IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

GWR GEORGIA PROPERTY OWNER, LLC,	*	
Petitioner,	*	
v.	*	Docket No. 2119097
ROBYN A. CRITTENDEN, in her official capacity as COMMISSIONER, GEORGIA DEPARTMENT OF REVENUE,	*	
Respondent.	*	

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Before the Georgia Tax Tribunal are cross-motions for summary judgment filed by GWR Georgia Property Owner, LLC ("Petitioner" or "GWR"), and Respondent Robyn A. Crittenden, in her official capacity as Commissioner of the Georgia Department of Revenue ("Department" or "Commissioner"). The parties submitted a number of stipulated facts which are hereby incorporated by the Tribunal in the Findings of Fact set forth below. After considering all the facts of this matter and applicable law, and for the reasons explained below, Petitioner's motion for summary judgement is **DENIED**.

FINDINGS OF FACT

1.

Petitioner and several local governments located in Troup County, Georgia, entered into a memorandum of understanding (MOU) on or about October 15, 2015, that provided for economic incentives to be provided to Petitioner by those governments should Petitioner proceed with a tourism attraction project ("Project") located in the county. See Stipulation ¶¶ 1-3, Joint Exhibit A.

2.

The local government agencies agreed to "enthusiastically support" Petitioner's application to be an approved project under the Georgia Tourism Development Act (the "Act"), O.C.G.A. § 48-8-270, *et seq.*, and offered to include "approval of the City [of Lagrange] and [Troup] County local option sales taxes collected at the Project to be eligible for refund under the Act (with the exception of the local option education sales tax) (the 'Project Local Option Sales Taxes')." See Stipulation ¶¶ 2-4, Joint Exhibit A at 8.

3.

The MOU placed some restrictions on potential refund of the "Project Local Option Sales Taxes," such as limiting the refund available to Petitioner should hotel/motel tax receipts prove insufficient to cover bond debt service and use of the taxes for establishment of a reserve fund for coverage of bond debt service. See Joint Exhibit A at 6.

4.

The MOU also noted that Petitioner "understands that refund of SPLOST tax expenditures after expiration of the current [Special Purpose Local Option Sales Tax] SPLOST is contingent upon voter approval…". Joint Exhibit A at 9. This is the only reference to SPLOST in the MOU.

5.

On or about February 9, 2016, the City of LaGrange adopted a resolution approving of and endorsing Petitioner's application to be an approved project under the Act. See Stipulation ¶ 5, Joint Exhibit B. The city agreed to "commit to the inclusion of the City of LaGrange Local Option Sales Tax (LOST) sales and use tax within the tax refund program" under the Act. Joint Exhibit B. The resolution references the MOU and the incentives included. See Joint Exhibit B.

6.

On or about February 16, 2016, the Troup County Board of Commissioners adopted Resolution 2016-22 to approve and support Petitioner's application to be an approved project under the Act. See Stipulation ¶ 6, Joint Exhibit C. The Resolution referenced the MOU and affirmed that the County would "commit to the inclusion of the Troup County portion of the Local Option Sales Tax (LOST) sales and use tax within the tax refund program" under the Act. Joint Exhibit C at 3.

7.

Following the passage of these resolutions, Petitioner applied to be a Tourism Attraction Project under the Act as well as to be an approved company eligible for refunds of sales taxes collected at the Project. See Stipulation ¶ 7. The Georgia Department of Community Affairs (DCA) and the Georgia Department of Economic Development approved Petitioner's application. See Stipulation ¶ 8. On or about June 2, 2016, DCA and Petitioner entered in a Georgia Tourism Development Agreement authorizing Petitioner to receive ten (10) years of sales and use tax refunds under the Act. See Stipulation ¶ 9.

8.

On or about August 1, 2017, the Troup County Board of Commissioners passed Resolution 2018-05 calling for the imposition of a six-year SPLOST (in this case, "SPLOST V") if approved by voters during a special election on November 1, 2017. See Respondent's Exhibit 1. The Resolution contained a list of the specific projects that would be funded by the SPLOST. See id. The Resolution did not list Petitioner's Project or any other similar type of project that would be funded by the SPLOST. See id.

9.

As a result of the passage of Resolution 2018-05, a ballot measure was put before the voters of Troup County on November 1, 2017. See Respondent's Exhibit 2. The ballot measure contained a list of specific projects to be funded by the SPLOST if approved by voters. See id. The list of projects on the ballot measure did not list Petitioner's Project or any other similar type of project that would be funded by the SPLOST. See id.

10.

The Project opened in May of 2018. See Stipulation ¶ 10. Petitioner submitted to Respondent a request for refund of sales taxes collected at the Project in 2018 and 2019. See Stipulation ¶ 11.

11.

On or about April 13, 2020, Respondent granted Petitioner's request in part and denied the request in part. Respondent granted Petitioner a refund of the LOST sales taxes collected at the Project but denied Petitioner a refund of the SPLOST sales taxes collected at the Project. See Stipulation ¶ 12, Joint Exhibit D.

12.

Petitioner protested Respondent's partial denial of Petitioner's refund request. See Stipulation ¶ 13. On or about January 25, 2021, Respondent denied Petitioner's protest and issued a letter explaining that refund of the SPLOST funds was not authorized by law in these circumstances. See Stipulation 14, Joint Exhibit E.

CONCLUSIONS OF LAW

I. STANDARD OF REVIEW

Summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Norfolk S. Ry. v. Zeagler, 293 Ga. 582, 583 (2013) (quoting O.C.G.A. § 9-11-56).

II. THE LANGUAGE OF THE RESOLUTIONS READ TOGETHER WITH THE MOU DO NOT AUTHORIZE A REFUND OF SPLOST FUNDS

Petitioner's refund request is based on the Georgia Tourism Development Act, which incentivizes tourist attractions to come to Georgia through, among other things, allowing the refund of sales and use taxes collected by the business operating an attraction. See O.C.G.A. § 48-8-272. Specifically, O.C.G.A. § 48-8-273(h) states "[b]y resolution and at the discretion of the county and city, if any, where the tourism attraction project is to be located, the local sales and use tax may be refunded under the same terms and conditions as any refund of state sales and use taxes." O.C.G.A. § 48-8-273(h).

The parties' primary dispute is whether the terms of the City and County resolutions authorized a refund of SPLOST funds pursuant to O.C.G.A. § 48-8-273(h). Petitioner acknowledges that the resolutions do not use the term "SPLOST," but it contends that the language in the resolutions, read together with the MOU, clearly encompasses SPLOST funds as eligible for a refund under the Act. The Tribunal disagrees.

"The construction of a contract is a matter of law for the court." O.C.G.A. § 13-2-1. "Under Georgia rules of contract interpretation, words in a contract generally bear their usual and common meaning." Claussen v. Aetna Cas. & Sur. Co., 259 Ga. 333, 334 (1989). However, "if the construction is doubtful, that which goes most strongly against the party executing the instrument or undertaking the obligation is generally to be preferred." Id. (quoting O.C.G.A. § 13-2-2 (5)). Extrinsic evidence may be admissible to explain an ambiguity only if the contract remains ambiguous after the rules of construction are applied. Id.

The City's resolution provides that the City "commit[s] to the inclusion of the City of LaGrange Local Option Sales Tax (LOST) sales and use tax within the refund program 'under the same terms and conditions as the refund of state sales and use tax' as authorized by O.C.G.A. § 48-8-273(h)." The County's resolution, after noting the City's commitment, also "commits to the inclusion of the Troup County portion of the Local Option Sales Tax (LOST) sales and use tax within the tax refund program 'under the same terms and conditions as the refund of state sales and use tax' as authorized by O.C.G.A. § 48-8-273(h)." The County, like the City, referenced the MOU and attached it as an Exhibit to the resolution. The County's resolution further stated that "the MOU provides for the inclusion, within the sales tax revenues eligible for rebate to GWR under the Program, the local option sales taxes (with the exception of the local option education sales tax) collected at the Project (the 'Non-Education Local Option Sales Tax')."

In the MOU, the local governments agreed to support Petitioner's application to be an approved project under the Act and offered to include "approval of the City [of Lagrange] and [Troup] County local option sales taxes collected at the Project to be eligible for refund under the Act (with the exception of the local option education sales tax) (the 'Project Local Option Sales Taxes')." See Findings of Fact ¶ 2, Joint Exhibit A. The MOU further noted that "GWR understands that refund of SPLOST tax expenditures after expiration of the current SPLOST is contingent upon voter approval...". See Findings of Fact ¶ 4. Respondent contends that this clause of the MOU qualifies that the refund of any SPLOST funds would be subject to a voter referendum in the future ("after expiration of the current SPLOST") authorizing a new SPLOST and committing those funds to the Project. Petitioner contends that the clause is not stating that a refund of SPLOST funds is subject to voter approval, but that in order for there to be a refund of

SPLOST funds available to Petitioner in the future, there must be a new SPLOST in place after expiration of the current SPLOST.

Because the clause at issue in the MOU is ambiguous, and both interpretations by Petitioner and Respondent could be true, the Georgia rules of contract interpretation should be deployed. O.C.G.A. § 13-2-2(5) states that where construction is doubtful, the construction which goes most strongly against the party executing the instrument is generally preferred; here, the party executing the instrument is Petitioner. Thus, the construction proposed by Respondent is preferred. Extrinsic evidence need not be considered in this case because the ambiguity no longer remains after applying the Georgia rules of contract interpretation. See Claussen v. Aetna Cas. & Sur. Co., 259 Ga. at 334.

Under Respondent's interpretation of the clause, a refund of SPLOST funds is subject to a voter referendum authorizing a new SPLOST and committing those funds to the Project. It is an undisputed fact that the renewed SPLOST (SPLOST V) did not include GWR's SPLOST refund as a project seeking voter approval. Since a SPLOST refund was not voted on and approved by the voters, the contingency in the MOU authorizing a refund of SPLOST funds has not been met. Thus, Petitioner is not entitled to a refund of SPLOST funds.

Adopting the interpretation of Respondent is also consistent with the law relating to SPLOST. O.C.G.A. § 48-8-111 imposes certain strict requirements before and during a SPLOSTs imposition. A resolution imposing a SPLOST must say, in clear detail, what specific capital outlay projects for which the proceeds of the tax may be used and expended, and then those same details must be included in a voter-approved referendum. See O.C.G.A. § 48-8-111. Funds generated by the tax can only be committed to those specific projects contained in the

resolutions and referendums adopted by voters approving of the SPLOST. See O.C.G.A. § 48-8-121(a)(1); Dickey v. Storey, 262 Ga. 452 (1992).

CONCLUSION

Based upon the foregoing, the Tribunal concludes that refund of the SPLOST funds to Petitioner is not authorized under the language of the resolutions, even when read together with the MOU. Therefore, Petitioner's Motion for Summary Judgment is **DENIED**.

SO ORDERED, this 22nd day of September, 2022.

James E. O'Neal

HONORABLE LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL