

December 22, 2010

Sandy Springs Restructures Its Business and Occupation Tax

The Sandy Springs, Georgia, City Council revised its Business and Occupation Tax ordinance on December 21, 2010 in an effort to foster economic development and alleviate the potential chilling effect on the City's business climate. The amendments lower the maximum tax, implement an across-the-board rate reduction, and provide for the exclusion of out-of-state service receipts and franchise fees. The amendments represent an important change in the City's existing policy, placing the City's application of local taxes in line with other local jurisdictions within the state, and allowing the City to remain competitive as an attractive location for national headquarters.

Background

As background, the City of Sandy Springs has imposed a business and occupation tax on the gross receipts of businesses operating in the City since 2006. Sandy Springs, Ga., Code of Ordinances § 54-115 *et seq.* Specifically excluded from the definition of "gross receipts" are, among other things, "[p]roceeds from sales of goods or services that are delivered to or received by customers who are *outside* the state at the time of delivery or receipt." Sandy Springs, Ga., Code of Ordinances § 54-115. However, Sandy Springs had previously taken the position that it was entitled to tax gross receipts from sales of services to customers located *outside* the state. This position had a particularly unfavorable impact on businesses headquartered in Sandy Springs that receive service receipts and franchise fees on a national and international basis.

To enforce its new tax position, the City contracted with private auditors paid based on a percentage of tax assessments. As of September 15, 2007, the tax was capped at \$400,000 and had the potential of being applied on a separate legal entity basis.

As a result of the City's aggressive tactics regarding the sourcing of receipts, many service and franchise businesses headquartered in Sandy Springs saw their tax bills rise overnight by several hundred percent. Such aggressive taxation placed the City at risk of driving away the large corporations currently headquartered in the City and restricting its ability to attract additional corporate headquarters.

Concerned about the City's expansive application of the tax, many Sandy Springs-based businesses joined together this summer, along with the Sandy Springs Chamber of Commerce, to work collaboratively with the City to develop a pro-business tax policy that would allow the City to maintain a competitive economic development climate.

Sutherland Comment: The City's historical interpretation of the tax created serious legal, economic, and policy issues. The City's application of the tax regardless of customer location was inconsistent with the plain language of the ordinance which provides that the tax should not apply to receipts from sales delivered to or received by customers outside of Georgia. Further, Sandy Springs companies with business locations outside of Georgia ran the risk of having the same sales subject to multiple local business license taxes creating potential constitutional challenges. The sheer burden of the tax on businesses, coupled with the potential for multiple legal challenges to the tax, looked to hinder the City's economic growth as businesses questioned whether locating in Sandy Springs was a good idea.

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Amendments and What's Next

At the December 21, 2010, City Council meeting, the Council voted to amend the City's business and occupation tax ordinance in the following manner:

- Exclude from the tax base gross receipts from out-of-state sales of services;
- Exclude from the tax base gross receipts from out-of-state franchise fees;
- Reduce the cap on the maximum annual Occupation Tax from \$400,000 to \$75,000 (this tax cap will be adjusted (increased or decreased) annually based on changes to the cost-of-living index determined by the United States Department of Labor's Bureau of Labor Statistics); and
- Implement an across-the-board 8% tax reduction for all occupation taxes.

The amendments excluding out-of-state sales of services and out-of-state franchise fees from taxable gross receipts will be applied retroactively to January 1, 2006. The tax cap and 8% tax reduction will be effective beginning January 1, 2011. Finally, based on follow-up communications received from one of the Council members, it appears that the tax cap will be applied only to the parent (and not subsidiaries) of each company. In fact, the meeting materials prepared by the City Manager and posted on the City's Web site indicate that the tax cap was never intended to be applied on a per legal entity basis but only on the "parent." Yet, it remains to be seen how the City ordinance will interpret the term "subsidiary" for purposes of the tax cap.

Sutherland Comment: The amendments to the City's business and occupation tax represent a significant policy change that will stimulate the City's economic climate and positively affect its standing as a place to do business. Additionally, the revised law should alleviate ongoing contentious business and occupation tax audits and likely eliminate the need for costly litigation in the future.



If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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