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This Week in State Tax (TWIST)



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Georgia: State high court holds that fire protection fee was a tax, not a fee, and was improperly structured under state law

The Supreme Court of Georgia recently affirmed a trial court's grant of summary judgment to a class of property owners finding that a fire protection service fee charged by Chatham County was actually a tax on real property. The tax was not levied on an ad valorem basis, as required by Georgia law, and the court therefore determined the tax was illegal. The trial court had awarded refunds plus prejudgment interest to the class.

Chatham County first funded fire protection in parts of its unincorporated area through a fire service protection tax on property owners in a special district. In 2022, the county repealed that tax and replaced it with a "Fire Protection Service Fee" that applied to all real property parcels in a newly defined Fire Service Area. As adopted, the fee was a $100 flat charge per parcel plus a graduated charge based on the square footage of any structures. It was later amended to a $100 charge for vacant parcels and $0.14 per square foot for structures, with a $100 minimum. The ordinance allowed late penalties, collection costs, fines, and court actions for enforcement. The taxpayers filed a class action seeking refunds of fees paid from July 2022 through June 2024, arguing that the fee was an illegal tax.

The Supreme Court relied on its prior decision in *Bellsouth* which set forth four factors to consider in determining whether a government charge is a tax or a fee. A charge is more likely to be a tax if it raises general revenue, is mandatory, is not related to the payer's burden on government, and gives the payer no special benefit. Applying these factors, the court found that the fire protection service fee was a tax. First, it raised general revenue based on property ownership, not on the use or direct benefit of fire services. The fact that the money went into a dedicated fund did not change that result. Second, the charge was mandatory, given the ordinance's enforcement provisions and the lack of any practical way to avoid it. Third, the charge did not track each payer's burden on the system, as it was not based on actual use of fire services. Fourth, payers received no special benefit, because fire service providers responded to all calls in the service area whether the property owner had paid or not. The court rejected the county argument that lower insurance premiums and higher property values were property-specific benefits. It noted that tenants and others who did not pay the charge also received those benefits.

The court further held that the tax was illegal because it was not an ad valorem tax. The court did not decide whether the Georgia Constitution imposes a general ad valorem requirement. Instead, the court concluded that controlling law required services provided mainly for the benefit of unincorporated areas to be funded through ad valorem property taxes or other listed mechanisms. The fire fee was not one of those mechanisms. As a result, the county exceeded its taxing authority by structuring the fee as it did rather than basing the fee on property value.

For more information on *Chatham County v. Smith*, please contact Benjamin Cella.

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