

May 2, 2003

IN RE: BOARD OF DIRECTORS OF CITY TRUSTS ACTING ON BEHALF OF
WILLS EYE HOSPITAL

DOCKET NO: 36BPREFZZ9919

STATEMENT OF RECORD:

1. The Board of Directors of City Trusts acting on behalf of Wills Eye Hospital (hereafter "Wills") filed a petition with the Tax Review Board on December 17, 2001 to appeal assessments for Business Privilege Tax and Wage Tax.
2. A hearing was held before a Tax Review Board Master on November 27, 2001. The decision of the Master, ratified by the Tax Review Board, was to deny the petition as to the Business Privilege Tax and grant the petition as to the Wage Tax.
3. Wills appealed for a de novo hearing before the full Tax Review Board on the matter of the Business Privilege Tax.
4. The Tax Review Board held a public hearing on September 17, 2001, following which a briefing schedule was set for the parties. On December 10, 2002, the Tax Review Board convened for oral arguments by the parties. At the conclusion, the Board announced its decision to grant the petition as to Wills' challenge to the Business Privilege Tax assessment.
5. The City of Philadelphia Department of Revenue has appealed to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Under the will of James Wills who died in 1832, a bequest was made to the "Mayor and Corporation of the City of Philadelphia" for the purpose of erecting and maintaining "The Wills Hospital for the Relief of the Indigent Blind and Lame." Title to the assets vested in the City of Philadelphia at that time and have been used by the City for the purposes delineated in the Will since that time. All funds are to be used to carry out the terms of the bequest and are not for the use of the City for its general purposes. See copy of James Wills will, attached as #13 to the Record of Appeal.
2. As per the instructions in the will, The Wills Eye Hospital was established and remains today as a well known and respected member of the Philadelphia medical community. Wills provides ophthalmology services to its patients, as well as training and education for medical professionals and research for causes and cures of eye diseases.
3. The assets of the Trust set up under the will are dedicated to charitable purposes only. As per the terms of the Will, after establishing the hospital, the income from the trust is to be "exclusively applied to the comfort and accommodation of as many of the indigent blind & lame as the income will admit after defraying the necessary expenses incident to such an establishment." See copy of James Wills will, attached as #13 to the Record of Appeal.
4. The will provided for the Mayor and city officials to appoint trustees and managers to carry out the terms of the will. In 1869, the General Assembly of Pennsylvania

created the Board of Directors of City Trusts (hereafter the “Board”) whose purpose to this day is to manage, on behalf of the city, bequests or gifts left to the City. The duties and responsibilities of the City of Philadelphia concerning charitable trusts vested in the City “shall be discharged by the said city through the instrumentality of...” the Board. 53 P.S §16365. The Board is an agent of the City, acting on its behalf, as Trustee, to administer various trusts including the trust created under the will of James Wills. 53 P.S. §16370.

5. Wills derives income from a number of activities, including the operation of a parking garage located at the hospital and certain leases at the hospital. The garage is used for staff and patients, although it is also open to the general public. The leased space is for physicians’ offices, retail optical outlets, and a commercial bank. All income from these activities is used for the benefit of Wills.
6. All income earned by the Trust from any of its activities, including those the City seeks to tax, is added to the Trust corpus, to be expended only for the furtherance of those charitable activities enumerated under the will.
7. Wills also has requested and received, from the federal government, 501(c)(3) status under the Internal Revenue Code as a tax exempt entity.
8. The Business Privilege Tax assessed to Wills was paid on September 18, 2000. A refund was requested.

CONCLUSIONS OF LAW:

The City of Philadelphia seeks to impose its Business Privilege Tax on the income earned by Wills through its parking garage and leasing activities.

The issue before the Tax Review Board (hereafter “TRB”) was the taxability of Wills as a trust administered by the Board on behalf of the City of Philadelphia, as both trustee and record owner of the assets, and whose purposes are charitable in nature.

The decision of the TRB was that the Wills trust is property owned and operated by the City of Philadelphia. It is managed by the Board on behalf of the City of Philadelphia. “The said directors, in the discharge of their duties, and within the scope of their powers aforesaid, shall be considered agents or officers of said City.” 53 P.S. §16370. The Board acts as a management layer that in no way interferes with or changes the essential ownership of the trust assets by the City or the City’s fiduciary responsibilities as trustees under the will.

As trustee for the Wills trust, the Board is standing in the shoes of the City of Philadelphia and its mayor, the original trustees. The Board, as created by state statute, is vested with all “the duties, rights and powers of the City of Philadelphia, concerning all property and estate whatsoever, dedicated to desirable uses or trusts, the charge or administration of which is now or shall hereafter become vested in or confined to the City of Philadelphia.” 53 P.S. §16365. The Board, on behalf of the City, is administering a trust whose assets remain vested with the City. The TRB in completing its review and

research has found that the status of the Board was expressly recognized by the City of Philadelphia Law Department in its December 1995 newsletter which stated “(t)he Board of City Trusts is not a quasi-City entity but rather is a part of City government.” See City of Philadelphia Law Department Client News, No.8 December 1995.

It is undisputed that all of the trust assets and income are dedicated to charitable purposes. The City is the beneficiary of all funds collected or earned by Wills because all funds expended by the trust are for charitable purposes within the City. In addition, the Act creating the Board expressly states that it applies only to “property and estate whatsoever, dedicated to *charitable uses and trusts*...”(emphasis added)” 53 P.S. §16365. The Board exists only to administer those trusts dedicated to charitable purposes.

The trust created by Wills is analogous to the trust created under the will of Stephen Girard which also left to the City funds to be used for specific charitable purposes. The Girard Estate is also administered by the Board in the same manner as the Wills trust. In discussing the role of the Board the Commonwealth Court of Pennsylvania found the Board to be a local agency, part and parcel of the municipal government. In addition, the Court reasoned that “...Girard turned his private wealth over to the City for public use...the City’s ability to accept the bequest depended on its use for public purpose. (Vidal, 43 U.S. at 190.) In its stated purpose and in the directives concerning its administration, Girard’s bequest changed his private property into public property belonging to the City. Insofar as the City holds the property for public benefit, it acts in its governmental capacity.” Richard W. Burcik and City of Philadelphia, Trustee Acting by the Board of Directors of City Trusts, Girard Estates v. Larry Caplen, Neil B. Caplen, Jill Caplen Schecter, and Stanley B. Caplen, 805 A.2d 21, Pa. Cmwlth., 2002.

Therefore if one carries forward these facts: the assets of the Wills trust have been and remain vested in the City of Philadelphia, that the City owns the property, the City is the designated trustee, and the Board is an agent of the City to fulfill its trustee duties, the question then becomes whether imposing the BPT on Wills’ activities and income becomes a situation where Philadelphia is attempting to assess a tax on itself, on its own income, activities and property. And if so, is this permissible taxation?

It is generally accepted public policy that governmental bodies do not tax themselves. It has been a “(l)ong standing rule that property owned by a municipal authority should not be taxed.” Delaware County Solid Waste Authority v. Berks County Board of Assessment of Appeals and Boyertown School District, 534 Pa 81, 626 A.2d 528 (1993). The assets sought to be taxed have been and remain vested with the City as provided for in the will and as accepted by the City.

The enabling statute of the Board which provides that the Board is to function as trustee on behalf of the City does not change the ownership position of the City with respect to the trust assets. The Board acts in the name of the City in all business conducted by it. 53 P.S. §16368.

Nor is the Board itself subject to the BPT. The Board is a state created agency and therefore also immune from taxation. Its activities are restricted by its creating statute to managing only charitable property and activity. See Commonwealth of Pennsylvania v. The Board of Directors of City Trusts of the City of Philadelphia, 138 A.2d 846.

The Board is a creation of government and a part of government. Wills is owned and operated by government. Each carries out public business with a purely charitable purpose. Wills and its activities are not operating as a commercial entity. Any income earned is used to carry out the trust's charitable objectives.

The fact that Wills has received non-profit status under the IRS Code does not alter the essential nature of the trust, its ownership or the status of its managing Board. Reporting or taxation rules of the federal government do not bind the City in this matter or require consistency with their process. The fact of whether a taxpayer does or does not enjoy a tax exemption from the federal government "is immaterial and not controlling" on the issue of whether that entity is entitled to an exemption from state or local taxation. Appeal of Pittsburgh Institute of Aeronautics, 435 Pa. 618, 258 A.2d 850 (1969).

Therefore the decision of the Tax Review Board was to grant the petition for refund.

Concurred:

Daniel Saidel, Esq. Chair

Derrick Johnson, Vice Chair

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