PA Supreme Court Decision Subjects More Businesses to Local Gross Receipts Taxes

On December 27, the Pennsylvania Supreme Court issued a decision which authorizes local jurisdictions to subject a greater number of businesses to local gross receipts taxes. Localities that did not have such taxes (known as business privilege and/or mercantile taxes) as of Nov. 30, 1988 are statutorily barred from enacting the tax. Certain industries are exempt from the tax, including manufacturers and banks.

The PA Supreme Court held that the City and School District of Harrisburg properly imposed such a tax upon a Lancaster-based contractor who constructed a building in Harrisburg *(V.L. Rendina, Inc. v. City of Harrisburg*, No. 130 MAP 2005 (Pa. Dec. 27, 2007), *reversing* 859 A.2d 888 (Pa. Commw. 2004)). The tax was based on gross receipts earned on a project constructed in Harrisburg.

The contractor leased and maintained a job trailer in Harrisburg for use in connection with the project. The Supreme Court determined that the contractor had enough nexus with Harrisburg to uphold the tax because the wording of the *Local Tax Enabling Act* (LTEA) authorizes local jurisdictions to tax a wide range of commercial activity. In its majority opinion, the PA Supreme Court indicated the LTEA even permits localities to subject businesses to the tax in the absence of a base of operations.

The Supreme Court reversed a Commonwealth Court case which held that the City and School District could not impose business privilege taxes on the contractor because the contractor's use of the trailer did not constitute a base of operations in the city. According to the Supreme Court, the lower court relied on an overly broad interpretation of prior cases to require an actual physical, permanent place of business as a precondition to impose the tax.

The *Rendina* decision illustrates the broad authority the LTEA grants local jurisdictions to impose taxes upon transactions, privileges and occupations. Companies that operate in more than one location may be subject to additional local business privilege taxes, dependent upon the structure of the local implementing scheme.

If you have questions about how this decision may affect you, please contact Tom Bowen, Eric Marshall, or your Stevens & Lee attorney. Stevens & Lee has significant experience in state and local tax issues and can assist you in a broad range of matters, including those relating to local gross receipts taxes. For more information about Stevens & Lee's State and Local Tax practice, please visit our website at www.stevenslee.com, or contact:

Thomas A. Bowen, Esq.
717.255.7363
tab@stevenslee.com

Eric F. Marshall, Esq.
610.478.2092
efm@stevenslee.com