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Recent Developments

Recent Maryland Litigation

by Nicolette Prevost
Lynn Caudle

In a unanimous opinion in *Xerox Corporation v. Comptroller of the Treasury*, 290 Md. 126, 428 A.2d 1208 (1981), the Court of Appeals has held that the Comptroller's Office properly assessed additional income taxes against Xerox on interest and royalty income it received from foreign subsidiaries and non-affiliated domestic and foreign corporations. The court rejected Xerox's argument that Maryland lacked both statutory and constitutional authority to tax such income, which was received in 1972, 1973 and 1974. Even though the transactions producing the interest and royalty income took place at Xerox's corporate offices in New York and Connecticut and not in Maryland, the court held that the income was produced as part of the overall unitary business of Xerox, which was conducted, in part, in Maryland.

Additionally, expanding on a 1980 U.S. Supreme Court opinion in *Mobil Oil v. Commissioner of Taxes*, 445 U.S. 425 (1980), the court held that there need not necessarily be a unitary tie-in between the payors of interest and royalties and the payee, Xerox.

Xerox now is appealing the taxes assessed for 1975, 1976, 1977 and 1978. At issue, through March of 1981, are assessments and interest totaling $740,000.

* * *

Annapolis Funding Co. and Financial Trading Co., two commodities trading firms located in Annapolis and accused of the illegal sale of commodity options, have been placed in receivership and their owners enjoined from the options business.

An order signed by Judge Alexander Harvey, II, in U.S. District Court in Baltimore follows a suit filed last July by Securities Commissioner K. Houston Matney and the U.S. Commodity Futures Trading Commission.

The suit alleged that the companies maintained "boiler room" sales operations that sold delivery contracts in gold, silver and other precious metals by using false, misleading and incomplete statements about the firms' abilities to honor obligations to their customers. It also alleged that metals the companies said were being stored in banks or depositories in the U.S. and Europe did not actually exist.

Investors were required to make non-refundable "down payments" for the right to buy a specific amount of precious metal at a predetermined price on a specific "maturity" date in the future, the suit contended.

Because investors were not obliged to take delivery of the metal on the maturity date, it was charged that the accounts really were commodity options, which are illegal.

Unverified records suggested that customers paid more than $6 million in non-refundable payments on some $37 million in contracts, and affidavits and testimony filed with the suit revealed that many investors also were encouraged to reinvest paper profits through contract extensions, or "rollovers." It was alleged that many investors lost substantial sums when the market prices for gold and silver plummeted.

The companies and their owners, Clayton Rose and Raymond Thomas Quillen, agreed to entry of the court order without admitting or denying any wrongdoing.

Out-of-court settlements have been reached in *Martin, et. al. v. Antrim Township, et. al.* and *Metz, et. al v. Peach Botton Township, et. al.*, providing for tax rebates totaling approximately $100,000 for over 1,000 Marylanders who work in six Pennsylvania subdivisions and were illegally taxed on their incomes there.

All six subdivisions named as defendants in the two class action suits filed last October have adopted ordinances or resolutions exempting non-residents from Pennsylvania's Local Tax Enabling Act, popularly known as the "Tax Anything Act," or granting the Marylanders the same tax credits given Pennsylvanians who live in one subdivision but work in another.

Pennsylvania subdivisions have to grant a credit against their local earnings tax to Pennsylvania residents who live elsewhere in the state and are taxed on their income by their place of residence. The defendant subdivisions, however, were given the right under the disputed Pennsylvania law to deny similar credits to non-Pennsylvanians whose out-of-state residence also taxes the person's income.

Under the terms of the settlements, Marylanders who work in the default subdivisions will not get the tax refunds automatically, but must apply for them by December 1st by filing a Pennsylvania Municipal Earned Income Tax Return along with a Claim for Refund form, available from the Attorney General's Office.

* * *

In *Koyce v. State, Central Collection Unit,* 289 Md. 134, 422 A.2d 1017 (1980), the Maryland Court of Appeals upheld the right of the state to hold persons liable for the cost of their treatment when they are committed to a maximum security state psychiatric hospital. Involved are patients who have been committed after being found not guilty of a criminal charge by reason of insanity. The Central Collection Unit of Maryland currently recovers approximately $250,000 each year for such patients under the Mental Hygiene Law. *Md. Code Ann.* art. 59, ¶¶1-75, (1979).

Anthony Koyce was sent to Clifton T. Perkins State Hospital for evaluation after he pleaded not guilty by reason of insanity to a murder charge. Subsequently, he was involuntarily committed to Perkins until such time he would no longer be considered a danger to society. When Koyce was released three years later from Perkins under its Conditional Release Program, the State, through its Central Collection Unit, sued Koyce for $4,155.34 for patient care he received during his 37 month stay at Perkins.

The District Court of Maryland for Baltimore City concluded that Koyce was not legally responsible for the hospital bill. On appeal, the Baltimore City Court found that the governing statutes required that Koyce pay for his treatment at Perkins. *Koyce v. State, Central Collection Unit,* 289 Md. at 137, 138, 422 A.2d at 1019 citing *Md. Code Ann.* art. 43 ¶601 (c) (1) (1979), art. 59 ¶¶ *2, 27, 31(a), 39 (1980).* The holding was based on the fact that Koyce suffered from mental illness while at Perkins, that he was financially able to pay for the cost of his care, that mental health services were rendered to Koyce and that Perkins is a mental health facility of the State. Judge Levin of the Baltimore City Court emphasized that Koyce's detention was for mental illness not criminality since he ". . .could be released at any time he satisfied the statutory requirements as opposed to an incarcerated prisoner who must complete his prison term." *Id.* at 137, 422 A.2d at 1019.

The Court of Appeals, in affirming the Baltimore City Court decision, referred to *Wagner v. M. & C.C. of Baltimore,* 134 Md. 305, 306 A. 753 (1919). A factually identical case, the Court of Appeals there held in 1919 that civilly and criminally committed patients, if financially able to do so, were required to pay for the treatment they received in a state mental hospital. In 1980, the Legislature revised Article 59 and it is clear that the policy is to require all patients financially able to do so to pay for mental health treatment received by them. This obligation to pay for such treatment extends to persons legally responsible for the patient. In the *Koyce,* case, the Court of Appeals specifically held that under the policy and plain meaning of the relevant statutory provisions, a person involuntarily committed to a maximum security state psychiatric hospital after being found not guilty of a criminal charge (murder) by reason of insanity, is liable in an action brought by the State for the cost of his care and treatment.

Recent Maryland Legislation

State Immunity in Tort. Waives the liability of the State and its officials in certain enumerated tort actions, to the extent that the State is insured; grants certain State personnel immunity from liability as individuals for such torts absent certain circumstances; requires the filing of a tort claim with the State Treasurer and authorizes the Treasurer to adjust and settle such claims; directing the Treasurer to secure insurance; and generally relates to the immunity of the State and its personnel in tort.

Article — Courts and Judicial Proceedings, ¶¶5-401 through 5-408 — Added; Article 95 — Treasurer, ¶27(d) and (3) —Added

Secondhand Precious Metals and Gem Dealers. Requires the licensing after June 1, 1981 of every precious metals and gem dealer in this State and that the State police investigate the background of each applicant; requires each dealer to maintain records of all business transactions involving precious metals and to file a copy of the records with a law enforcement agency; requires the dealer to hold the precious metals for 15 days; prohibits transactions with minors.

Article 56 — Licenses, ¶¶416 through 427, inclusive, to be under the new subtitle "Secondhand Precious Metals and Gem Dealers" — Added

Purchases for Minority Businesses — Fraud. Provides that a person may not perform certain fraudulent or willful acts with regard to the certification process under the Minority Business Enterprise Program; provides that offenses associated with fraudulent minority business certification are subject to a penalty of imprisonment or a fine or both; and defines the terms "certification" and "person."

Article 21 — Procurement, ¶8-601 as enacted by Chapter 775 of the Acts of the General Assembly of 1980— Amended

District Court — De Novo Appeal. Provides that in a civil case in which the amount in controversy exceeds $1,000 an appeal is heard on the record made in District Court, and in cases involving less than $1,000 an appeal is tried de novo; and provides that this Act is contingent upon the passage of H.B. 931 relating to the jurisdiction of the District Court over small claim actions.

Article — Courts and Judicial Proceedings, ¶12-401 — Amended

Small Claims Court. Defines a small claim action as (1) a civil action for money in which the amount claimed does not exceed $1,000, exclusive of interest and costs and (2) certain land-