

the Southern Federal Tax Institute. Prior to joining Sullivan & Worcester, Cosby was a partner at Fried, Frank, Harris, Shriver & Jacobson LLP. He earned his JD from William & Mary Law School and his BS from the University of Virginia.

Kristen Lawler has joined Crowe LLP as an insurance tax partner at the firm's Captive Insurance practice in New York City. In her new role, Lawler advises insurance and captive insurance companies on tax compliance. Prior to joining Crowe LLP, Lawler was a senior tax manager at Deloitte Tax LLP for over a decade, specializing in insurance tax. She earned her LLM in taxation from Boston University School of Law, her JD from the Elisabeth Haub School of Law at Pace University, and her BS in psychology and political science from Fordham University.

Dark Horse CPAs has promoted two associate principals, **Brandy Kelly** and **Matthew Reese**, to principal positions. Kelly and Reese joined the firm's principal accelerator program in July 2024.

Kelly is a CPA with over a decade of experience. He previously worked as an accounting supervisor at Kraft & Company PLLC prior to joining Dark Horse CPAs in Nashville, Tennessee. He advises individual clients and small businesses on matters of rental properties, business tax strategy, tax planning, accounting, and bookkeeping. He earned a bachelor's degree in accounting and finance from the University of Tennessee at Chattanooga.

Reese is a CPA with eight years of experience. He was a principal at J. Herbert Burkman & Associates prior to joining Dark Horse CPAs. He specializes in tax litigation support, business tax strategy, fractional CFO services, and tax planning for taxpayers in the esport and real estate sectors. Reese earned a bachelor's degree in accounting from Missouri State University.

Tax Notes is pleased to provide news on personnel movements in the state tax community. Do you have an item for On the Move? Please send any announcements to OntheMove@taxanalysts.org. ■

NEW YORK

New York Court: Taxability of Safety Services Challenge Can Proceed

by Andrea Muse

Four companies providing licensed site safety managers could seek judicial review of whether site safety services are taxable without exhausting their administrative remedies, a New York appellate court has held.

The New York Supreme Court, Appellate Division, ruled April 17 in *Site Safety LLC v. Department of Taxation and Finance* that a trial court properly dismissed the challenge of seven of the 11 companies because they had not yet been audited or the audits weren't complete.

But the appellate court concluded that the remaining four companies could proceed with the challenge even though they had not exhausted their administrative remedies because the tax statute was attacked as wholly inapplicable to the plaintiffs and no factual issue was raised.

The New York State Department of Taxation and Finance issued an advisory opinion in 2020 finding that services of licensed site safety managers, such as performing government-mandated inspections of construction and demolition projects in New York City, fell within the scope of "protective and detective services" and were subject to sales tax under N.Y. Tax Law section 1105(c)(8).

In 2023 the 11 plaintiffs filed suit in the Albany County Supreme Court seeking a judgment that section 1105(c)(8) did not apply to site safety services defined in the New York City Building Code.

Four of the plaintiffs, including Site Safety LLC, had not yet been audited by the department, and the trial court dismissed their claims as unripe. The trial court dismissed the claims of the remaining plaintiffs for failure to exhaust their administrative remedies.

The appellate court agreed that the claims of the four plaintiffs that had not been audited were not ripe, stating that "ripeness occurs when an agency has reached a definitive position that inflicts actual, concrete injury" and those plaintiffs had not demonstrated that any actual harm had been inflicted on them.

The court also concluded that the claims of the three plaintiffs that were actively under audit at the time the suit commenced were properly dismissed but disagreed with the trial court's reason. The claims should have been dismissed because they were not ripe, and not for failure to exhaust administrative remedies, according to the appellate court.

But the court reversed the dismissal of the claims of the four plaintiffs — Safety and Quality Plus Inc., AP Tristate-Safety Corp., Menotti Enterprise LLC, and The Casa Group Inc. — that had been audited and received either statements of proposed audit change or letters from the department indicating that their services were subject to sales tax.

Finding that those plaintiffs qualified for the “wholly inapplicable” exception to the requirement that the plaintiffs were first required to exhaust their remedies, the court determined that the complaint alleged that the department lacked jurisdiction because section 1105(c)(8) does not apply to their services.

The court noted that the exception is limited to cases in which no factual issue is raised, and concluded that there were no factual issues at play here because the plaintiffs were simply seeking a declaration that site safety services defined in the New York City Building Code are exempt from sales tax and had conceded that any other services would not be subject to the declaration.

The lawyer for the plaintiffs declined to comment. The department did not respond to a request for comment by press time.

The plaintiffs in *Site Safety LLC v. Department of Taxation and Finance* (Case No. CV-24-0743, 2025 NY Slip Op 02255) are represented by K. Craig Reilly of Hodgson Russ LLP. ■

Public Park Exempt From City Property Taxes, New York Court Finds

by Cameron Browne

A public park managed by a private company is exempt from property taxes because it's owned by a municipal corporation and serves a public use, a New York state appellate court has held.

In its April 16 opinion in *County of Westchester v. City of Rye*, the New York Supreme Court, Appellate Division, Second Department, upheld a lower court's ruling that Playland Park, a public park located in Rye, New York, is exempt.

Westchester County entered into an agreement with Standard Amusements LLC in 2021 under which the company manages Playland Park for the county. At the time of the agreement, the property was listed as exempt under N.Y. Real Prop. Tax Law section 406(1) as land owned by a municipality.

Rye's assessor informed the county in 2022 that the city deemed the park taxable since Standard Amusements was the beneficial owner under the management agreement and the park was no longer operated for a public purpose. The county and Standard Amusements filed grievances with the Rye Board of Assessment Review, but the board rejected them.

The county and Standard Amusements filed suit in the Westchester County Supreme Court to annul the assessment, restore the property tax exemption, and seek a refund for any overpayment of taxes. The petitioners then moved for summary judgment, which the trial court granted in 2023 after it determined that the property was exempt from taxation.

Rye appealed to the Supreme Court of New York, Appellate Division.

Public Park Was Exempt

The city argued that the petitioners did not have standing to challenge the tax assessment since they failed to pay the at-issue property taxes. But the appellate court rejected the city's argument, finding that because the petitioners commenced their proceedings more than six months before the taxes were due, the county was under no obligation to pay taxes yet and the “pay