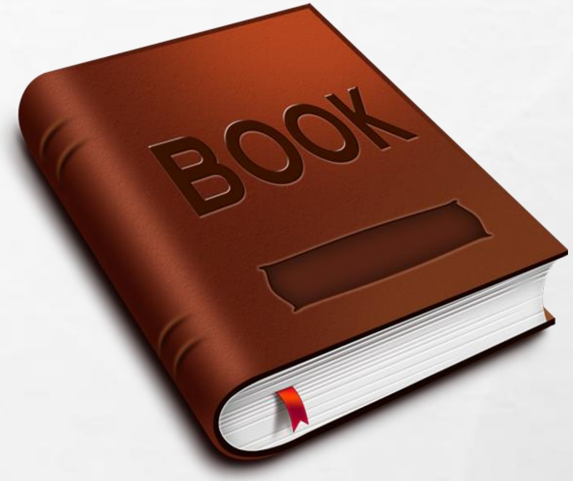
TAX & AG RULINGS & COURT CASES

VALTA

POWHATAN, VA

AUGUST 26, 2022

CITY OF CHARLOTTESVILLE v. REGULUS BOOKS, LLC



- KLUG IS A FREELANCE WRITER OF LEGAL FICTION NOVELS
- HE FILED A SCHEDULE C FOR BUSINESS INCOME IN 2018
- COR OFFICE HAD NO LICENSE ON FILE FOR TAXPAYER
- COR OFFICE REQUESTED INCOME INFORMATION FOR 2015- 18
- KLUG RESPONDED THE LOCAL ORDINANCE DID NOT APPLY TO HIM

SUPREME COURT RULING

- Business does not provide a service
- Business does not fall under ordinance's catch-all provision
- No ruling on unconstitutionality of ordinance since the catch-all provision did not apply
- Since business not covered by ordinance, upheld circuit court ruling to tax REFUNDED
- Circuit court erred in awarding cost of litigation

Trustees of the New Life in Christ Church v. City of Fredericksburg

- CHURCH PARSONAGE OCCUPIED BY MARRIED COUPLE WHO ARE COLLEGE MINISTERS
- COUPLE MINISTERS TO STUDENTS AT UNIVERSITY OF MARY WASHINGTON
- HOST BIBLE STUDIES AND WORSHIP SERVICES AT PARSONAGE
- VIRGINIA CONSTITUTION ARTICLE X EXEMPTS
    - (2) REAL ESTATE AND PERSONAL PROPERTY OWNED AND EXCLUSIVELY OCCUPIED OR USED BY CHURCHES OR RELIGIOUS BODIES FOR RELIGIOUS WORSHIP OR FOR THE RESIDENCES OF THEIR MINISTERS.

Exemption Denied

- CITY DENIED TAX EXEMPTION TO PARSONAGE
  - COUPLE'S TITLE WAS "DIRECTORS OF COLLEGE OUTREACH"
  - PART-TIME EMPLOYEES WITH NO FORMAL RELIGIOUS EDUCATION OR ORDINATION
  - COUPLE WERE EMPLOYED AS YOUTH MINISTERS
  - LED NO SERVICES AND TAUGHT NO CLASSES WITHIN THE CHURCH
  - PRESBYTERIAN BOOK OF CHURCH ORDER REQUIRES MINISTERS TO BE ORDAINED.
- CIRCUIT COURT UPHELD THE CITY'S POSITION
- UNITED STATES SUPREME COURT UPHELD LOWER COURT'S DECISION

AG OPINION 21-052

ERRONEOUS ASSESSMENTS

INTEREST PAID ERRONEOUS ASSESSMENTS?

- TAXPAYER FILES CORRECTED RETURN
- TAX PAYMENT DIRECTED TO INCORRECT ACCOUNT
- CORRECTED “STATUTORY ASSESSMENT”

OPINION DETERMINATION 21-052

“Erroneous” means containing an error

Any assessment containing an error is an “erroneous assessment”

Not limited to error of assessing official

PD 21-130 BPOL

- TAXPAYER FILED AMENDED RETURNS REQUESTING A REFUND
- COUNTY AUDITED RETURNS AND ISSUED FINAL LOCAL DETERMINATIONS
- TAXPAYER APPEALED TO TAX CONTENDING IT SHOULD BE ALLOWED TO USE PAYROLL APPORTIONMENT

PD 21-130 BPOL DETERMINATION

- Local final determination was not signed by the Commissioner
- The letter did not include a designation granting the employee authority to sign the letter.
- TAX does not recognize this as a "final local determination"
- Under <u>no</u> circumstance should an employee who issued an audit determination be permitted to sign the final local determination.
- PD includes a sample of a designation language

PD 21-107 BTPP ORIGINAL COST

- TAXPAYER ACQUIRED ITEMS OF BTPP WHEN IT PURCHASED SEVERAL FRANCHISE RESTAURANT LOCATIONS IN THE CITY
- TAXPAYER USED THE PURCHASE PRICE OF THE PROPERTY AS THE FAIR MARKET VALUE
- UNDER AUDIT, THE CITY DETERMINED THE FMV BY USING A PERCENTAGE OF THE ORIGINAL COST AND ISSUED ASSESSMENTS

PD 21-107 BTPP DETERMINATION

Virginia Code § 58.1-3503 A 18 requires BTPP to be valued by using a percentage or percentages of original cost

City's valuation method is consistent with the statutory requirements

Burden of proof lies with the Taxpayer to rebut the presumption of correctness

Taxpayer must show by clear preponderance of evidence that the property is assessed at more than FMV

PD 21-115 BPOL

- TAXPAYER IS PRODUCER OF READY TO SERVE MEALS FOR AIRLINERS
- CLASSIFIED ITSELF AS A RETAIL MERCHANT ON BPOL RETURN
- LATER CLAIMED IT WAS A MANUFACTURER AND REQUESTED A REFUND
- COUNTY DENIED RECLASSIFICATION & REFUND

PD 21-115 BPOL DETERMINATION

- **“APPEALABLE EVENTS” TO LOCAL COMMISSIONER:**
  - INCREASE IN THE ASSESSMENT OF A LOCAL LICENSE TAX PAYABLE BY A TAXPAYER
  - DENIAL OF A REFUND
  - ASSESSMENT OF A LOCAL LICENSE TAX WHERE NONE PREVIOUSLY WAS ASSESSED
- **APPEAL TO TAX COMMISSIONER:**
  - WITHIN 90 DAYS OF LOCAL FINAL DETERMINATION
  - IF NO LOCAL FINAL DETERMINATION HAS BEEN ISSUED AFTER 1 YEAR OF TAXPAYER’S APPEAL

PD 21-115 BPOL DETERMINATION

- **LOCAL LETTER:**
  - NOT SIGNED BY COMMISSIONER
  - DID NOT INCLUDE DESIGNATION GRANTING AUTHORITY TO EMPLOYEE TO ISSUE LETTER
- **IMPORTANCE:**
  - THIS PRACTICE GENERALLY REFLECTS THE DEPARTMENT'S OWN APPEALS PROCESS BY WHICH THE TAX COMMISSIONER SIGNS APPEAL DETERMINATIONS AND OFFICIAL RULINGS OF THE DEPARTMENT.
  - PRACTICE IS PREFERRED BECAUSE IT HELPS ENSURE THE HIGHEST LEVEL OF SUPERVISORY OVERSIGHT OF THE PROCESS
  - UNDER NO CIRCUMSTANCE SHOULD AN EMPLOYEE WHO ISSUED AN AUDIT DETERMINATION WHICH BECOMES THE SUBJECT OF AN APPEAL BE PERMITTED TO SIGN THE FINAL LOCAL DETERMINATION IN THE CASE
- **TAX LACKS JURISDICTION**

PD 21-86 BTPP

Taxpayer was the owner's association of a timeshare condominium

Individuals purchased either an annual or biennial co-tenancy interest in fee simple in one of the units in the Building

Each unit was furnished by the Taxpayer

A small percentage of units owned by the Taxpayer were rented to the public

City audited the Taxpayer and assessed BTPP tax for the furnishings located in the individual units

City issued a final determination, concluding that the furnishings located within each unit were owned by the Taxpayer and subject to BTPP tax

PD 21-86 BTPP

TAXPAYER'S RESPONSE

- NOT REQUIRED TO DEPRECIATE THE FURNITURE FOR FEDERAL INCOME TAX PURPOSES
- HOUSEHOLD ITEMS ARE EXEMPT
- FURNITURE WAS ONLY OCCASIONALLY USED FOR RENTALS
- DID NOT QUALIFY FOR RELIEF UNDER PAYCHECK PROTECTION PROGRAM (PPP)

PD 21-86 DETERMINATION

- Taxpayer was at a minimum in the business of operating the Building
- Sometimes acting as a rental agent on behalf of the timeshare owners
- All the furniture in the units was the property of the Taxpayer, not the owners
- Furniture falls under the classification of tangible personal property employed in a trade or business and is subject to the BTPP tax

PD 21-160 BPOL

- TAXPAYER WAS AN ASSOCIATION THAT OPERATED A TIME-SHARE RESORT
- CITY AUDITED AND DETERMINED THAT ROOM CLEANING FEES PAID BY TIME-SHARE OWNERS SHOULD HAVE BEEN INCLUDED IN GROSS RECEIPTS
- THE TAXPAYER CONTENDS THAT THE CLEANING CHARGES SHOULD NOT BE INCLUDED IN GROSS RECEIPTS BECAUSE PAYMENTS WERE PASSED THROUGH THE TAXPAYER TO AN UNRELATED THIRD-PARTY VENDOR
- CITY DETERMINES THE CLEANING FEES WERE GROSS RECEIPTS BECAUSE THEY WERE REPORTED AS REVENUE

PD 21-160 BPOL DETERMINATION

- GROSS RECEIPTS MEANS "THE WHOLE, ENTIRE, TOTAL RECEIPTS, WITHOUT DEDUCTION". SEE *VIRGINIA CODE* § 58.1-3700.1
- SPECIFIC EXEMPTIONS, DEDUCTIONS AND EXCLUSIONS PROVIDED - ONE AREA IS THAT OF "AGENCY RELATIONSHIPS"
- 3 CRITERIA MUST BE MET:
  - CONTRACTUAL RELATIONSHIPS EXIST BETWEEN THE TAXPAYER, THE CLIENT AND THE CONTRACTED THIRD PARTY, AND THERE IS A STATED RELATIONSHIP BETWEEN THE CLIENT AND THE CONTRACTED THIRD PARTY
  - TAXPAYER MUST HAVE A SEPARATE ACCOUNTING SYSTEM OR A FIDUCIARY ACCOUNT WHERE THE PASS-THROUGH RECEIPTS FROM ITS CLIENTS ARE RECORDED
  - "PASS THROUGH COSTS" NOT REPORTED ON FEDERAL INCOME TAX RETURNS

PD 21-160 BPOL DETERMINATION

Taxpayer failed to prove that it was acting as a legal disbursing agent for the owners in obtaining the cleaning services

There is no basis to overturn the City's final determination

The assessments are upheld