

[J-100A-2010][M.O. - Eakin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NORTHEASTERN PENNSYLVANIA IMAGING CENTER,	:	No. 93 MAP 2009
	:	
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court at No. 635 FR 2007
	:	dated 10/5/09 overruling the exceptions
v.	:	
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Appellant	:	SUBMITTED: December 1, 2010

[J-100B-2010]

MEDICAL ASSOCIATES OF THE LEHIGH VALLEY, P.C.,	:	No. 94 MAP 2009
	:	
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court at No. 50 FR 2006
	:	dated 10/29/06 overruling the exceptions
v.	:	
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Appellant	:	SUBMITTED: December 1, 2010

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 21, 2011

I tend toward the majority's position that -- to the degree the Department has established valid legislative regulations -- such regulations should establish the primary

frame of reference in these cases. I also believe that the Department should be active in promulgating reasonable regulations to provide essential guidance. In this regard, common-law fixtures analysis seems to me to entail too great a degree of uncertainty to govern for tax-classification purposes. See, e.g., Strain v. Green, 172 P.2d 216, 218 (Wash. 1946) (Robinson, J.) (commenting that “[e]very lawyer knows that cases can be found in [the fixtures] field that will support any position that the facts of his particular case require him to take”).

In the present case, however, in terms of moving away from a fixtures overlay, the difficulty is that the Department previously agreed that such analysis should apply in this litigation. See, e.g., Brief of Appellant, No. 93 MAP 2009, at 13 n.7 (explaining that “[w]e advocated for the use of Sheetz . . . before the Commonwealth Court”); Ne. Pa. Imaging Ctr. v. Commonwealth, 978 A.2d 1055, 1061-62 & n.13 (Pa. Cmwlth. 2009) (reflecting the parties’ belief that Sheetz, rather than Beck, should be applied). Since the Department is the appellant before this Court -- and as such is subject to prevailing issue-preservation obligations, I would accede to a reliance on Sheetz in these appeals and reserve the announcement of a rule of general application to a case in which the counter-positions have been appropriately raised and preserved.¹ In applying that case’s precepts, moreover -- most notably, the “extent of annexation” standard, id. at 1063 -- I would reach the same conclusion as did the Commonwealth Court majority. Accordingly, I respectfully dissent.

¹ Indeed, the Department’s eleventh-hour adjustment to its argument on appeal is particularly problematic where it already had reversed its position concerning the obligation of those in Appellees’ circumstances to pay the tax in the first instance, to Appellees’ substantial detriment. See generally Ne. Pa. Imaging, 978 A.2d at 1059.