

## PA Notes

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**Sales Tax - Drop Shipments:** A Virginia retailer, which otherwise had nexus with Pennsylvania, was required to collect Pennsylvania sales tax from a Massachusetts customer when that customer instructed the retailer to ship goods to Pennsylvania. This would include deliveries to the Massachusetts company's Pennsylvania customer unless the Massachusetts company tendered a "resale" exemption certificate. **PA Ruling No. SUT-99-134**, reissued February 16, 2010.

**Personal Income Tax - Military Spouses Residency Relief Act:** Under certain conditions, a service member's nonmilitary spouse can maintain out-of-state residency so that his/her compensation income will not be subject to Pennsylvania's Personal Income Tax. However, non-compensation income from Pennsylvania sources (e.g. from a Pennsylvania trade or business) will be subject to tax. Personal Income Tax Bulletin 2010-1, issued March 17, 2010.

**Sales & Use Tax - Printing Exclusion:** The Pennsylvania Supreme Court has affirmed, per curiam, the Commonwealth Court's 2009 decision in *EUR Systems, Inc. v. Commonwealth*, 965 A.2d 319, in which the court ruled that a provider of fulfillment services could not claim the printing exclusion for equipment and supplies used in producing telephone bills. While some degree of individualization of documents is permissible, each telephone bill was so different from the others that they did not satisfy the regulation's requirement of "substantial[ly] similar printed matter." *EUR Systems, Inc. v. Commonwealth*, No. 48 MAP 2009, March 24, 2010.

**Realty Transfer Tax - Transfer to Irrevocable Living Trust:** In a 2-1 decision, a panel of the Commonwealth Court has ruled that an irrevocable trust may be treated as a "living trust" for purposes of exemption from realty transfer taxes where the settlors (husband and wife) designated themselves and their only child as the beneficiaries and retained substantial lifetime rights of dominion and enjoyment of the trust corpus (farmstead), including the right to sell the property. The dissent agreed with the Department of Revenue and the appeals board that only a revocable trust can qualify as "will substitute," which is one of the statutory requirements to constitute a living trust. *Miller & Miller v. Commonwealth*, No. 757 F.R. 2007, April 8, 2010.

**Gross Premiums and Annuity Consideration Tax - Guaranty Association Credit:** The credit for guaranty association assessments must be determined separately for each assessment class and not on all types of covered policies. As to credit for assessments in the annuity class, the "proportionate part factor" used to determine the proportion of the assessment allowed to be credited includes annuity considerations in both the numerator and denominator. *Allstate Life Insurance Co. v. Commonwealth*, No. 89 F.R. 1997, March 25, 2010.

**Surplus Lines Tax - Exemption of State Instrumentalities:** A seven-judge en banc panel of the Commonwealth Court has affirmed the 2009 decision of a 3-judge panel of the court (973 A.2d 1101),

holding that Temple University is not considered an instrumentality of the Commonwealth for purposes of exemption from surplus lines tax. Furthermore, the General Assembly's failure to specifically address Temple's status in amending the tax statute could not imply intent to continue the exempt treatment previously granted by the Department of Revenue because there is no reason to suspect that the legislature was aware of a letter from a taxing officer to the university's previous broker, or would be aware of the Department's tax treatment of any individual taxpayer. *Valentine Co. v. Commonwealth*, No. 562 F.R. 2006, January 15, 2010.

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