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Atlanta Restaurant Partners, LLC v. Clayton County

Court of Appeals of Georgia - June 10, 2025 - S.E.2d - 2025 WL 1637362

Taxpayer that operated food concessions at airport brought action against county and city, among other parties, seeking refund of real property ad valorem taxes assessed and collected on airport concession agreement, alleging spaces were nontaxable usufructs.

School district filed motion to intervene, which the trial court granted. City issued a tax refund to taxpayer and city and taxpayer submitted a proposed consent order to trial court dismissing city from the action, which the trial court signed. The trial court later granted school district's motion for partial dismissal of taxpayer's claims. Following dismissal order, and prior to court-ordered mediation, county refunded the remaining tax amounts at issue to taxpayer. Taxpayer appealed grant of school district's motions.

The Court of Appeals held that:

- Taxes were illegally collected from taxpayer;
- Taxes were required to be refunded to taxpayer regardless if the taxes were remitted to school district;
- School district was not entitled to intervene as of right; and
- Trial court's error in granting school district's motion to intervene as of right warranted reversal of grant of motion for partial dismissal.

Airport retail spaces were usufructs and not subject to ad valorem real estate taxes, and thus ad valorem taxes that city and county had assessed and collected from taxpayer in connection with taxpayer's food and beverage concession operations at airport pursuant to airport concession agreement between taxpayer and city were illegally collected from taxpayer, for purposes of determining whether taxpayer was entitled to refund of such taxes paid by taxpayer.

Ad valorem real estate taxes that city and county illegally assessed and collected from taxpayer that operated food concessions at airport pursuant to airport concession agreement between taxpayer and city were required to be refunded to taxpayer from funds of county, municipality, county board of education, state, or any other entity to which the taxes were originally paid, regardless whether the taxes were remitted to school district; legislature did not carve out an exception for illegally collected taxes that a county remitted to a board of education.

School district did not have a property interest in real property ad valorem taxes, which were illegally assessed and collected by city and county on airport concession agreement, and which therefore were required to be returned to taxpayer, and therefore school district was not entitled to intervene as of right in taxpayer's action against city and county, among other parties, seeking refund of such taxes paid by taxpayer, so that trial court abused its discretion by allowing school district to intervene as a matter of right, even if school district had an interest in the amount of money it received from county for its budget.

Trial court’s error in granting school district’s motion to intervene as of right in action brought by taxpayer that operated food concessions at airport against city and county, among other parties, seeking refund of real property ad valorem taxes which city and county had illegally assessed and collected on airport concession agreement between city and taxpayer warranted reversal of trial court’s grant of school district’s motion for partial dismissal and remand to trial court.

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