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Arizona Must Give Back \$136M Stadium Tax, Judge Rules

By **Jessica Corso**

Law360, New York (August 13, 2015, 7:44 PM ET) -- The state of Arizona must return more than \$136 million in taxes intended to finance an NFL team's stadium following a state judge's ruling Wednesday that the fees imposed on rental car company customers could be returned directly to the rental businesses themselves.

Maricopa County Judge Christopher Whitten indicated that his hands were tied as both the U.S. Supreme Court and the Arizona Court of Appeals had determined that, where a tax was declared illegal, the government collecting it must refund any revenue already collected. This includes incidents in which the tax wasn't paid by the business itself but instead by its customers, the judge ruled.

"This distinction seems to leave open the possibility that ... relief is appropriate in a case where a tax is illegally collected, but the taxpayer is otherwise made whole by having passed the illegal tax on to its customers," Judge Whitten wrote, seeming to call into question a request by a class of rental car companies that demanded the money be returned to them.

The judge said that the state appellate court had interpreted a fundamental Supreme Court decision allowing businesses to recoup taxes paid out by their customers, however, and granted the businesses' request.

The tax was declared illegal by another Maricopa County judge in June of 2014 following a proposed class action filed by rental car companies that argued charging higher taxes to out-of-towners looking to rent a car than to local residents doing the same was illegal under the state constitution.

Judge Dean M. Fink, however, said the tax was illegal for another reason. It is illegal in Arizona to use fees collected on the "registration, operation, or use of vehicles" to fund anything other than highways or related projects, the judge said.

The tax, passed by voters in 2000, was one of the ways in which the state hoped to fund the reconstruction of the Arizona Cardinals' stadium, according to the 2010 complaint.

When reached for comment Thursday, Arizona Department of Revenue spokesman Sean Laux said that the state continues to collect on the tax until an injunction is filed and plans to appeal either the refund ruling or the ruling declaring the tax unlawful.

If an injunction is called or the appeal does not go in the state's favor, Laux said the Department of Revenue would have to give back \$136 million it has collected so far and counting.

Laux said he wasn't sure how the state would pay back the money it spent constructing the stadium should it lose on appeal.

"Certainly the ruling is new so we're still reviewing it to assess our options," he told Law360.

An attorney for the rental car companies noted that an Arizona appellate court ruled in 2007 that consumers lacked standing to recover the tax.

"Because the tax was unconstitutional under our state constitution, we believed, we filed the action on behalf of the rental car companies," Shawn K. Aiken of Aiken Schenk Hawkins & Ricciardi PC wrote in an email Thursday.

Shawn K. Aiken of Aiken Schenk Hawkins & Ricciardi P.C. and Greg Hanley of Kickham Hanley PLLC represented the businesses.

Arizona was represented by Kimberly Cygan of the Department of Revenue and Timothy Berg of the Arizona Sports and Tourism Authority.

The case is Saban Rent A Car LLC v. Arizona Department of Revenue et al., case number TX2010-001089, in the Superior Court of Arizona, Maricopa County.

— Editing by Ben Guilfoy.

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