PA Notes

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Pennsylvania Sales and Use Tax Ruling
No. SUT-06-014 (July 20, 2011). The Pennsylvania Department of Revenue has reissued its 2006 ruling regarding the provision of computer **consulting and programming services**. Such services are nontaxable in Pennsylvania unless they are provided as "help supply" services. Under the ruling, computer consulting and programming services remain nontaxable so long as the vendor's employees that provide the service remain under the control of the vendor, not the customer. The presence in the service contract of a specified deliverable or finished product also supports a finding that the service is nontaxable, as help supply service arrangements typically do not have such requirements.

Pennsylvania Corporation Tax Bulletin
No. 2011-2 (July 20, 2011). The Pennsylvania Department of Revenue has announced that effective for tax years beginning January 1, 2011, taxpayers subject to the **gross receipts tax** are required to file their tax reports using the same **method of accounting** used in reports filed with the Federal Energy Regulatory Commission or Federal Communications Commission, the Pennsylvania Public Utility Commission, or the Internal Revenue Service, in that order of preference. If a taxpayer must change its method of accounting as a result of this announcement, the taxpayer must restate its gross receipts in the transition year. Depending on the method of accounting required by the change, the taxpayer's receipts reported in the transition year may increase.

Lebanon Valley Farmers Bank v. Commonwealth
No. 698 F.R. 2005 (Aug. 4, 2011). The Commonwealth Court has held that the application of six-year averaging in the calculation of **bank shares tax** is unconstitutional where a Pennsylvania bank has merged with an out-of-state bank or with a bank in existence for less than six years. After initially ruling that the averaging provision was constitutional, the Court, upon reviewing exceptions filed by the parties, overruled its previous decision, and determined that on a prospective basis, a bank involved in a merger with an out-of-state bank shall calculate its bank shares tax as if it were a new entity. In the case of a bank that merged with a bank in existence for less than six years, the Court held that the bank should calculate its tax as if it had been in existence for the same number of years as the "younger" bank. The Court also found that the taxpayer in the case was entitled to relief on a retrospective basis, but did not specify a remedy. Instead, the Court ordered the Commonwealth to take the necessary steps to provide for a remedy in accordance with its decision.

Appeal of Collegium Charter School
No. 2354 C.D. 2010 (July 26, 2011). In an unreported opinion, the Commonwealth Court rejected the request of the Collegium Foundation for an **exemption from real estate taxes** for the tax year 2009. During the period at issue, the Collegium Foundation leased the charter school property to the Collegium Charter School, a related entity and the named petitioner in the appeal, in exchange for market rents. (Subsequent to the filing of the appeal, the two Collegium entities merged, and there was no question that the property was exempt in 2010.) Among other things, the Foundation argued that it was entitled to the exemption under Act 104 of 2010, which retroactively exempted from real estate taxes all school property owned or leased by a charter school. However, the Court found that Act 104 could not be constitutionally applied in the case, as it had not become effective until after the lower court's ruling and a tax lien was issued, which resulted in the accrual of a vested right to the taxing authority. Therefore, despite the clear mandate by the General Assembly, the Court found that the Foundation was not entitled under Act 104 to the tax exemption for the year in question.