[J-99-2009][M.O. - Greenspan, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 52 MAP 2009
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court dated 10/15/08 at No. 1502 MDA
	:	2007 vacating and remanding the order of
v.	:	Dauphin County, Criminal Division, dated
	:	8/8/07 at No. CP-22-MD-0000790-2006
	:	
DENNIS KEITH DIXON,	:	
	:	
Appellant	:	SUBMITTED: July 27, 2009

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: December 28, 2009**

I would follow the federal approach that venue for the crime of willful failure to file personal tax returns, a crime of omission, lies in jurisdictions in which the duty could have been performed, including either the district of residence of the taxpayer or the district in which the service center is located. See United States v. Hicks, 947 F.2d 1356, 1361 (9th Cir. 1991) ("Failure to file a tax return is an offense either at the defendant's place of residence, or at the collection point where the return should have been filed." (quoting United States v. Clinton, 574 F.2d 464, 465 (9th Cir. 1978))). Thus, I agree with Mr. Justice Eakin that Dauphin County was an appropriate venue here, albeit I would not reject Berks County as an alternative, proper venue. In this regard, as a matter of our rulemaking prerogative, I also would not be opposed to considering adoption of a specific venue rule to account for the interests of defendants in criminal tax matters in a local prosecution. See 18 U.S.C. §3237 (providing that when tax

offenses, including willful failure to file, are based solely on mailings to the Internal Revenue Service, and if prosecution is commenced in a judicial district other than the one covering the defendant's residence, the defendant may, upon timely motion, elect to be tried in his district of residence).[1]

[1] Our present criminal venue rules do provide, in the situation in which charges arising from the same criminal episode occur in more than one judicial district, that the Commonwealth must consider in which magisterial district it would be in the interests of justice to have the case proceed, based upon the convenience of the defendant and witnesses, and the prompt administration of justice. See Pa.R.Crim.P. 130, Comment. The rules do not specifically take into account, however, the situation in which a single offense (contrasted with a criminal episode) spans more than one judicial district. While this Court has equated "offense" and "criminal episode" for some purposes, see Freundt v. PennDOT, 584 Pa. 283, 289-90, 883 A.2d 503, 506-07 (2005), I did not support this equation in the context in which it arose, see id. at 292, 883 A.2d at 508 (Saylor, J., dissenting), and I believe it would be ill-advised to extend it to other contexts. Rather, I would prefer that we, through our Criminal Procedural Rules Committee in the first instance, consider whether to adopt a clear and specific rule pertaining to designated tax offenses which may be deemed to occur in more than one judicial district, with the noted federal statutory provision as a model.