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### **Will Leased Parking Garages be a Tax Shelter?**

Pittsburgh is contemplating a lease of its publicly owned parking to the high bidder for a sum of \$452 million. The lease of nearly 18,000 spaces in garages or lots and on-street metered spots owned by the City of Pittsburgh and the Parking Authority, if consummated, will alter the concept of public property.

Consider the terms of the lease agreement. The parking system will be leased for 50 years, almost two generations. The lessee would provide money to retire the debt of the Parking Authority—an agency in place since the 1940s—changing the Authority’s role dramatically. And it will create a new private competitor for existing private parking facility owners.

But as the details continue to be uncovered an important question has emerged: just how private will the new private parking operator be?

By way of background, there are two separate lease proposals, one for meters and one for garages and lots, both containing sections on “payment of taxes”. In brief, here’s what those sections say: the lessee will be responsible for paying or collecting and remitting the parking tax, the payroll preparation tax, taxes on wages and the local services tax. However, and this is a big however, it will not be required to pay property taxes or the deed transfer tax.

Here is the key language: Section 3.10 of the facilities lease agreement states “it is the understanding and intention of the parties that, except with respect to certain space used for allowable service concessions, the real property comprising the parking facilities system is and shall remain public property used for public purposes, and that such real property utilized to provide the parking facilities purposes is and should remain exempt from the imposition of real property taxes...”

That means some entity, whether the City or the stripped down Parking Authority, will own the garages and lots but won’t operate them while keeping them exempt from property taxes in the manner of the Sports and Exhibition Authority owning Heinz Field, PNC Park, and Consol Energy Center whose leases are set just under 30 years. Assuming the assessed value is close to the balance sheet value of Parking Authority facilities of

\$121 million, the lessee won't have to pay \$3.6 million annually to the City, the County, and the Pittsburgh Public Schools.

The meter lease language, also titled Section 3.10, states that the City "shall indemnify and hold the concessionaire harmless from and against" any sales tax on the agreement, any deed transfer tax on the agreement, and any property taxes related to the meters. Applying the County's 7 percent sales tax on the \$452 million offer on the table translates into \$31.6 million in sales taxes that will not be paid.

The deed transfer provision is altogether a more complicated issue. Commonwealth law states that a real estate lease or occupancy agreement that is less than thirty years in duration is not subject to the deed transfer tax. That likely explains the curious 29 year, 11 month leases that often appear. That is the term under which the SEA has leased the stadiums to the Steelers and the Pirates. A lease agreement of 50 years, for all practical purposes, transfers effective ownership of the property to the lessee. That is undoubtedly the rationale behind the Commonwealth requirement that a deed transfer tax be paid on leases of 30 years or longer.

But the City's 50 year lease term means the transaction on the parking system would be taxable, unless the City has agreed to take on the cost of the tax. With a combined 4 percent transfer tax between the Commonwealth, the City, and the School District the tax would produce \$18 million in revenue.

In all, the tax treatment made via this lease will exempt the lessee from some \$53 million in taxes to be due at or shortly after completing the transaction.

Naturally, several questions arise. The basic issue is whether the tax exemptions will stand up to legal challenges. Secondly, do the lease terms relating to taxation create an unfair competitive advantage for the lessee relative to privately owned parking garages? If the garages are completely under the management and control of the lessee for 50 years, including major renovations and additions, in what sense are they still public property being used for public purposes as the lease agreement asserts? Then too, what claim of ownership will the Parking Authority have for the 1,800 new spaces the lessee says it will build? More broadly, if the lessee earns a profit—which it says it will—how can the leased garages possibly be public property being used for public purposes?

Will the Pittsburgh School District or the County challenge the decision to keep the parking garages and lots tax exempt (under the ownership of either the City or Authority) and waive other taxes given the fact that the lease is a 50 year one and is akin to a sale? As discussed above, the network of parking facilities is changing from a public one, where the goal is to keep parking affordable for the commercial sector and parking customers, to a private one, where profit seeking is the objective. The prospective lessee has already talked about capital improvements and new efficiencies that will make parking a more satisfying customer experience. The Parking Authority never had to pay property taxes or earn a return on investment, which gave it an advantage over privately

owned facilities. The City cannot now have it both ways. Garages are either private, profit seeking entities or they are tax exempt.

Will owners of private parking launch a legal challenge against the tax exempt status and favorable treatment of the lessee on the grounds that existing private facilities are required to pay property taxes on their garages and lots?

In short, if the lease as proposed by the high bidder is approved by Council, is the stage being set for a spate of protracted legal battles?

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