

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: May 26, 2009
Decided: July 13, 2009

Stephen P. Ellis, Esquire
Ellis & Szabo, LLP
9 North Front Street
P.O. Box 574
Georgetown, DE 19947

John S. McDaniel, Esquire
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801

***RE: Tunnell Companies, L.P. v. Delaware Division of Revenue,
Patrick Carter, Director of Revenue
C.A. No. 2450-VCL***

Dear Counsel:

Before the court are cross-motions for summary judgment that are fully briefed as of the submission of the defendants' reply brief on May 26, 2009. I have reviewed the briefs and the stipulation of facts to determine whether or not oral argument would be helpful to the resolution of the motions. For the reasons discussed below, I have come to the conclusion that this court lacks subject matter jurisdiction over the action and, in consequence, the case will be transferred to the Superior Court in and for Sussex County.

The complaint involves a dispute over the proper construction of 30 *Del. C.* § 2110, a general provision of the state tax code that the Attorney General is alleged to interpret in a certain way that interferes with the plaintiff's normal business operations. For various reasons, the complaint asserts that the section of the law in question either does not apply to it or, if it applies as interpreted by the Attorney General, is discriminatory in violation of the United States Constitution as well as the Delaware Constitution. The complaint seeks a declaratory judgment as to the proper interpretation of the statute in question, an award of reasonable costs and attorneys' fees, and "such further relief as may be just and proper." The complaint does not allege that the Attorney General is currently threatening

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coercive action against the plaintiff based on the challenged interpretation or that such coercive action, if it occurred, would threaten the plaintiff with irreparable harm. The complaint also does not specifically seek any equitable relief.

The enactment of the Delaware Declaratory Judgment Act, 10 *Del. C.* § 6501, *et seq.*, had “no effect on the inherent and equitable jurisdiction of the Court of Chancery.”¹ Thus, the question of subject matter jurisdiction in the case of an action for declaratory judgment is “based upon application of the same criteria that would obtain if the [Declaratory Judgment Act] were not there.”² Here, the complaint is not based on any claim that falls within the inherent jurisdiction of the Court of Chancery; indeed, it is clear that issues of statutory construction and claims of unconstitutionality give rise to no particular equitable right or remedy.³ Moreover, there is no reason to believe that, once a court of competent jurisdiction has construed the act in question and issued a final judgment, the Attorney General would, nevertheless, act in contravention of that judgment. Thus, there is no colorable argument that an equitable remedy will ever be required in this case. In the circumstances, I see no basis on which to assert jurisdiction over the matter.

For the reasons set forth herein, an order transferring this case to the Superior Court in and for Sussex County is entered concurrently herewith.

/s/ Stephen P. Lamb
Vice Chancellor

¹ DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 2.03[b][2], p. 2-63.

² *Id.* at 2-64, citing *Jefferson Chem. Co. v. Mobay Chem. Co.*, 253 A.2d 512 (Del. Ch. 1969).

³ *Reed v. Brady*, 2002 Del. Ch. LEXIS 83 (June 21, 2002).