

LAW OFFICES of

## William Gaines Ellyson

a professional corporation

The Virginia Building / Suite 401

One North Fifth Street / Richmond, Virginia 23219

(804) 780-0880 telephone / (804) 282-6367 fax / WGE@EllysonLaw.com

A client had a “interesting” problem with her local personal property taxation department that wanted to tax her business personal property twice because she leased her property to her business and, they said, that the business had to pay tax on all leased business property and the individual had to pay taxes of all property leased to a business.

Oddly enough, this problem has never come up in my practice. As recently as ten years ago, leased property was not taxed as personal property – at least the personal property forms sent by the localities did not reference leased property and, since the reason for leasing personal property to your own company is primarily to protect it from the creditors of the business and not for profit, we all felt justified in saying “none” on our business personal property forms that leased property from its owners.

In recent years, when asked to list leased property as well as property owned by the business, we have listed the leased property on the business return, but not on the personal return. We note “none” on the personal return, but I’m not so sure anymore.

I’ve thought of all sorts of arguments – that it is really not a “lease” in the conventional sense of the use of the work – an arms length, for profit arrangement; that it is primarily a safety device – but I have only found one sure way of avoiding a double tax in the (unlikely) event that the locality seeks to levy a second tax (the personal property tax statute permits two taxes but the “fair” implication is that the two parties that are taxed are unrelated and are at arms length).

The one sure way is the exception in the personal property tax statutes for a sale and lease back of the property between parties as long as the transaction results in one property tax.

In my view, it is undesirable to sell, say, our vehicles to businesses and lease them back because the vehicles will become assets of the businesses and subject to the claims of creditors; nor do we want the business to buy the vehicles and sell them to us so that we can lease them back to the business...much too complicated, but that way would work, would be safe.

The best I can do is to point out that this exception – the sale, lease back exception – demonstrates that, between related parties, the tax code expects only one tax, and we should continue to give our localities only one tax until a higher authority (court, new statute) clarifies this situation.

If the local authority insists on two taxes, we can do a sale and lease back and I wonder if we can sell our old vehicle for three times its value to our business and depreciate the higher value. If the taxing authorities insist on treating the transaction as an arms length transaction, we should be able to depreciate the higher value.

A handwritten signature in black ink, appearing to be the initials 'WGE'.