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COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
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Machinery and Equipment Exclusion from Real Property Taxation in Pennsylvania

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McNees Wallace & Nurick, LLC

The Pennsylvania Supreme Court in 2001 first addressed the issue of what constitutes an "industrial establishment" entitled to exclusion from taxation as real property under 72 P.S. Section 5453.201(a), of the Fourth to Eight Class County Assessment Law. This Section reads as follows:

Machinery, tools, appliances and other equipment contained in any mill, mill, manufactory or industrial establishment shall not be considered or included as a part of the real estate in determining the value of such mine, mill, manufactory or industrial establishment

It should be noted that in 2011, the General Assembly of the Commonwealth of Pennsylvania merged the Fourth to Eighth Class County Assessment Law and the Second Class A and Third Class County Assessment Law into the Consolidated County Assessment Law, 53 Pa.C.S.A. Section 8801 et seq. The above cited statute was reenacted in substantially the same form at 53 Pa.C.S.A. Section 8811 (b)(1).

BFC Hardwoods Inc. v Board of Assessment Appeals of Crawford County, 771 A.2d 759 (Pa. 2001) was the first Pennsylvania Supreme Court decision to discuss this statute in detail. Other cases have dealt with equipment located in mills and manufactories but none have explored the meaning of equipment located in industrial establishments since the passage of the Act.

The facts of this case are complex because of the industrial process involved. BFC Hardwoods, Inc. was in the business of drying lumber in five specialized kilns known as dry kilns. The Crawford County Board of Assessment Appeals assessed the kilns as taxable and refused to apply the exclusion from taxation mentioned in the above statute. The kilns in question were used continuously and exclusively to remove moisture from pre-cut lumber to a greater degree than could be done by conventional open-air drying. This process made the wood suitable for a commercial sale and use in a broad range of applications. The facility included large insulated physical structures into which lumber was stacked for substantial time periods. Three million British Thermal Unit heating systems were used to heat the lumber and draw moisture from the wood. Exhaust ventilation systems were designed to control airflow and eliminate saturated air from the enclosed structures. The dry kilns possessed additional specialized features including computer controls, monitoring equipment, interior skins of aluminum alloy, concrete flooring to support the heavy load, loading doors designed as movable walls and equipped to be hermetically sealed, system of fans integrated into false ceilings and bulkheads and baffles used to direct airflows. The ovens were assembled on the property from pre-manufactured, pre-drilled components which could be disassembled for purposes of relocation. The dry kilns lack conventional services such as run water, sewage or heating. The taxpayer's expert testified that these kilns have no other use and are not suited to applications other than drying lumber. The BFC facility consists of these ovens, storage buildings, an office and undeveloped real estate.

On appeal to the Crawford County Court of Common Pleas, the decision of the assessment board was affirmed. The lower court held that the dry kilns were not excluded from taxation because they were not contained in any mill, manufactory or industrial establishment and that the business of kiln drying did not meet

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Ideas for You

UNPLUG FROM WORK WITH CONFIDENCE

If you're longing for a real vacation free from checking email and voice mails, here's how to successfully disconnect:

• **Designate a pinch hitter.** Allow someone to sit in for you while you are gone. Fill the person in on any projects or clients that will need support in your absence. You may need to spread the support among several people.

• **Get ahead.** Work ahead as much as you can to reduce the amount of work for your stand-ins. Plan to train those filling in, and leave enough time for them to take a trial run and come to you with questions.

• **Make it automatic.** Set emails to send on particular dates. Draft social media reports and web updates early and automate them as well. Set your out-of-office reply with information on where to go for support in your absence.

• **Make a contact plan.** Set up emergency procedures, and leave the information with one person. List items that qualify as an emergency. If employees have to contact you, you'll hear from them without needing to log in to check emails.

— Adapted from "5 Ways to Successfully Unplug onVacation," Kathy Caprino, www.linkedin.com.

What's Inside

President's Message, Legislative Wrap Up, AAP People

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President's Message

I hope everyone enjoyed their summer and is ready for another eventful or hopefully, uneventful appeal season. As the appeal season approaches I am reminded of when I was appointed chief assessor. I had only been with the county as deputy assessor for six months when I got a call from the county's outside counsel for assessment litigation against a CCRC (Continuing Care Retirement Community). Counsel told me to prepare to testify at a hearing in a few weeks. After my conversation with counsel, I thought about turning in my resignation! I had never testified in court nor did I have any idea why we were in litigation. Then I thought, I should go talk to the county solicitor since he has to know about this case. I asked him how to prepare for court and he said, "what case and who it is." Ironically, the prior solicitor was elected judge three months before and neglected to update the current solicitor on the case.

To make a long story short, a day or two before our hearing the Alliance Home case was decided by the Supreme Court and counsel thought it would be best to enter into a PILOT program with the CCRC. All the research I had done in preparation for this case was done for nothing. However, because of my research, I learned a lot about CCRCs. I was convinced that this CCRC did not qualify for exemption and vowed to get them back on the tax rolls before I retired.

In 2013, as part of the PILOT agreement, the exemption automatically renewed every two years unless there was a substantial change in the law. I viewed the consolidation of the Assessment Law as a substantial change in the law and sent notice to the appellant of the termination of the PILOT agreement effective January 1, 2014. While doing research, my solicitor determined that this property never passed the HUP test since it was already considered tax exempt prior to the institution of the HUP test in 1985. Also, he found case law that prohibits governing bodies from binding their successors. In other words, if any of the taxing authority boards do not have a majority membership still occupying the board that authorized the original agreement, then the agreement is null and void.

This May a Common Pleas judge denied the appellants' motion to enforce the agreement. The appellants quickly asked the judge for reconsideration and a hearing has been scheduled for later this year. I'll keep you updated.

In August, I was challenged by my fellow assessor, Chuck Masters, in the ALS Ice Bucket Challenge. In return, I challenged AAP members who are my friends on Facebook as well as the rest of the AAP to perform the ALS Ice Bucket Challenge or donate in support of John Engels Jr., retired chief assessor of Erie County. I again challenge AAP members who have not already done so, to complete the Ice Bucket Challenge and/or donate in support of John.

Finally, I hope everyone enjoys their appeal season and I look forward to seeing all of you at the Fall Conference in Lancaster on November 6th and 7th.

Sincerely,

JR

Charles "JR" Hardester, MS, CPE
AAP President



CCAP Legislative Wrap Up

The General Assembly returned to Harrisburg on September 15, with 11 session days planned in the Senate and 12 in the House before the 2013-2014 session closes on November 30. Despite the limited timeframe, much remains to be done, including several bills important to counties.

A priority for counties this year has been to comprehensively address the growing substance abuse and drug overdose problem across the commonwealth. Legislation critical to reversing this trend must be approved this fall, including issues such as getting naloxone, a rescue drug effective in treating overdoses and saving lives, into the hands of emergency responders (with immunity for those seeking help and access to it) and creating a prescription drug monitoring system to help identify potential addictions so they can be addressed earlier.

Other outstanding bills include SB 1078, Senator Sean Wiley's (D-Erie) bill to clarify that cost of living adjustments (COLAs) granted under the County Pension Law would not have to be calculated retroactively to the date of the previous COLA, nor applied to each year since the COLA. It has been referred to the House Finance Committee after winning the unanimous approval of the Senate in late June. House Bill 2131 (Representative Chris Ross, R-Chester) and SB 1322 (former CCAP member Senator John Eichelberger, R-Blair) would fix a drafting error in the County Consolidated Assessment Law to assure all buildings are considered real estate, and thus assessable, as they were prior to the consolidation. Both have been reported by their respective chamber's Local Government committees, and one will need to be approved by both chambers to make it to the Governor's desk. Senate Bill 771, introduced by Senator John Gordner (R-Columbia), would create a statewide geospatial board to bring together state, local, and other interests to improve coordination of data collection and analysis. The bill needs just a floor vote in the House to get to the Governor's desk, while a companion bill, HB 1285, introduced by Representative Bryan Cutler (R-Lancaster), is awaiting a vote in the Senate. Finally, HB 942 (Representative Sandy Major, R-Susquehanna) would provide guidance relating to oil and gas documents filed in county recorder of deeds offices, and is currently before the Senate Environmental Resources and Energy Committee.

Any bills not sent to the Governor's desk during the remaining session time will have to be reintroduced and begin the legislative process anew when the legislature reconvenes for the 2015-2016 session in January. Talking points and other materials can be found on CCAP's Legislative Action Center on the CCAP website, *www.pacounties.org*.

The AAP's Legislative Update authored by Jonathan B. Schuck, Chair, Government Information Committee and Director of Assessment/Tax Claim, Chester County, will be back in the Winter 2015 issue in January.

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Article submissions are welcome.
Please send to:
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the definition of manufacturing or processing in the Capital Stock Tax Act, 72 P.S. Section 7601-7606. The Pennsylvania Commonwealth Court affirmed the lower court in a memorandum opinion and allowance of appeal to the Pennsylvania Supreme Court was granted.

BFC argued the dry kilns qualify for exclusion because they are machinery contained in an industrial establishment and that they are directly employed to accomplish a form of industrial processing.

The Pennsylvania Supreme Court stated that in order to qualify for this exclusion from taxation the following two requirements must be met: (1) the property at issue must constitute machinery, tools, appliances, or other equipment: and (2) the property must be contained in a mine, mill, manufactory or industrial establishment.

In meeting these tests BFC contends that its facilities are an "industrial establishment." The Court agreed and stated:

Beginning with the latter of these criteria, while BFC does not purport that its facilities should be deemed to be a mine or mill and does not press the assertion that they constitute a "manufactory," its essential position is that the facilities do constitute an "industrial establishment." In defining this term, this Court has applied an approach emphasizing general usage and understanding. See, e.g. North Side Laundry Co. v. Board of Property Assessment Appeals and Review, 366 Pa. 636, 79 A.2d 419 (1951) (stating that the law can do no better than define an industrial plant as that establishment which the ordinary man thinks of as such." Under this approach, the Court has determined, for example, that a commercial laundry is an industrial establishment, see id; United Laundries, Inc. v Board of Property Assessment Appeals and Review, 359 Pa. 195, 58 A.2d 833 (1848), and the intermediate appellate courts have concluded that newspaper plants and TV stations also would qualify. See, e.g. Messenger Publishing Co. v. Board of Property Assessment, Appeals and Review, 183 Pa.Super 407, 132 A.2d 768 (1957) (endorsing the view of the common pleas court to the effect that it would seem that the ordinary man would think of a newspaper as an industrial plant, especially if one were to tell him that a laundry or carpet cleaning company are such for purpose here being considered.) City of Pittsburgh v. WIIC-TV, 321 A.2d 387 (Pa.Cmwlth. 1974)) stating that the same ordinary man would think of a TV station as an industrial establishment, especially if one were to tell him that a newspaper plant is such for the purpose being considered)

The Pennsylvania Supreme Court specifically found that BFC employs large-scale specialized implements to cause a substantial change in quantities of lumber by removing moisture more efficaciously than would be possible naturally and that its operation constitutes an industrial establishment, meeting one of the requirements of Section 201(a). The Court then found that the modern conception of machinery as effectively, the apparatus essential to actual industrial operations and that a broad construction was consistent with the legislative policy of fostering business development in the Commonwealth. The Court found that the taxpayer met the second prong of the exclusion test and held that the BFC dry kilns constitute machinery and therefore the ovens were excluded from taxation.

It should be pointed out that the Court summarily disposed of the argument that the restrictive definitions of manufacturing in the Capital

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AAP People & Chapter News

Laurel Mountain Chapter

The chapter wishes **H. John Frazier**, Chief Assessor of Greene County, a happy retirement! John will be retiring in February 2015 and has been a wonderful friend and colleague. He will be greatly missed!

North West Chapter

The chapter congratulates and welcomes three new CPEs to the North West Chapter - **Amy Carll**, Forest County, as well as **Willy Yost** and **Kim Demi** from Clearfield County.

The chapter also thanks our fellow members who joined us for our 'Picnic in the Park' that followed the August 22nd chapter meeting and class. The chapter hopes to make it a yearly event

South Central Chapter

The South Central Chapter meets quarterly in March, June, September and December, beginning with the business meetings at 9 a.m., with seminars immediately after the meeting and are held at the Adams County Agricultural and Natural Resources Center in Gettysburg. Please contact Barb Walter at (717) 337-9837 for more information. The next meeting is December 5.

Armstrong County

Congratulations to Chief Assessor, **Mike Renosky**, who retired from the county on August 1. Enjoy your retirement! **Vince Milie** has been named the county's acting Chief Assessor.

Berks County

Congratulations to **Brenda Shaw** who has been named the county's acting Real Estate Director after the retirement of **Duane Rashlish** on June 30. Also retiring from Berks were **Judy Barr** on September 1 and **Norma Sando**, an AAP past president. Congratulations to Brenda, Duane, Judy and Norma! The county would also like to welcome **Mark Grabfelder** to the assessment office. Mark is an AAP past president.

Carbon County

Pam Bauchspies and her husband Jeff became first time grandparent to a healthy 7 lb. 2 oz. baby boy on July 21. Her daughter and baby (Dean Allen) are both happy and healthy. We wish them all the best!

Elk County

Congratulations to Chief Assessor **John Samick** on his retirement and to **Tyler Daniels**, Elk's new Chief Assessor!

Luzerne County

Congratulations to **Anthony Alu**, Luzerne County's Chief Assessor, on the birth of his new grandson, Benjamin Anthony Alu. Tony and his wife have been blessed with four grandchildren, *so far*.

Union County

Condolences to **George Zeyn** (Union County) and **Josh Zeyn** (Crawford County) on the loss of their father and grandfather, respectively.

AAP People - continued on page 7

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Kelley A. Cosner
Chief Deputy Assessor
Wyoming County

Name: Kelley A. Cosner

Position: Chief Deputy Assessor

Year in assessment field: 11 years as an assessor, 15 years in the assessment office

County: Wyoming

Marital status and family: Married for 13 years to Bruce, my son, Bruce III, 10 years old, and my daughter, Dorie Anne, nine years old

What irritates me most in the assessment business: How people blame you for the buildings THEY built. How it's our fault they have to pay taxes on them.

Most people would be surprised to know: I am a belly dancer.

Biggest challenge as an assessor: Keeping up on all the laws and changes

First Job: Waitress at Pompei's Pizza

If I couldn't be an assessor, I'd be: A business owner

If I won millions in the lottery, I would: Pay off my parents' debt, then take a long vacation.

Favorite food and drink: Anything Italian and red wine

Favorite vacation: Our family trips to the beach

Favorite movie: Grease

Three people living or dead that I would invite to dinner: My grandfather who died when I was six, my father who I look up to the most, and Jesus - so many questions to ask

The hardest lesson I ever learned as an assessor was the time: I realized you can't please everyone.

If I could live in the past for one day, I would change . . . Nothing, I think the past made me the person I have become, and I'm content with that.

My best friend: Melissa Banos for 25 years

AAP
ASSESSORS' ASSOCIATION OF PENNSYLVANIA

MEMBERABILIA

AAP People *continued from page 5*

STEB

Sadly, **Tom Connolly** passed away on September 6. He was the retired Director of Certification for the PA State Tax Equalization Board (STEB) with 32 years of service. He will be remembered fondly by AAP and its members for his many contributions to the AAP and the assessment profession.

CCAP/AAP News

Early this month AAP, CCAP and our other affiliates officially moved to one building. The CCAP staff was previously split between two buildings -- one in downtown Harrisburg and one in the suburbs. CCAP sold the downtown property and the staff is now under one roof. Our address is now PO Box 60769, Harrisburg, PA 17106-0769 and our phone number is (717) 526-1010.

Send Your Chapter & County News!

Don't forget to send your county or chapter news for the next AAP Journal. Our next deadline is **December 5**. Please send your news to Terry Cochran at *tcochran@pacounties.org*.

Real Property *continued from page 4*

Stock Tax Act were controlling. The Pennsylvania Supreme Court stated in this regard :

"*We agree with BFC that the decision is distinguishable as defining a set of exclusions for purposes of capital stock taxation crafted more narrowly than the exclusion prevailing under the Law for purposes of local real estate taxation.*"

In order to qualify for this exclusion from taxation, a taxpayer is required to meet a two prong test promulgated by the Pennsylvania Supreme Court i.e., the property at issue must constitute machinery, tools, appliances, or other equipment: and the property must be contained in a mine, mill, manufactory or industrial establishment. Pennsylvania originally enacted this provision to make the Commonwealth attract new industrial business establishments and retain existing ones.

Half-Price IAAO Membership Ends December 31, 2014

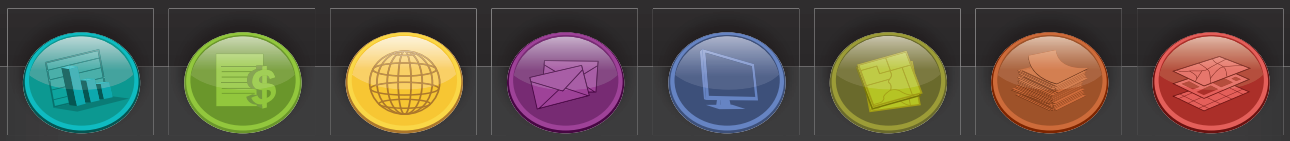
IAAO offers half off membership discounts to new members (or to former members who have lapsed for at least two years). This discount ends December 31, 2014. Also, if you join in the fourth quarter (October - December), new members can get up to three months of membership for FREE! Don't delay in taking advantage of this incredible offer!

Remember: You must write the name of one of the AAP's IAAO reps in the referral section of the special half-price membership application for new members to get this incredible deal. Our reps are **JR Hardester**, Lawrence County, and **Joan Righter Price**, Montgomery County.

We will also have applications available at the AAP Fall Conference, November 6 and 7 at the Eden Resort & Suites in Lancaster.

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