

# **Bond Case Briefs**

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## **TAX - GEORGIA**

### **Jones v. City of Atlanta**

**Supreme Court of Georgia - October 31, 2024 - S.E.2d - 2024 WL 4633416**

Property owner filed action against city, alleging that ordinances authorizing the city department of watershed management to impose a franchise fee and a payment in lieu of taxes (PILOT) for water and sewer services constituted unlawful taxes under state and federal law and seeking, inter alia, a tax refund.

The Superior Court granted city's motion for judgment on the pleadings, and denied customer's motions for summary judgment. Property owner appealed.

The Supreme Court held that:

- On city's motion for judgment on the pleadings, trial court was required to accept as true property owner's allegations that he paid the disputed charges and that they grossly exceeded the costs of providing the services;
- Genuine issues of material fact precluded summary judgment on property owner's claim that the disputed water and sewer fees were an illegal revenue-producing tax rather than fees for providing services; and
- Property owner's allegations did not establish as a matter of law that the disputed franchise fee was a tax based on the payor's gross revenue.

In property owner's challenge to the legality of city ordinances establishing a franchise fee and payment in lieu of taxes (PILOT) to be collected by city department of watershed management for water and sewer services, trial court was required to accept as true property owner's allegation that he paid the disputed charges for purposes of city's motion for judgment on the pleadings, where there was no conflict between the text of the ordinances and property owner's allegation that his water and sewer bill contained hidden taxes on water and sewer customers, and property owner's payment of the disputed charges to the department of watershed management was payment to the city.

On city's motion for judgment on the pleadings in property owner's challenge to ordinances establishing a franchise fee and payment in lieu of taxes (PILOT) to be collected by city department of watershed management for water and sewer services, trial court was required to accept as true property owner's allegations that the disputed fees grossly exceeded the associated costs of providing the services, and that the city was compensated for the associated costs through other means; recitals in ordinances that expressed city council's intention that the fees be used to compensate the city for costs associated with providing water and sewer services did not restrict the city from using the fees for other purposes or being compensated from other sources.

Property owner's allegations in action challenging city ordinance imposing a franchise fee for water and sewer services did not establish as a matter of law that the disputed fee was a tax based on the payor's gross revenue, where the ordinance imposed a charge based on the gross revenues of city's department of watershed management, which was passed on to property owner as a percentage of

his water and sewer bill, which was comprised of a flat base charge and a variable portion based on the services he used and not on his income.

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