

## Joseph C. Bright

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Mr. Bright is a partner in WolfBlock's Tax Practice Group, where he concentrates in state and local taxation.

A former chief counsel of the Pennsylvania Department of Revenue (1980-81), Mr. Bright has since represented hundreds of taxpayers in state and local tax planning, administrative, legislative and litigation matters.

Mr. Bright is the author of *Taxation*, a two-volume treatise on Pennsylvania state and local taxation published by West Group as part of *Summary of Pennsylvania Jurisprudence 2d*. A book review of *Taxation* in *State Tax Notes* described the first edition of the treatise as the leading treatise on Pennsylvania state taxation and Mr. Bright as one of the leading state practitioners in the nation. He is a principal Pennsylvania correspondent for *State Tax Notes*, published by Tax Analysts, Inc. He has written hundreds of articles on state and local tax topics. Mr. Bright was appointed by the leadership of the House of Representatives to the Pennsylvania Business Tax Reform Commission. He is a Fellow of the American College of Tax Counsel and is listed in *Who's Who in America*.

Mr. Bright is an active member of the Tax Section of the Pennsylvania Bar Association, the State and Local Tax Committee of the Tax Section of the Philadelphia Bar Association, the Tax Section of the American Bar Association, the Tax Committee of the Pennsylvania Chamber of Business and Industry, and the State and Local Tax Committee of the Greater Philadelphia Chamber of Business and Industry. In local civic affairs, Mr. Bright is a Board member of the Economy League of Greater Philadelphia. He has served as vice-chair of the Children's Hospital Foundation and Member of the Board of Managers, president of the Board of Trustees of St. Peter's School in Philadelphia, president of the Society Hill Civic Association, and Trustee of the Philadelphia General Hospital Research Fund.

Mr. Bright received his B.A., *cum laude*, from Harvard University in 1964 and his J.D., *cum laude*, from the University of Pennsylvania Law School in 1970, where he was the Managing Editor of the *University of Pennsylvania Law Review*. He also served as a lieutenant in the United States Army from 1965 to 1967, receiving a Bronze Star Medal for Meritorious Service.

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### Litigated Tax Cases

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- ❖ Lehman Brothers Bank, FSB v. State Bank Commissioner, 937 A.2d 95 (Del. 2007)
- ❖ City of Philadelphia v. Hotels.com, 2006 Phila. Ct. Com. Pl. Lexis 218
- ❖ Adams Electric Cooperative, Inc. v. Commonwealth, 853 A.2d 1162 (Pa. Commw. 2004), *aff'd*, 887A.2d 1213 (Pa. 2005)
- ❖ Safe Harbor Water Power Corp. v. Fajt, 876 A.2d 954 (Pa. 2005)
- ❖ Philadelphia Eagles Football Club, Inc. v. City of Philadelphia, 823 A.2d 108 (Pa. 2003)
- ❖ Commonwealth v. Gilmour Manufacturing Co., 882 A.2d 676 (Pa. 2003)
- ❖ Briggs v. East Goshen Township, 823 A.2d 290 (Pa. Commw. 2003)
- ❖ Unisys Corp. v. Commonwealth, 812 A. 2d 448 (Pa. 2002)
- ❖ Bell Atlantic Mobile Systems, Inc. v. Commonwealth, 799 A. 2d 902 (Pa. Commw. 2002)
- ❖ School District of Philadelphia v. The Glenmede Trust Co., Apr. Term 2000 No. 001247 (Phila. Com. Please July 14, 2000)
- ❖ Rittenhouse Plaza v. Tax Review Board, 694 A.2d 1170 (Pa. Commw. 1997)
- ❖ Samuel Rappaport Limited Partnership v. Tax Review Board, 682 A.2d 862 (Pa. Commw. 1996)
- ❖ Society for Industrial & Applied Mathematics v. Board of Revision of Taxes, 643 A.2d 792 (Pa. Commw. 1994)
- ❖ University of Pennsylvania v. Board of Revision of Taxes, 649 A.2d 154 (Pa. Commw. 1994)
- ❖ Biosciences Information Service v. Commonwealth, 551 A.2d 672 (Pa. Commw. 1988)
- Kimberton Co. v. Commonwealth, 553 A.2d 943 (Pa. 1989)
- ❖ Chester County v. Herdeg, 539 A.2d 486 (Pa. Commw. 1988)
- ❖ Northwood Nursing Care & Convalescent Home, Inc. v. City of Philadelphia, 511 A.2d 281 (Pa. Commw. 1986)
- ❖ Philadelphia Savings Fund Society v. Commonwealth, 467 A.2d 420 (Pa. Commw. 1983)
- ❖ Bankers Bond & Mortgage Co. v. School District of Philadelphia, 445 A.2d 1379 (Pa. Commw. 1982)

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## Pennsylvania Taxation: Judicial Citations and Reviews

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### Citations:

**Allfirst Bank v. Commonwealth of Pennsylvania, No. 83 MAP 2006 (Pa. Oct. 17, 2007) (Saylor, J.)**

The concept of taxing shares of stock rather than the bank's net assets or capital stock as such ultimately developed as a "legal fiction ... to permit the base of the tax to include federal obligations," Joseph Bright, 26 SUMM. PA. JUR. 2D TAXATION §3:6, the theory being that corporate shares are property interests separate from the corporation's ownership of its assets, even where the value of that discrete interest is measured by underlying assets that include United States obligations ... See generally Bright, 26 SUMM. PA. JUR. 2D TAXATION §3:3 (providing background and historical context for the present bank and trust company shares tax).

**Clifton v. Allegheny County, Civ. Div. No. GD05-028638 (Allegh. Co. June 6, 2007).**

Joseph C. Bright, 27 Summ. Pa. Jur. 2d Taxation § 15:1, states that the 1977 Census of Governments ranked Pennsylvania 49 among the 50 states in terms of assessment uniformity as evidenced by the coefficient of dispersion computed for single-family units.

**Downingtown Area School District v. Chester County Board of Assessment Appeals ex. rel. Lionville Station S.C. Associates, 913 A.2d 194 (Pa. 2006) (Saylor, J.)**

Since Chester County is a county of the third class, real estate assessment is governed by the Assessments Law and, to the extent not inconsistent with such enactment, the General County Assessment Law, Act of May 22, 1933, P.L. 853 (as amended, 72 P.S. §§5020-101 - 5020-602). Similar statutory provisions govern relative to counties of other classes, with the General County Assessment law also applying in the absence of contrary provisions ... See generally JOSEPH BRIGHT, 27 SUMM. PA. JUR. 2D TAXATION §15:5 (2204) ... BRIGHT, 27 SUMM. PA. JUR. 2D TAXATION §15:12 (criticizing Hromisin and its suggestion that the common law procedure for mounting a uniformity challenge might be foreclosed.) The EPR is defined as the county's intended ratio of assessed value to market value for any given tax year, see 72 P. S. §5342.1; BRIGHT, 27 SUMM. PA. JUR. 2D TAXATION §15:5, and thus, would appear to have been conceived as a methodology to advance equalization ... Rather, in application, the EPR is treated as a fixed number that merely fractionalizes assessments and which is generally held constant pending countywide reassessments. See BRIGHT, 27 SUMM. PA. JUR. 2D TAXATION §15:12 (It is unclear why Pennsylvania has institutionalized the practice of fractional assessment, since it does not appear to serve a useful purpose.) ... Thus, although we do not question that much of the Legislature's efforts have resulted in the improvement of the assessment law in furtherance of the goal of fundamental fairness, see generally "); BRIGHT, 27 SUMM. PA. JUR. 2D TAXATION §15:1 (discussing the poor quality of prior assessment law and the subsequent advances), we cannot agree that the present statute may serve to foreclose all other inquiry.

**PPL Electric Utilities Corp. v. Lancaster County Board of Assessment Appeals, No. 1587 C.D. 2003 (Pa. Commw. 2004) (Cohn, J.)**

Some background material will provide context for the issue before us. Historically, the real property of Pennsylvania utilities had been exempt from local real estate property tax. Local taxing authorities argued that the exemption allowed a potential source of revenue to escape taxation and also that the presence of a major utility in their taxing area reduced the base upon which property taxes could be assessed. Joseph C. Bright, Public Utility Realty Tax. 26 Summ. Pa. Jur.2d Taxation §5:17.

**McNeil - PPC, Inc. v. Commonwealth, 834 A.2d 515 (Pa. 2003) (Newman, J.)**

As the name suggests, the Sales and Use Tax is nominally two taxes. . . . The taxes, however, are not duplicative; the Use Tax is imposed only on the use of items purchased at retail with respect to which Sales Tax has not been paid. 26 Summ. Pa. Jur. 2d § 7.2, pages 7-6 to 7-7 (updated 12-1998). October, 2003

**Solar Turbines Incorporated v. Commonwealth of Pennsylvania, 816 A.2d 362 (Pa. Commw. 2003) (Friedman, J.)**

As it appears in the Tax Reform Code, the [Tax] is labeled a tax on utilities. However, the label is misleading. As discussed in §5.110, taxpayers under the act, generally speaking are identified by function, not by whether they are utilities according to any definition, much less whether they are public utilities. *Id.* at 1386 (quoting Joseph C. Bright, Jr., Pennsylvania Taxation, Section 5.100 at 5-3).

**Devlin v. City of Philadelphia, 809 A.2d 980, 992 n.18 (Pa. Commw. 2002) (Doyle, J.):**

We note that the City imposes its local realty transfer tax pursuant to Section 1 of what is commonly referred to as the Sterling Act . . . . Although the City is a home-rule municipality, this fact does not expand upon its taxing powers. . . . See SUMMARY OF PENNSYLVANIA JURISPRUDENCE 2D § 20:1 (1998).

**Shawnee Development, Inc. v. Commonwealth, 799 A. 2d 882 (Pa. Commw. 2002) (Leadbetter, J., concurring):**

As has been noted:

For a period well over 100 years, the base of taxation of the Capital Stock Tax was the actual worth of a taxpayer's capital stock. While regulatory efforts were made to rationalize the process of determining actual worth, they met with limited success. As a result, liability was difficult to predict, settlements were frequently appealed, and the final liability was often a negotiated figure.

26 SUMMARY OF PA JURISPRUDENCE 2d., § 2:57 (West 1998).

**Airpark International I v. Interboro School District, 667 A.2d 388 (Pa. Commw. 1996) (Pellegrini, J.):**

A mercantile tax and a business privilege tax are both taxes upon the privilege of conducting business in a locality and are generally measured by the gross value of business annually transacted or the gross receipts, although a mercantile tax, unlike a business privilege tax, is generally based on merchandise sold. See *City of Philadelphia v. Tax Review Board*, 631 A.2d 1072, 1074-75 (Pa. Commw. 1993); Bright, *Pennsylvania Taxation*, §§33.022 and 33.024.

**Krug v. City of Philadelphia, 620 A.2d 46 (Pa. Commw 1993) (Colins, J.):**

The Commonwealth granted the City the power to levy, assess, and collect taxes in the Act of August 5, 1932, Ex.Sess., P.L. 45, *as amended*, 53 P.S § 15971, commonly known as the Sterling Act. Pursuant to the authority granted under the Sterling Act, the City passed an ordinance creating a wage and net profits tax (hereafter referred to as the tax or the wage tax). The Philadelphia Code (Code) §§ 19-1501-19-1504. The tax is levied on the salaries, wages, commissions, and other compensation paid by employers, and the tax is levied on net profits of businesses. Section 19-1501 of the Code. Individuals who reside in the City and non-residents who earn wages in the City are both subject to the tax. Section 19-1502 of the Code. In addition, the tax is imposed on profits earned by businesses operated by City residents and on profits earned by businesses operated in the City by non-residents. *Id.* While City residents are taxed on wages and profits without regard to whether the income was earned in City, non-residents are taxed only to the extent that the wages and profits are earned in the City. Section 19-1502 of the Code; *see also* Joseph C. Bright, Jr., *Pennsylvania Taxation* § 42.110 (1988).

**Samuel Rappaport Limited Partnership v. Tax Review Board, 26 Phila. 59 (1993) (Avellino, J.):**

Subject to this disclaimer, the Board is reminded that, on remand, it will be free to re-examine the jurisdiction and abatement questions. It is likely to answer the abatement question differently if, for example, it concludes that the gains were not, in fact, earned. In any event, the jurisdiction question probably deserves another look. At the very least, the Board's report should discuss (or mention) the cases on which the taxpayers relied, namely *Tax Review Bd. v. Belmont Laboratories*, 392 Pa. 473, 141 A.2d 234 (1950) and *Tax Review Bd. v. D.H. Shapiro Co.*, 409 Pa. 253, 185 A.2d 529 (1962). In the current report, this omission is glaring because the taxpayers' lawyer wrote the book, so to speak, see e.g., J. Bright, PENNSYLVANIA TAXATION, §§ 33.000-41.040 (1992) (discussing local taxes in general and Philadelphia taxes in particular), and told the Board in his opening statement that, on the jurisdiction issue, he had a "slam-dunk." N.T. at 74 (June 5, 1990).

**City of Philadelphia v. Janney Montgomery Scott, 601 A.2d 875 (Pa. Commw. 1992) (Kelly, J.):**

Although this Court has found preemption of an industry on one occasion in *Liberty Bell*, we are very hesitant to expand the preemption doctrine and declare new industries to be off limits to local taxation. Each time that we do so, we act to further erode the tax base of local taxing bodies and we force those bodies to increase the tax burden on other taxpayers. See J. Bright, Pennsylvania Taxation, § 30.012 (1987). We therefore decline to hold that the securities industry has been preempted from local taxation.

**Hanley & Bird v. Commonwealth, 590 A.2d 1382 (Pa. Commw. 1991) (McGinley, J.):**

Further, the publications relied upon by Petitioners to establish that the Tax is a tax on gross receipts imposed only on public utilities are not exhaustive treatises. In fact, one of the cited publications entitled Pennsylvania Taxation states the contrary:

As it appears in the Tax Reform Code, the tax is labeled a tax on utilities. However, the label is misleading. As discussed in § 5.110, taxpayers under the act, generally speaking are identified by function, not by whether they are utilities according to any definition, much less whether they are public utilities. Thus, it is possible that a taxpayer may not be a public utility for purposes of the Public Utility Code or that a PUC public utility may not be subject to the tax. The statute itself does not use the words *utility* or *public utility*, except with respect to certain restrictions on the taxation of municipality-owned and operated entities, discussed in § 5.112.

*Joseph C. Bright, Jr.*, Pennsylvania Taxation, Section 5.100 at 5-3. (Emphasis in original).

## **Book Reviews:**

### **Want To Know Pennsylvania Taxes? Here's The Book**

Review by David Brunori

Over the past quarter century there has been an explosion of multistate (and multinational) business. It is becoming increasingly rare to find companies conducting business in only one state. The tremendous growth in interstate commerce has been accompanied by growing concerns with and attention to state taxation. Businesses no longer have the luxury of complying with the tax rules of one or even a few states. Rather, companies and their tax practitioners must be aware of the law in many more jurisdictions.

As readers of *State Tax Notes* know, that is often no small task. The 50 states have a myriad of rules and regulations. Although finding the law has become easier in the electronic age, determining what it means is still a challenge. Practitioners are always looking for resources that help provide context for the raw text of code and regulations.

Those concerned with Pennsylvania tax law have an excellent resource. The West Group has published the latest edition of *Summary of Pennsylvania Jurisprudence 2d, Taxation*. The first edition was widely considered the leading treatise on Pennsylvania taxation. The author is Joseph C. Bright, a partner with the Philadelphia law firm of Wolf, Block, Schorr & Solis-Cohen; former chief counsel to the Pennsylvania Department of Revenue; and a *State Tax Notes* Pennsylvania correspondent who focuses on court decisions. Bright, as many readers are well aware, is considered one of the leading state tax practitioners in the nation. Few people have Bright's knowledge of and experience with Pennsylvania taxation.

The new edition encompasses two volumes, dealing with state and local taxation. The first volume begins with Pennsylvania's taxation of business, starting there with the complexities of the corporate net income tax. Bright pulls the rules together so that the reader comes away with a pretty good understanding of the tax. You will quickly learn what entities are subject to the tax, what activities are considered taxable, and more straightforward information, such as rates and filing requirements. As a teacher of state and local taxation, I appreciated the inclusion of a discussion of Public Law 86-272 and the corporate net income tax; it is not easy to untangle the various state court interpretations of the federal law after the *Wrigley* ruling.

The strength of Bright's book, however, is in the discussion of the details of the corporate net income tax. After starting with federal taxable income, various adjustments must be made for accelerated cost recovery, depreciation, dividends received, and other factors. While most state tax practitioners are aware that adjustments must be made, the book lets you know what they are and how they are applied. Bright then provides a detailed discussion of how Pennsylvania apports and allocates multistate income.

The other sections discussing business income are perhaps in some ways even more valuable to the practitioner because they represent areas of the law for which there is less information available. Bright includes chapters on taxation of financial institutions, utilities, and insurance companies. For each, Bright describes the tax in general terms, then provides detailed analysis — and helpful research tips when warranted.

Nearly half the first volume is dedicated to describing Pennsylvania's sales and use tax regime. Multistate businesses must of course spend considerable resources complying with various sales and use tax requirements nationwide. While many of the concepts are constant, no two states impose the sales and use taxes in the same manner. Tax bases, rates, exemptions, credits, and administration vary, often widely, from state to state. Pennsylvania's sales tax regime has its peculiarities, and Bright spends considerable time explaining its nuances. A particularly helpful section discusses problems with taxation of services. In 1991, Pennsylvania extended its sales tax reach to services but, as Bright points out, imposed the tax on many business-to-business services. The book provides far more detail than most practitioners will ever need — but you are sure to find what you're looking for.

Many practitioners will find the second volume, dealing with local taxation, equally useful. There are more than 85,000 local taxing jurisdictions in the United States, levying property, sales, income, and excise taxes. Thousands are located in Pennsylvania alone. To some extent at least, practitioners and their clients must be aware of the rules governing local taxation, which has always been somewhat mysterious to all those outside the jurisdiction in question. The rules and regulations are rarely easily accessible to the public. Decisions are often shrouded in informal negotiations. And virtually no analytical work on local levies exists. Bright's book overcomes some of these problems with an exhaustive discussion of local taxation in Pennsylvania.

Pennsylvania has always combined some cutting-edge concepts (local-option land value taxation) with tired, inefficient levies (wage taxes). The state allows counties to impose a property tax on intangibles — although, as Bright points out, that tax is not in force as a result of the U.S. Supreme Court's decision in *Fulton Corp.* But the state also authorizes the imposition of local mercantile taxes (essentially a gross receipts tax on small business), business privilege taxes, earned income taxes (the wage tax), occupation and privilege taxes (taxes on office property), and realty transfer taxes. Companies doing business need to be aware of the dizzying array of taxes imposed in the commonwealth. Bright's book explains those taxes better than any other source available.

In addition to the explanatory materials, throughout the book Bright provides ample citations to the relevant statutory, administrative, and judicial authorities that make up the Pennsylvania tax laws, for the practitioner who wants to confirm Bright's analysis. We randomly checked numerous citations and they proved correct.

Some reference materials should be on the shelf in every tax practitioner's office. If your clients conduct business or are planning to conduct business in Pennsylvania, Bright's book is one of those works for you.

*Summary of Pennsylvania Jurisprudence 2d, Taxation* (1998), two volumes, by Joseph C. Bright, is published by the West Group.

Contributing Editor David Brunori of *State Tax Notes* reviews *Summary of Pennsylvania Jurisprudence 2d, Taxation* (1998), two volumes, by Joseph C. Bright, a comprehensive review of Pennsylvania state and local taxation. *State Tax Notes*, April 26, 1999.

### **Pennsylvania Taxation: Better Than Ever?**

Review by Joseph E. Lundy

I recently had occasion to consult the latest edition of *Pennsylvania Taxation*, by Joseph C. Bright. I am pleased to report that this treatise is better than ever. Chapter 31 on the taxation of Pennsylvania real property was extremely well done. It accurately distills and thoroughly analyzes some very intricate and complex tax rules.

Overall, the treatise is an extremely useful tool for the beginner as well as the expert. With exceptional clarity, Bright has organized and outlined a broad range of topics and issues most frequently encountered by a practitioner in search of a quick answer, as well as one confronted with a question involving some murky or evolving areas of obscure Pennsylvania taxation.

The entire treatise is a marvelous reference source. In particular, I found the updated material on real property taxation extremely helpful and thoughtful. Not only does Bright think clearly, he writes clearly. Wherever possible, the treatise commences with an accurate and succinct presentation of current substantive law with just the right ingredient of pertinent historical perspective. But there is more.

Bright is skilled at making the transition from the clear black letter law and historical perspective to an analytical discussion of obvious and not so obvious issues and practical applications. Along the way, the insightful analysis and examples expand one's understanding of the logic and reason behind some arcane legal principles. For example, in the discussion dealing with real property owned and used by charity, there is a thorough history of the judicial interpretation of the constitutional authority of the General Assembly to grant tax exemption to "institutions of purely public charity."

Not only does *Pennsylvania Taxation* trace the over-100-year evolution of the judicial interpretation of this key constitutional phrase, it analyzes the relevant case law from the perspective of different types of charities. Thus, there is an analysis and discussion of the interpretation of the constitutional reference to "institutions of purely public charity" from the perspective of a nonprofit hospital as well as from the perspective of a nonprofit school.

Bright does not hesitate to share his personal opinions and views. For example, he accurately presents the frequently cited five criteria for charitable exemption as pronounced in 1985 by the Pennsylvania Supreme Court in *Hospital Utilization Project v. Commonwealth*. He then advances the argument that the real test to determine whether or not an entity is a "purely public charity" for Pennsylvania tax exemption purposes is its ability to satisfy four somewhat different than HUP fundamental principles that evolve from a compendium of historic case law leading up to and including HUP. Bright is very persuasive, and even if you do not always agree (or wish to agree) with his conclusions, his scholarly approach contributes to the readers' overall understanding.

All in all, this treatise is a must for the Pennsylvania tax practitioner and an extremely useful resource for any practitioner seeking an in-depth understanding of an extremely broad, complex, and not elsewhere well organized or analyzed area of Pennsylvania law. This treatise is likely to pay for itself with its first use.

Joseph C. Bright is a partner in the tax department of Wolf, Block, Schorr and Solis-Cohen in Philadelphia. Mr. Bright is the author of *Pennsylvania Taxation*, published by Shepard's/McGraw Hill, and is the Pennsylvania correspondence for *State Tax Notes*. He is a former chief counsel of the Pennsylvania Department of Revenue, and is a former chairman of the State and Local Tax Committee of the Tax Section of the Philadelphia Bar Association. Mr. Bright attended Harvard College and the University of Pennsylvania Law School, where he was the managing editor of the *University of Pennsylvania Law Review*.

Joseph E. Lundy was a partner in the tax department at Ballard Spahr Andrews & Ingersoll and a lecturer at law at Temple University School of Law. He is a graduate of the University of Pennsylvania Wharton School (B.S. in Economics 1965), Temple University School of Law (J.D. 1968) and New York University School of Law (LL.M. in Taxation 1969). Mr. Lundy is a frequent lecturer on federal and state tax matters. *State Tax Notes*, September 13, 1993.