

Bond Case Briefs

Municipal Finance Law Since 1971

TAX - GEORGIA

Hojeij Branded Foods, LLC v. Clayton County

Court of Appeals of Georgia - May 28, 2020 - S.E.2d - 2020 WL 2763498

Operator of fast food concession stand at international airport brought action against city, county, and various city and county officials seeking a refund of ad valorem property taxes paid in two particular years based on precedent establishing that airport retail spaces were usufructs, rather than estates in real property.

The Superior Court granted defendants' motions to dismiss for failure to state a claim, based on sovereign immunity. Concession stand operator appealed.

The Court of Appeals held that statute governing tax refund claims against a county or city waived sovereign immunity for five years after payment of the tax, rather than three years.

Statute governing tax refund claims against a county or city waived sovereign immunity for five years after payment of the tax, rather than three years; statute allowed a taxpayer to file a claim directly with the county or city within three years after payment of the tax and barred commencement of a lawsuit thereafter until the earlier of 90 days or denial of the claim, but did not make filing such a claim a prerequisite to filing a lawsuit and did not otherwise indicate that the three-year period applied to such a lawsuit, and statute expressly provided that any lawsuit seeking a refund had to be commenced within five years after payment.