

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA  
CIVIL DIVISION

COPY

DR. ROBERT ROMANCHECK, ALEX :  
A. DIAS, JANE D. VARRA, CHRYSTYNA:  
S. H. MUSSELMAN, MICHAEL P. :  
SCHWARE, and JOSEPH S. HILLIARD, :

No. 2006-C-2590  
(Hon. Edward D. Reibman)

Petitioners/Appellants, :

v. :

CITY OF ALLENTOWN, :

Respondent/Appellee. :

FILED  
2007 MAR 28 P 12:53  
CLERK OF COURTS  
LEHIGH COUNTY, PA

ORDER

AND NOW, this 27<sup>th</sup> day of March, 2006, upon consideration of the Second

Amended Petition to Invalidate the City of Allentown's Imposition of An Emergency and  
Municipal Services Tax, filed on November 17, 2006, and the Respondent/Appellee City  
of Allentown's response thereto, filed on December 6, 2006, and upon the City of  
Allentown's Petition to Dismiss by Reason of Mootness, filed on February 15, 2007, and  
Petitioners/Appellants' response thereto, filed on February 20, 2007, and after argument  
held on March 14, 2007,


IT IS ORDERED that Respondent/Appellee's motion is DENIED.<sup>1</sup>

<sup>1</sup> The relevant factual history pertinent to this matter is set forth in the opinion accompanying the order entered on October 30, 2006, sustaining, in part, and denying, in part, the preliminary objections of Respondent/Appellee The City of Allentown ("City") to Petitioners/Appellants' Amended Petition, which challenged the City's Ordinance No. 14409 on various grounds. The court sustained the City's preliminary objections relating to Petitioners' challenge in respect to the provisions of the City's Home Rule Charter, but denied the City's general demurrer. The court held that Petitioners had stated a claim for relief on the grounds that Ordinance No. 14409 failed to comply with applicable provisions of the Local Tax Enabling Act, 53 P.S. § 6901 *et seq.*

After that order had been entered, the City, on December 20, 2006, passed Ordinance No. 14457, which, in pertinent part, provided "[t]hat all Ordinances inconsistent with [Ordinance

IT IS FURTHER ORDERED that, consistent with the footnote below,  
Petitioners/Appellant's petition is GRANTED and that Ordinance No. 14409 of the city  
of Allentown is hereby declared INVALID.<sup>2</sup>

BY THE COURT:

  
EDWARD D. REIBMAN, J.

14457] are repealed to the extent of their inconsistency.” Art. 336.99, § 5. On this basis, the City contends that any challenge to Ordinance No. 14409 has been rendered moot.

The City's argument must be rejected. It is true, as the City argues, that no challenge to Ordinance No. 14457 is before the court in this appeal, which has been brought, pursuant to 53 P.S. § 6906, as a taxpayers' challenge to Ordinance No. 14409. However, the subsequent ordinance did not simply repeal Ordinance No. 14409. And, indeed, the City concedes, as it must, that Ordinance No. 14409 remains a valid ordinance to the extent it is not inconsistent with Ordinance No. 14457. It follows, therefore, that to the extent the earlier ordinance remains valid, any challenge to that law cannot be considered legally moot. Accordingly, the motion to dismiss will be denied.

<sup>2</sup> At the initial hearing date set for this matter in September, 2006, the parties jointly stipulated in open court that there were no issues of contested fact and that the present matter concerned only a question of law, and neither party sought to offer any evidence to the court on March 14, 2007. Accordingly, the present matter is ripe for decision.

As explained in the opinion accompanying the order entered on October 30, 2006, the LTEA sets forth specific and express requirements in relation to taxes passed under the authority of that act. 53 P.S. § 6905. And as also explained in that earlier opinion, Ordinance No. 14409 failed to conform and is, therefore, “unlawful.” 53 P.S. § 6906.