



What Happens if an Applicant Disputes the Payment of a Licensing Fee?

By Kevin J. Best, Esq.

Cities and towns in Maryland may collect reasonable fees and charges for processing and reviewing land development, zoning, building and other related applications (i.e. variances, special exceptions, grading permits, and rental licenses, etc.). Administrative fees are typically authorized by ordinance and thereafter established from time to time by formal resolution in the form of a fee schedule.

A municipality is further authorized by statute to ordain that "any valid charges, taxes, or assessments made against any real property within the municipality shall be liens upon such property to be collected in the same manner as municipal taxes are collected." *Annotated Code of Maryland*, Art. 23A, § 2(b) (17). In the event a fee goes unpaid, a municipality having such an ordinance may use the tax sale procedures provided for in State law to satisfy the debt and possibly avoid litigating the debt collection matter in the courts.

The courts have determined that municipal license fees are considered reasonable if they meet the cost of administration and have a definite relation to the regulatory purpose. Should a dispute arise regarding a fee or charge levied by a Maryland municipality, how would you as a municipal official resolve the matter? Local ordinances probably do not address these types of disputes. The controversy, however, could very well be eventually resolved by the Maryland Tax Court.

The Maryland Tax Court hears appeals from the final decisions of State or local taxing authorities, including decisions of the Comptroller of Maryland, the county Property Tax Assessment Appeals Boards, and county or municipal tax (or fee) collectors. The Tax Court makes factual determinations and adjudicates disputes about income taxes, sales and use taxes, real and personal property assessments, and other taxes or fees

including those levied by a municipality. Appeals of Tax Court decisions may be made to the Circuit Court.

Despite the name, the Maryland Tax Court is not really a court at all. It is an independent administrative unit of the State government operating similar to a municipal board of appeals or other quasi-judicial body. The types of cases the Tax Court may hear emanating from a municipality are typically limited to claims for a refund of paid taxes or charges. These cases are limited to situations where the applicant either erroneously pays too much, or is wrongfully assessed a tax or fee. Should the refund claimant also challenge the legal validity of the ordinance purportedly authorizing the fee, the Tax Court may decide that issue as well.

Before a refund claim can be filed in the Maryland Tax Court, the claimant must first exhaust his or her remedies with the city or town. The procedures for investigating and finally deciding a claim for refund of municipal taxes and fees are as follows:

1. The Claimant makes a refund claim to the municipal tax/fee collector, who investigates the claim.
2. The municipal official authorized to collect the tax or fee must conduct a hearing if requested by the claimant prior to a final determination of the claim.
3. If the tax/fee collector determines that a claim for refund should be allowed, either in whole or in part, the tax collector shall forward the claim to the municipality's chief fiscal officer for approval. (A claim for refund may not be approved unless all other State, county, or municipal corporation taxes, fees, and charges due by the person entitled to the refund have been paid.)

4. The tax collector shall give the claimant notice of the determination of the claim for refund, and any delay in paying an allowed claim.
5. Within thirty days after the date on which a notice is mailed, a person who is aggrieved by the action in the notice may appeal to the Maryland Tax Court. If a tax collector does not make a determination on a claim for refund within six months after the claim is filed, the claimant may consider the claim as being disallowed and appeal the disallowance to the Tax Court.

With a properly drafted ordinance, a municipal board of appeals or another body could be delegated the collateral duty of conducting the statutorily required hearing and making the necessary findings of fact and recommendations to the municipality's chief fiscal officer regarding whether to approve a claim. The designated body could sit to hear both substantive challenges to the legal validity of the fee and cases requesting a refund.

One caveat arises in the appeal process for those cases that are brought solely to challenge the legal validity of a municipal

fee or charge. Unless an administrative review process established by ordinance requires otherwise and the case does not also involve a refund claim, the ordinance establishing the fee may be immediately challenged in the Circuit Court without being heard by the Tax Court.

In conclusion, there is a specific process dictated by State law on how a municipality may resolve a regulatory or license fee dispute. A municipality may either have its designated tax/fee collector conduct a hearing or the case could be heard by the board of appeals if it's properly empowered by ordinance to do so. Final decisions of a city's or town's chief fiscal officer based on the findings and recommendations resulting from a municipal hearing involving refunds could then be heard by the Maryland Tax Court before the matter could be appealed to the Circuit Court. ■

Kevin J. Best is an attorney in the Chestertown office of Funk & Bolton, and serves as Town Attorney for Forest Heights and Upper Marlboro. He is also the Land Use & Planning Counsel for Capitol Heights. You can contact Mr. Best at 410/810-1381 or kbest@fblaw.com. A special thanks to Robert L. Zouck, Clerk of the Maryland Tax Court, for reviewing this article.

The Strategic Procurement Source for Public Agencies

- Time & Resource Savings
- Competitively Solicited Contracts
- Quality Products & Services
- Great Pricing
- No-Cost Participation



**U.S.
COMMUNITIES™**

Government Purchasers Saving You Money

Founding Co-Sponsors



www.uscommunities.org