

Bond Case Briefs

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Jones v. City of Atlanta

Court of Appeals of Georgia - June 25, 2021 - S.E.2d - 2021 WL 2621445

Water and sewer customer, on behalf of a class similarly situated, sought review of decision of appeals board for the city department of watershed management finding that it lacked jurisdiction to rule on legality of city ordinances authorizing department to impose a franchise fee and a payment in lieu of taxes (PILOT), which customer alleged were illegal taxes for which he and similarly situated customers were entitled to a refund.

The Superior Court granted city's motion to dismiss, finding that it lacked subject matter jurisdiction over customer's claims due to customer's failure to meet 30-day deadline for applying for a writ of certiorari, and, alternatively, granted city's motion for judgment on the pleadings, concluding that the fees were not illegal taxes. Customer appealed.

On transfer from the Supreme Court, the Court of Appeals held that:

- Limitation period in statute governing refunds of erroneously or illegally assessed taxes, rather than 30-day limitation period for seeking a writ of certiorari, applied to customer's suit seeking review of appeal board's decision, and
- Customer exhausted his administrative remedies.

Limitation periods in statute governing refunds of erroneously or illegally assessed taxes, providing that "no suit may be commenced until the earlier of the governing authority's denial of the request for refund or the expiration of 90 days from the date of filing the claim" and "under no circumstances may a suit for refund be commenced more than five years from the date of the payment of taxes or fees at issue," rather than 30-day limitation period for applying for writ of certiorari, applied to suit seeking review of agency's decision on water and sewer customer's claim for refund of franchise fee and payment in lieu of taxes (PILOT) paid to city department of watershed management; tax refund statute did not reference certiorari procedure or its 30-day limitation period.

Water and sewer customer, who claimed that franchise fee and a payment in lieu of taxes (PILOT) paid to city department of watershed management were illegal taxes for which he was entitled to a refund, exhausted his administrative remedies, where customer received a final decision from appeals board for department, pretermittting whether department was proper "governing authority" with whom to challenge tax, and customer's remaining course of action was to seek judicial review of appeal board's decision.