



OCTOBER 2015

PENNSYLVANIA DEPARTMENT OF EDUCATION RAIDING PROPERTY TAX RELIEF ALLOCATION

Last week, the Pennsylvania Department of Education (PDE) notified school districts that it will be withholding funds otherwise payable to those districts to instead pay overdue tuition to charter/cyber schools. While this is hardly news since the Charter School Law (CSL) provides for such withholdings, the source of the funds and timing of the withholding is.

Specifically, the PDE has decided that where the CSL says the PDE should withhold from “any and all State payments made to the district” that the language includes the tax relief allocation made to the school districts pursuant to Special Session Act 1 of 2006.

That payment is governed by both Act 1 and the PA Race Horse Development and Gaming Act, where the Gaming Act specifically notes that the money in the property tax relief fund “**shall be used for local property ... tax relief.**” 4 Pa.C.S. §1409. And, in fact, the various school districts have already “used” those funds for the required purpose. That use can be seen on every qualified homestead and farmstead’s real estate tax bill where it reads (as mandated by Act 1):

Notice of Property Tax Relief

“Your enclosed tax bill includes a tax reduction for your homestead and/or farmstead property. As an eligible homestead and/or farmstead property owner, you have received tax relief through a homestead and/or farmstead exclusion, which has been provided under the Pennsylvania Taxpayer Relief Act, a law passed by the Pennsylvania General Assembly

designed to reduce your property taxes.”

So, in effect, the school districts have already distributed that tax relief money to the district’s taxpayers as directed by the state legislature.

Whether the PDE is statutorily permitted to divert Property Tax Relief Fund money or not, after the PDE makes its payment to the school districts on the fourth Thursday in October (this year falling on October 22), there will be no further payments from that Fund to school districts until next August.

But this may be too late for the most cash-strapped school districts. There, this diversion of funds may impact on the district’s ability to offer its normal and required programming.

School districts have taken many different paths related to charter/cyber schools’ tuition during Harrisburg’s current budget impasse. Some are continuing to make payments as normal, some make no payments at all and some are withholding a portion that corresponds to the amount normally coming from the state subsidy.

The process for the PDE to make payment to a charter/cyber school on behalf of a school district is statutory. It requires first that the school district fail to pay the bill itself, and then that the charter/cyber school demand the withholding from the district’s state payments. However, at least one school district is now challenging these current deductions both because they are tax relief funds and the district never received bills from the charter/cyber schools.

In deciding how to move forward at this point, school districts should be aware that the CSL's 30-day appeal period for any money diverted in August has already passed. There may still be arguments to allow one to proceed on the August taking at this point based on lack of notice by the PDE, lack of billing by the charter/cyber school or even the source of the funds taken. Of course, the PDE and the charter/cyber schools would likely object that any district claim for return of such funds now would be untimely.

But now is clearly the right time to challenge the PDE's plan to divert Property Tax Relief Fund money scheduled to take place later this week. Any school district wishing to do so should contact its solicitor immediately to discuss options.

The Auditor General has already agreed to review the legality of this withholding. However, if a school district wishes to preserve the issue it may be necessary for the impacted school districts to take action, as well. This may include a challenge to the withholding under the CSL, but may also require the filing with the courts for injunctive relief. Obviously, any such decision and its impact should be discussed with the school district's solicitor.

Under a strict reading of the CSL, a school district

must notify the PDE of its objection within 30 days of the withholding or waive the objection. Districts thinking about taking action should keep this time limit in mind.

If you have any questions about the above, you may contact A. Kyle Berman at 610.397.7980 or aberman@foxrothschild.com or any member of Fox Rothschild's Education Practice.

Update:

Earlier this week, the Pennsylvania School Board Association joined with two school districts to file an action in the Commonwealth Court that may rectify this situation for all school districts. That action seeks an injunction to prevent the PDE from diverting any gaming funds due to any school district to instead pay charter/cyber schools. As a result of this court action, the State Treasurer has announced that his department will not act on the PDE's request to make those diversions until after the court has ruled on the issue. The court complaint, however, does not ask the court to issue an order relating to any gaming funds diverted in August. If funds were diverted in August from your school district and you wish to do something about it, the above court action will not address those deductions.

¹ 24 P.S. §17-1725-A(a)(5) where it states: "If a school district fails to make a payment to a charter school as prescribed in this clause, the secretary [of the Department of Education] shall deduct the estimated amount, as documented by the charter school, **from any and all state payments made to the district** after receipt of documentation from the charter school." (emphasis added).

