land available to the public for recreational activities and

that the land had been used to benefit the public. The trial court determined that the township had made a good faith effort to develop the land to be used as a park and/or playground.

In its appeal to the Commonwealth Court, the Schuylkill County Board of Assessment Appeals argued that the trial court erred in determining that the Board bears the burden of proving that the township was not using the property for a public purpose; and, therefore, that the property is taxable. The Board also argued that the trial court erred in concluding that the property was used for public purposes, that the property was intended as a public park and/or playground, that there were funds to develop the property for public purposes, and that the property was available for public use as a park and/or playground.

In rejecting the arguments of the Schuylkill County Board of Assessment Appeals, the Commonwealth Court noted that, ordinarily, the property owner bears the burden of establishing a tax exemption under the rule that all property is subject to real estate taxes. However, where the matter involves property that is government-owned, the burden of proof of liability for taxes is clearly upon the taxing authority. The Commonwealth Court noted that it failed to consider this important distinction in its decision in *Guilford*, and that the Court misstated the appropriate burden of proof for government-owned property in that decision. Similarly, the Commonwealth Court noted that the burden of proof was misplaced in its decision in the case of *In Re Township of Middleton*.

In reaching its conclusion, the Commonwealth Court relied upon its decision in *Granville Township v. Board of Assessment Appeals of Mifflin County*, 900 A.2d 1012 (Pa. Cmwlth. 2006), and clarified that the burden of proving liability for taxes is on the taxing authority where the real estate in question is owned by a governmental body, 900 A.2d at 1016. In addition to clarifying the burden of proof, the Commonwealth Court also discussed the use of the property for public purposes. The court concluded that there was substantial evidence in the record to support the trial court's decision that the Schuylkill County Board of Assessment Appeals failed to meet its burden to prove that the property of Norwegian Township was taxable. The township produced evidence through testimony establishing that the subject property was actually and regularly being used for a public purpose, was available to the public for recreational activities, was used by the township to benefit the public, and that the township made a good-faith effort to develop the property for a park or playground. In light of such evidence and the failure of the Board of Assessment Appeals to prove otherwise, the Commonwealth Court found sufficient evidence supporting the decision of the trial court that the property of Norwegian Township was exempt from taxation.

If you would like more information with respect to the decision of the Commonwealth Court or tax exemption matters in general, please contact Loren D. Szczesny, Esquire, at 610.397.7967 or lszczesny@foxrothschild.com.



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