

## ***Michigan Supreme Court: City Can Levy Tax to Pay for Environmental Claim***

The Supreme Court of Michigan has held that a city's property tax levy, imposed to pay for the city's liability for contaminated real estate sold to a business, is not unconstitutional under the Headlee Amendment.

In 1984, the city of Hamtramck sold property to Freezer Services of Michigan under a redevelopment plan. Under the sale agreement, the city warranted that the site was not contaminated with toxic substances. After the sale, Freezer Services discovered the property was contaminated and sued the city. The City and Freezer Services settled the case for approximately \$3 million.

After the settlement, the City imposed a levy of 30 mills on property owners' 1994 tax bills. One property owner, American Axle & Manufacturing, Inc. (American Axle) objected to the levy and petitioned the Michigan Tax Tribunal for a refund on the ground that the levy violated the Headlee Amendment to the Michigan Constitution. The Tax Tribunal agreed with American Axle and ruled that Hamtramck's levy was unconstitutional. On appeal, the Court of Appeals affirmed the Tax Tribunal's ruling. The City appealed to the Michigan Supreme Court.

The Supreme Court analyzed whether the Headlee Amendment prohibited the City's levy. The Headlee Amendment provides in part that:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when the section is ratified, without the approval of a majority of the qualified electors of that unit of local government voting thereon.

Thus, unless authorized prior to the December 1978 constitutional amendment, no new property taxes may be levied unless approved by the affected voters. Nothing in Hamtramck's city charter authorized the challenged levy. American Axle argued that the City should not be allowed to levy additional taxes to pay for the settlement if the local voters had not approved the millage, pointing out that the millage was not part of the city charter prior to December of 1978.

The Court noted that for a tax levy to have been "authorized by law" before 1978, does not mean the tax had to actually be levied before December 1978. Rather, the Headlee Amendment requires only that a local government have the *power* to levy the tax before the Amendment was ratified, even if the local government had never before levied the tax.

The court then found that Section 6093(1) of the Revised Judicature Act (RJA) provides for tax levies by municipalities to pay for judgments against them:

Whenever a judgment is recovered against any township, village, or city . . . the assessing officer shall . . . proceed to assess the amount thereof with the costs and interests . . .

upon the next tax roll of such township, city or village . . . adding the total amount of the judgment to the other township, city, or village taxes.”

Section 6093(1) of the RJA *requires* city assessors or township supervisors to assess taxes to pay judgments, even if the increased taxes exceed other tax limitations. Thus, the Supreme Court found, Section 6093 of the RJA, which was in effect when the Headlee Amendment was enacted, provided the requisite authority to the City of Hamtramck to levy additional taxes to pay for the judgment against it, and reversed the Court of Appeals and the order of the Michigan Tax Tribunal.

***American Axle Manufacturing, Inc. v. City of Hamtramck***, 604 N.W.2D 330 (Mich. 2000).

This article was prepared by Stuart J. Weiss, an associate in our Environmental Department, and previously appeared in the March, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.