IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

FILED
SEP 22 2022
Clara Davis, Tax Tribunal Administrator

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

ORDER GRANTING RESPONDENT'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, the Department's Motion for Summary Judgment is **GRANTED**.

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 the resolutions recited in paragraphs 5 and 6, 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 certain 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. APPLICABLE STATUTES AND REGULATORY AUTHORITY

Several different statutes and associated regulations are applicable to the factual situation presented in this case. The Georgia Tourism Development Act ("Act"), O.C.G.A. § 48-8-270, *et seq.*, creates an incentive program for the construction of tourism attractions that would bring jobs and increased tax revenue to the State. It is under this program that Petitioner sought, and received, special benefits from Troup County and the City of LaGrange in exchange for building a qualified project in the county. The fundamental dispute between the parties is whether Petitioner is entitled, under the Act, to refund of both the applicable local option sales taxes (LOST) and special purpose local option sales taxes (SPLOST), or whether Petitioner is only entitled to refund of the LOST.

a. Georgia Tourism Development Act

The Act was passed in order to induce the creation or expansion of tourism attraction projects in the State. See O.C.G.A. § 48-8-272. The Act contains a number of requirements proposed projects must meet in order to be an approved project and be eligible for incentives. See O.C.G.A. § 48-8-274. The Act authorizes the Department of Community Affairs (DCA) to promulgate regulations further detailing the procedures and requirements to be an approved project. See O.C.G.A. § 48-8-274(a); Ga. Comp. R. & Regs. 110-32-1.

A primary incentive authorized by the Act is the refund of state sales and use taxes collected by the company operating the approved project for a period of ten years. See O.C.G.A.

§ 48-8-273. The Act also permits local governments to refund local sales and use taxes under the following conditions:

> (h) *By 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) (emphasis added). The ten-year refund period begins when the project is completed or the expansion of an existing project is finished. See O.C.G.A. § 48-8-273(c).

b. Special Purpose Local Options Sales Taxes

When imposing a Special Purpose Local Option Sales Tax (SPLOST), government entities are restricted in use of the proceeds from that tax to only that "purpose or purposes specified in the resolution or ordinance calling for the imposition of the tax." O.C.G.A. § 48-8-121(a)(1). In order to impose a SPLOST, the county government must call a public meeting regarding the SPLOST and propose and pass a resolution or ordinance approving the SPLOST. The resolution must say, in clear detail, what specific capital outlay projects for which the proceeds of the tax may be used and expended. See O.C.G.A. § 48-8-111(a)(1). The resolution must also list the estimated costs of the projects that will be funded by the proceeds of the tax. See O.C.G.A. § 48-8-111(a)(3). The same resolution must then be approved by the voters in the county as a ballot initiative. The ballot must contain most of the same information that is included in the resolution: the list of specific capital projects to be funded by the tax and the estimated costs. See O.C.G.A. § 48-8-111(b).

The special requirements of a SPLOST do not end there, however. A SPLOST is only in effect for a limited period of time; when that SPLOST expires, a new SPLOST must be approved using the same procedures. See O.C.G.A. § 48-8-112(b). Use of the tax proceeds from the SPLOST "shall be used… for the purpose or purposes specified in the resolution or ordinance

calling for the imposition of the tax." O.C.G.A. § 48-8-121(a)(1); see also Dickey v. Storey, 262 Ga. 452 (1992) (board of county commissioners bound to projects listed in SPLOST budget and account reports). That same subparagraph goes on to state that the SPLOST proceeds "shall be kept in a separate account from other funds… and shall not in any manner be commingled with other funds." Id.; see also Op. Att'y Gen. 2007-5 (a county may not borrow from a SPLOST account to fund projects not specifically identified and approved of in the resolution or ordinance authorizing the SPLOST). Subparagraph 2 then states that the local government must "maintain a record of each and every project for which the proceeds of the tax are used" that is subject to annual audit. O.C.G.A. § 48-8-121(a)(2). This record has to list the original cost of each project, the current estimated cost, and the amounts expended from the SPLOST funds for that project each year. Id.

These restrictions on the collection and use of SPLOST funds are reinforced in regulations adopted by DCA regarding applications for approval to be an eligible project under the Act. Among the materials that must be included with the application is a resolution endorsing the project by the local government. See Ga. Comp. R. & Regs. 110-32-1-.03(6)(e). If the local government intends to refund LOST or SPLOST revenues as permitted by the Act, "there must be specific language in a *resolution* committing those resources along with language specifying that the intended uses align with any authorizing *referendum* for the LOST or SPLOST." Ga. Comp. R. & Regs. 110-32-1-.03(6)(e)(i) (emphasis added). In other words, there are two steps for approving the refund of SPLOST funds under the Act: the local government entities that wish to commit SPLOST funds must do so by resolution and the commitment of those funds must "align with any authorizing referendum for the… SPLOST." Id. The resolution committing the funds to the project must be in accord with the referendum authorizing the SPLOST.

III. PETITIONER'S REQUEST FOR REFUND UNDER THESE CIRCUMSTANCES

As discussed above, Petitioner and several local governments located in Troup County entered into a MOU that provided for economic incentives to be provided to Petitioner by those government agencies should Petitioner proceed with the Project. See Stipulation ¶ 3, Joint Exhibit A. The local governments ultimately approved resolutions supporting the Project and committing the "Local Option Sales and Use Tax (LOST)" funds to the Project. See Findings of Fact ¶¶ 8, 9, Joint Exhibits B and C. Approximately 18 months later, Troup County approved a resolution and referendum asking voters to support the imposition of a new SPLOST (SPLOST V) in the county. The SPLOST V resolution and referendum contained no reference to Petitioner's project. See Findings of Fact ¶¶ 11, 12, Respondent's Exhibits 1 and 2. Based upon the Findings of Fact above, applying the applicable law to those facts, and for the reasons below, the Tribunal concludes that Petitioner is not entitled to a refund of the SPLOST funds in these circumstances.

a. The applicable statutes and regulations require clarity and specificity when committing public funds

Petitioner urges the Tribunal to rule in its favor based in part on the notion that it was the intent of Petitioner and the local government entities (the City of LaGrange and Troup County) to include SPLOST funds as refundable. See Petitioner's Brief in Support of Motion for Summary Judgment at 8-10. Petitioner argues that the intent of the parties was clear enough from the language of the MOU and it was Petitioner's belief that the parties intended to include refund of the SPLOST funds as an incentive for the Project. Id. While the parties' intent may be important when interpreting private contracts, the Tribunal is not aware of any legal authority demonstrating that the Tribunal is bound to follow this purported intent in determining whether a refund of SPLOST funds is authorized under the Act.

Regardless of the intent of the parties, both the Act and accompanying regulations adopted by DCA are clear that local government entities that wish to commit either LOST or SPLOST funds to a project approved under the Act must do so with *specificity* and by *resolution.* See O.C.G.A. § 48-8-273(h); Ga. Comp. R. & Regs. 110-32-1-.03(6)(e)(i). The resolutions must be specific regarding the project and confirm that the commit of those funds "align with any authorizing referendum for the LOST or SPLOST." Ga. Comp. R. & Regs. 110-32-1-.03(6)(e)(i). In this case, the MOU is the only document that refers to SPLOST funds. The resolutions only "commit to the inclusion of the [city and county] portion of the Local Option Sales Tax (LOST) sales and use tax within the tax refund program." See Findings of Fact ¶¶ 8, 9.

Petitioner suggests that by referring to the MOU in the resolutions, the local governments incorporated the MOU into the resolutions and therefore committed to the use of SPLOST funds for the Project. See Petitioner's Brief in Support of Motion for Summary Judgment at 7-8. However, even if merely referring to the MOU in the recital clauses of the resolutions incorporated the MOU, the MOU still does not specifically commit to the refund of SPLOST funds. The MOU noted that Petitioner "understands that refund of SPLOST tax expenditures after expiration of the current SPLOST is contingent upon voter approval…". See Findings of Fact ¶ 4. This is the only reference to SPLOST in the MOU. See Joint Exhibit A. The Tribunal interprets this language to mean that 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. Thus, the MOU only confirms that any future SPLOST refunds would be subject to subsequent voter approval. The resolutions themselves only commit LOST funds and contain no reference to SPLOST funds. Therefore, since the resolutions lack specificity regarding SPLOST, do not clearly commit to the

inclusions of SPLOST funds as required by law, and by their own terms only commit to the inclusion of LOST funds, Respondent's denial of the refund claim was appropriate.

b. The SPLOST referendum provides no funding for this project

As discussed above, the law concerning SPLOST imposes certain strict requirements before and during its 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, the estimated costs, 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). The law states that the SPLOST proceeds must be kept in a separate account and are subject to rigorous records keeping requirements discussed above. See O.C.G.A. § 48-8-121(a)(2); see also Op. Att'y Gen. 2007-5.

DCA regulations require that resolutions be specific regarding the project and confirm that the commit of those funds "align with any authorizing referendum for the LOST or SPLOST." Ga. Comp. R. & Regs. 110-32-1-.03(6)(e)(i). As explained above, the resolution supporting the project and committing SPLOST funds must be in agreement with the resolution and referendum authorizing the SPLOST. In this case, neither Resolution 2018-05, the resolution authorizing SPLOST V, nor the referendum approved by voters affirming SPLOST V, make any mention of Petitioner's Project or a commitment of SPLOST V funds to it. See Findings of Fact ¶¶ 11, 12, Respondent's Exhibits 1 and 2. There is no alignment of the resolutions or referendum when it comes to Petitioner's Project as required by law.

Finally, Petitioner asserts that granting Petitioner a refund of the SPLOST V funds would not be a "use" of those funds. See Petitioner's Response in Opposition to Respondent's Motion for Summary Judgment at 11-12. Petitioner claims that since the SPLOST funds would be distributed as a refund to Petitioner through the Department of Revenue and not the county directly, then the rules relating to expenditures of SPLOST funds would not apply. Id. However, Petitioner points to no such distinction in the SPLOST statute regarding a "use" of the SPLOST funds. Although the Department collects and distributes the SPLOST funds back to the county, the SPLOST statute is clear that "use" of the funds must be accounted for with specificity and may only be used for those projects authorized in the referendum. See O.C.G.A. § 48-8-121(a).

In light of the accounting and spending requirements in the SPLOST statute discussed above, the Tribunal finds that a refund of SPLOST funds is considered to be a "use," subject to the specificity requirements of the statutes and regulations. The SPLOST funds have been collected from taxpayers and earmarked for specific projects approved in the referendum. By law, those funds can only be used on projects included in the voter-approved referendum. Petitioner does not explain how the county would be able to comply with the accounting requirements when these funds are disbursed to Petitioner instead of placed in the county's SPLOST account and used for the earmarked projects. Because Petitioner's Project was not on the list of projects to be funded by SPLOST V, SPLOST funds were not collected to support the Project and Petitioner is not entitled to a refund of those funds.

CONCLUSION

Based upon the foregoing, the Tribunal concludes that refund of the SPLOST funds to Petitioner is not authorized by law and Respondent's denial of the refund claim was appropriate. Therefore, Respondent's Motion for Summary Judgment is **GRANTED**.

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

James E. O'Neal

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