

Refunding Fees and Taxes Collected in the Case of Annexation Being Declared Void

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Via Email

Dear MTAS Consultant,

The court has recently declared an annexation of several parcels in a city void. Some of these parcels contained businesses, including a fast food restaurant and a Mexican restaurant. The city has asked if they are responsible for refunding (1) beer license fees, (2) beer sales tax, and (3) city property tax. In my opinion, the city may, at most, need to refund one year of property taxes and one year of beer privilege taxes. Tennessee Code Annotated § 67-1-707 (emphasis added) provides:

(a) The county clerks of the various counties are also authorized and empowered to settle and adjust with taxpayers all errors and double assessments of county taxes *erroneously or illegally collected by them* and to direct the refunding of the taxes. Any claim for such refund by the county of taxes or revenue alleged to have been erroneously or illegally paid shall be filed with the county clerk, supported by proper proof within one (1) year from the date of payment; otherwise, the taxpayer shall not be entitled to a refund and the claim for refund shall be barred.

(b) Subsection (a) also applies to municipalities and municipal taxpayers; provided, however, that in the case of claims made for refund of municipal taxes, the duties, obligations, and responsibilities of the county clerk described in subsection (a) shall be performed by the city recorder, city clerk, or director of finance of the municipality acting under the direction and authority of the mayor or city manager.

As stated above, if a municipality “erroneously or illegally collected” a tax, the taxpayer is able to make a claim and the municipality is authorized to settle claims supported by proper proof within one year from the date of payment. Any claim for refund after that time is barred by the statute of limitations.

1) Beer Application and License Fees

Tennessee Code Annotated § 57-5-104 (emphasis added) provides in pertinent part:

(a) Each applicant for a permit required by § 57-5-103 shall be required to pay an application fee of two hundred fifty dollars (\$250) to the county or city in which the applicant's place of business is located. *No portion of the fee shall be refunded to the applicant, notwithstanding whether an application is approved or denied.*

(b)(1) There is hereby imposed on the business of selling, distributing, storing or manufacturing beer in this state a privilege tax of one hundred dollars (\$100), notwithstanding § 57-6-112.

As expressly provided by statute, the beer application fee shall not be refunded. As for the refund of the annual beer privilege tax, Tennessee Code Annotated § 67-1-707(b) allows a claim for refund of up to one year of beer privilege taxes to be claimed by the taxpayer.

However, there is also an argument that this privilege tax is levied by the state and was payable to either the city or county. Further, since the city was presumably providing city services of police protection, fire protection, etc. during that year, the city may have an argument to not refund the privilege tax.

2) Beer Sales Tax

Under Tennessee Code Annotated § 57-5-205, the state levies a \$4.29 per barrel tax on the manufacture, sale, and transportation of beer. Cities are allocated 10.05 percent of this money on a per capita basis without regard to legal beer sales in the community. Another 10.05 percent of the revenue is allocated to counties. The taxpayers are charged the same fee regardless of location, and the city is allocated a portion based population. Therefore, there would be no amount to refund from the city, as this is a state tax with an allocation.

3) City Property Tax

As provided above, a claim of refund of city property taxes would be the same as for beer privilege taxes. Tennessee Code Annotated § 67-1-707(b) establishes an administrative method for refunding municipal taxes collected erroneously or illegally. The claim for a refund must be made within one year of payment, or it is barred. Also similarly to beer privilege taxes, the city may have an argument that the city provided city services during that year and may argue that the taxes paid for those services.

Although the city may have an argument to not refund any previously paid property or beer privilege taxes, the city may want to calculate the total for each property that could be refunded and determine if the refund of that amount would be preferable to a costly court battle.

Please let me know if you have any additional questions.

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