

This Week in State Tax (TWIST)

February 10, 2025



Michigan: What's in a Name: State Supreme Court Delineates Tax vs. Fee

The Michigan Supreme Court recently ruled that the City of East Lansing (City) utility fee was a tax that had been imposed by a municipal government without voter approval, in violation of the state constitution. In 2016, the City entered an agreement with the Lansing Board of Water and Light (LBWL) to collect from its customers a “franchise fee”, which was then remitted to the City and deposited in the general fund. Four years later in 2020, an LBWL customer filed a lawsuit arguing that the arrangement with LBWL violated the Headlee Amendment because the purported “fee” operates as a tax, and it had not been approved by the voters of the municipality. The trial court issued a partial summary judgement in favor the plaintiff, but an appeals court reversed this decision because it determined that LBWL (not the plaintiff) was the taxpayer, and that the plaintiff was therefore barred from filing the claim more than one year after the tax was enacted.

The Headlee Amendment (art. 9, sec. 31 of the Michigan constitution) requires voter approval for any tax or tax increase imposed by a local government. It does not apply to municipally imposed fees. Under statute, a Headlee Amendment claim must be advanced within one year. A previous state supreme court decision established that, for a taxpayer, this time limit begins running whenever the tax is due. For a non-taxpayer (i.e., member of the public), this time limit begins running when the tax is enacted.

In its decision in this matter, the supreme court first held that the franchise fee was a tax subject to the Headlee Amendment. The court identified three factors used to determine whether a levy was a tax or a fee: (1) whether the levy had a regulatory (rather than revenue-raising) purpose; (2) whether the levy was proportionate to the costs of a service; and (3) whether the levy was voluntary. The court concluded that (1) the levy had a revenue-raising purpose because it was based on amounts charged by other municipalities (not on specific expenses borne by the City) and was deposited to the City general fund; (2) the levy was not proportionate to the cost of a service because payors did not enjoy any particular benefit from the fee; and (3) the levy was not voluntary because a dissenting customer's only recourse would be to go without electric service.

The court also held that the plaintiff was a taxpayer who was not time-barred by the four-year delay in filing the claim. In reaching this conclusion, the court noted that customer, not LBWL, bore the legal incidence of the levy. In the court's view, LBWL was obligated only to remit amounts paid to it by its customers and was not expected to cover any collection shortfalls. Further, the City required LBWL to add the levy to the customer bill. These factors permitted the court to distinguish its previous decision that was relied upon by the appellate court in holding that

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customers were not taxpayers for a fee passed along by a cable company. In other words, the plaintiff here was not a mere member of the public who was time-barred from filing a Headlee Amendment claim. Instead, the plaintiff may file a claim for taxes wrongfully imposed within one year of when the action was filed. Contact [Dan De Jong](#) for questions about [Heos v. City of East Lansing](#).

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