

March 8, 2021

CLIENT ALERT

2016 Transportation Lockbox Constitutional Amendment Does Not Restrict Home Rule Taxes

Peter Friedman, Elrod Friedman LLP

In the November 2016 general election, Illinois voters approved a constitutional amendment known as the “*Safe Roads Amendment*.” Broadly stated, the Amendment was designed to protect funds generated from transportation-related taxes from being spent for anything other than transportation-related purposes. In other words, the Amendment attempted to create an actual constitutional lockbox.

In 2018, an amalgamation of transportation-related trade groups sued Cook County (the only home rule county in Illinois) claiming that the County ignored the lockbox and violated the Amendment by diverting tax revenues purportedly protected by the Amendment to non-transportation related purposes. Specifically, the plaintiffs alleged that the County illegally redirected as much as \$250 million to the County’s Public Safety Fund for non-transportation-related purposes from six transportation-related County taxes (the Cook County Home Rule County Use Tax, the Cook County Retail Sales of Gasoline and Diesel Fuel Tax, the Cook County New Motor Vehicle and Trailer Excise Tax, the Cook County Home Rule Use Tax for Non-Retailer Transfers of Motor Vehicles, the Cook County Wheel Tax on Vehicles, and the Cook County Parking Lot and Garage Operations Tax) (collectively, “*Cook County Home Rule Taxes*”).

The trial court ruled in favor of the County, finding that the plaintiffs lacked standing to bring the case and that, regardless, the claims were not “justiciable” because the trial court found that the claims were akin to policy disputes over how certain tax revenues should be spent. The plaintiffs appealed.

In a March 4, 2021 decision (*Illinois Road and Transportation Buildings Association, et al. v. The County of Cook*, 2021 IL App (1st) 190396), the First District Appellate Court disagreed with the trial court and found that the plaintiffs did, in fact, have standing to bring the challenge. *Id.* at ¶¶ 40 – 56. However, the Appellate Court agreed with the trial court that the plaintiffs’ case should be dismissed, but not because the claims were not justiciable. *Id.* at ¶¶ 58 – 62. Rather, the Appellate Court ruled for the County on grounds far more significant and impactful for the County and all other Illinois home rule units of government.

The Appellate Court found that home rule taxes adopted pursuant to constitutional home rule powers were simply not covered at all by the lockbox amendment, and that if the intent was otherwise, then the “drafters seriously whiffed” in the amendment’s terms, which the Court said were “far – light years – from a model of draftsmanship.” *Id.* at ¶¶ 109, 125.

The significance of the ruling for home rule units of government (Cook County and all home rule municipalities) lies in the court’s analysis of what is and what is not subject to the lockbox sequester of transportation-related tax revenues.

The court explained that home rule units may receive tax revenues from three different types of taxes and that the Amendment only restricts revenues from two of the three. The first type of tax revenues protected by the Amendment are those received from State-imposed taxes, such as the Illinois motor fuel tax, which the State imposes and then distributes some of the revenues to counties, municipalities and road districts. 35 ILCS 505/2, 5, 8. The second type of protected taxes are those that local governments can impose only because they have been specifically authorized to do so by the General Assembly by statute. For non-home rule units, of course, this means every tax (such as the retailers' occupation tax, 65 ILCS 8-11-1.3), since non-home rule units have no constitutional taxing authority and can tax only what has been specifically authorized by the General Assembly by statute. For home rule units, this includes any taxes on income or occupations, which can only be imposed when specifically authorized by the General Assembly by statute. The home rule retailers' occupation tax is an example of this type of tax. *Id. at* ¶¶ 73 – 79.

The third type of tax revenues available to home rule units are revenues from taxes imposed by a home rule unit by virtue of its own constitutional taxing authority, not a statute. The Illinois Constitution grants home rule units of government the power to tax. Ill. Const. 1970, art. VII, § 6(a). With regard to these types of home rule taxes, home rule units need not look to a statute for taxing authorization. Rather, the power to tax emanates from the voters of the State through the adoption of the Constitution, not by the General Assembly. *Id. at* ¶ 89.

The Appellate Court found that the only tax revenues that were restricted by the lockbox Amendment were revenues that derived from the first two types of taxes – the taxes that were authorized by the General Assembly by statute. After extensively analyzing the confusingly-written Amendment and its legislative history, the Court concluded that the “[t]he Amendment does not sequester revenues from transportation-related taxes spent by home rule units pursuant to their independent constitutional spending power.” *Id. at* ¶ 160. Accordingly, the revenue collected by Cook County from the imposition of the Cook County Home Rule Taxes was not covered by the Amendment and thus the County was free to spend those revenues as the County independently determined.

The case is a significant victory for home rule units of government in Illinois. Constitutional home rule taxing power is broad and allows myriad of different transportation-related revenue options for home rule units. In addition to the specific County taxes at issue in this case, other transportation-related home rule taxes in use around the state include taxes on transportation network companies and automobile renting operations, to name just a couple. Under the Appellate Court's decision, revenues from these taxes are not sequestered by the Safe Roads Amendment and the home rule units imposing these taxes retain full control of how and for what purposes the revenues will be used and allocated.

The plaintiffs have not yet indicated whether they intend to appeal. For more information and to discuss in greater detail the impacts of this important decision, please feel free to reach out to any Elrod Friedman attorney.

Elrod Friedman LLP is a premier land use, government, and real estate law firm established in February, 2020. Please visit our website at www.elrodfriedman.com to learn more about our public and private sector law practices.