

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001238-MR

KENTON COUNTY, KENTUCKY

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 01-CI-00183

CITY OF COVINGTON;
CORPOREX REALTY & INVESTMENT CORPORATION;
REBECCA RETTENMEIER;
SECO ELECTRIC, INC.; JOSEPH E. SCHAMER;
AND GREATER CINCINNATI BUILDING AND
CONSTRUCTION TRADES COUNCIL

APPELLEES

OPINION
REVERSING AND REMANDING
** **

BEFORE: KNOPF, MILLER, AND TACKETT, JUDGES.

KNOPF, JUDGE: Section 181 of the Kentucky Constitution permits the General Assembly to confer upon any county, city, town, or municipal corporation the authority to impose occupational license fees. Pursuant to this mandate, KRS 68.197 authorizes every county with more than 30,000 inhabitants to enact occupational license fees at a percentage rate not to exceed one percent (1%) of an individual's income or a business's net profits. Kenton County enacted its first occupational license

fee in 1978, and subsequently added additional fees in 1981, 1987, and 1989. In 2000, Kenton County modified the tax rate of these fees, increasing some, decreasing others, and leaving the remaining fees unchanged. At the same time, Kenton County substantially increased the base income which is subject to the license fees.

KRS 92.280(2) also authorizes cities of the second through the sixth class to impose occupational license fees. This case involves the effect of a series of amendments to KRS 68.197 regarding mandatory credits against the county-imposed fees for taxpayers who are subject to the city-imposed fees. The City of Covington, the named residents of Covington, and businesses located in Covington, brought this action for declaratory judgment claiming a right to offset city occupational license fees against the increased fees imposed by Kenton County in 2000.

The trial court in this case found that an increase in the county fees constitutes the "imposition" of taxes as contemplated by KRS 68.197(4). Consequently, the trial court held that taxpayers of the county who also pay a city license fee shall be allowed to credit their city fee against their county fee. We conclude that KRS 68.197(4) requires an offset only in counties which initially imposed an occupational license fee after July 15, 1986, and not for tax increases enacted after that date. Hence, we reverse the trial court's summary judgment in favor of the appellee-taxpayers, and we remand this matter to the

trial court with directions to enter a judgment in favor of Kenton County.

This matter was submitted to the trial court on the following joint stipulations of fact:

1. Covington is an incorporated second class city in Kenton County, Kentucky.
2. Petitioner Rebecca Rettenmeier is employed by Petitioner Corporex Realty & Investment Corporation ("Corporex") in the City of Covington. Rettenmeier is subject to Covington and Kenton County's occupational license fees
3. Rebecca Rettenmeier is expected in 2001 to earn income from her employment with Corporex in excess of \$25,000.00, up to the Social Security maximum.
4. Corporex employs other taxpayers in Covington who are expected to earn in excess of \$25,000 at Corporex in 2001. Those employees are also subject to Covington and Kenton County's occupational license fees.
5. Corporex has a business situs in Covington, Kenton County, Kentucky and is subject to the Kenton County occupational license fees.
6. Kenton County has had a population in excess of thirty thousand (30,000) at all times relevant to this lawsuit.
7. Seco Electric, Inc. is a corporation that does business and employs persons in Covington, Kentucky.
8. Joseph F. Schamer is an employee of Seco and pays occupational license fees to both Kenton County and the City of Covington.
9. The Greater Cincinnati Building and Construction Trades Council is an employee organization whose members consist of tradesmen such as carpenters, laborers, plumbers and related trades. Many of its members pay an occupational license fee to both Kenton County and the City of Covington.
10. The Kenton County Fiscal Court,, in Ordinance No. 78-6-1 adopted an occupational license fee that was effective July 1, 1978. Ordinance 78-6-1 set a license fee rate of four tenths of one percent (0.4%) of (i) all salaries, wages, commissions, or other compensation earned by every person in Kenton County for work done or services performed or rendered in the County (hereinafter referred to as "an individual's income"); and (ii) the net profits of all businesses, professions, or occupations from activities conducted in Kenton County, except those exempted under state law (hereinafter referred to as "a business's net profits."). Ordinance 78-6-1 further provided that no more than \$100 would be withheld from an individual's income in a one-year period, and no business would pay

more than \$150 in tax on a business's net profits in a one-year period. Thus, the first \$25,000 of an individual's income, and the first \$37,500 of a business's net profits are subject to the occupational license fee established by Ordinance No 78-6-1. Ordinance No. 78-6-1 was adopted pursuant to KRS 68.197.

11. The Kenton County Fiscal Court in Ordinance No 220.8, adopted another occupational license fee that was effective January 1, 1981. Ordinance No. 220.8 set a license fee rate of one-tenth of one percent (0.1%) of (i) an individual's income; and (ii) a business's net profit. Ordinance No 220.8 further provided that as to this additional license fee of 0.1%, no more than \$25.00 would be withheld from an individual's income in a one-year period, and no business would pay more than \$37.50 in tax on a business's net profits in a one-year period. Thus, the first \$25,000 of an individual's income, and the first \$37,500 of a business's net profits are subject to the occupational license fee established by Ordinance No. 220.8.
12. The Kenton County Fiscal Court, in Ordinance No. 223.0, adopted another occupational license fee effective April 1, 1987. Ordinance No. 223.0 set a rate of one-twentieth of one percent (0.05%) of (i) an individual's income; and (ii) a business's net profits. Ordinance No. 223.0 further provided that as to the additional license fee of .05%, no more than \$12.50 would be withheld from an individual's income in a one-year period, and no business would pay more than \$18.75 in tax on a business's net profits in a one-year period. Thus, the first \$25,000 of an individual's income, and the first \$37,500 of a business's net profits were subject to the occupational license fee established by Ordinance No. 223.0.
13. The Kenton County Fiscal Court, in Ordinance No. 223.7, adopted another occupational license fee effective January 1, 1989. Ordinance No. 223.7 set a rate of three-tenths of one percent (.3%) of: (i) an individual's income; and (ii) a business's net profits. Ordinance No. 223.7 further provided that as to this additional license fee of .3%, no more than \$75.00 would be withheld from an individual's income in a one-year period, and no business would pay more than \$112.50 in tax on a business's net profits in a one-year period. Thus, the first \$25,000 of an individual's income, and the first \$37,500 of a business's net profits were subject to the occupational license fee established by Ordinance No 223.7.
14. On June 6, 2000, the Kenton County Fiscal Court passed, and the Kenton County Judge/Executive approved, Ordinance No. 225.19 relating to the County's occupational license tax. Ordinance No. 225.19 amended

Ordinance Nos. 78-6-1, 220.8, 223.0 and 223.7 in the following ways:

(a) the licence tax rate in Ordinance No. 78-6-1 was changed from 0.4% to 0.85%;

(b) the licence tax rate in Ordinance No. 223.7 was changed from 0.3% to 0%;

(c) the licence tax rates in Ordinance Nos. 223.0 and 220.8 were unchanged;

(d) the maximum individual's income and business net profits subject to an occupational license fee in each of the four Ordinances was changed from a maximum of the first \$25,000 of an individual's income and the first \$37,500 of a business's net profits, to the Social Security Maximum as defined by the Federal Government for all taxpayers.

15. As a result of Ordinance No. 225.19, the aggregate rate of the Kenton County occupational tax rate was increased from eight and one-half tenths of one percent (.85%) to one percent (1%). Ordinance No. 225.19 was to take effect on January 1, 2001.

16. On November 8, 2000, prior to the effective date of Ordinance No. 225.19, the Kenton County Fiscal Court passed, and the Kenton County Judge/Executive approved, Ordinance No. 225.25, which amended Ordinance No. 225.19 in the following ways:

(a) it changed the rate under Ordinance No. 78-6-1 from .85% to .7403%;

(b) it changed the rate under Ordinance No. 220.8 from .1% to .0731%;

(c) it changed the rate under Ordinance No. 223.0 from .05% to .0366%[;]

(d) it made no changes to the maximum individual's income and business's net profits subject to an occupational license fee under each of the foregoing Ordinances, defined in Ordinance No 225.19 as the Social Security Maximum.

Ordinance No. 225.25 took effect January 1, 2001.

17. The Social Security Maximum is determined pursuant to 42 U.S.C. § 403. The Social Security Maximum for the past five years is as follows:

<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
\$65,400	\$68,400	\$72,600	\$76,200	\$80,400

18. The aggregate change in Kenton County's occupational license fees since January 1, 2001, is from a rate of .85%, with the maximum income and net profits subject to the tax of approximately \$25,000 of an individual's income and \$37,500 of a business's net profits, to a rate of .85% of income up to the Social Security Maximum for all taxpayers.

19. The City of Covington has enacted an occupational license fee of two and one-half percent (2.5%) of (i) all salaries, wages, commissions, or other compensation

earned by every person in Covington for work done or services rendered in Covington; and [(ii)] the net profits of all businesses, professions, or occupations from activities conducted in the city not specifically taxed under the general occupational tax ordinance. Under this ordinance, an individual pays 2-1/2% of his income up to the FICA maximum established for that year. A business's liability is limited to a maximum of \$40,000 with the exception of the following businesses, which pay the following flat occupational license fees:

Chattel loan companies	\$800
Telephone solicitors	\$100
Mining Operations	\$50,000
Barge Loading facilities	\$50,000
Coal Yard facilities	\$50,000

20. The FICA maximum as used in Covington's ordinance and the Social Security maximum as used in Kenton County's ordinance are the same number. Thus, for the year 2001, those individuals subject to the Covington occupational license fee will pay 2-1/2% of their income with a maximum income subject to the tax of \$80,400 to the City of Covington. Said individuals are also subject to occupational licenses fees as provided in Kenton County Ordinance No. 225.25 and, therefore, for the year 2001, will pay .85% of their income with a maximum income subject to the tax of \$80,400 to Kenton County, unless Petitioners and Intervening Petitioners are successful in obtaining a declaration of law that such individuals are entitled to credit city occupational license fees against county occupational fees.

As originally adopted in 1966, KRS 68.197 permitted counties of 30,000 or more, after approval by the voters, to enact the occupational license tax.¹ In 1978, the General Assembly added subsection (3) to the statute, which permitted city license fees to be offset against county license fees.² The General Assembly amended KRS 68.197 again in 1986, adding

¹ See Casey County Fiscal Court v. Burke, Ky., 743 S.W.2d 26, 27 (1988).

² In its entirety, KRS 68.197(3) provides: "Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may, upon agreement between the county and the city, credit their city license fee against their county license fee".

subsection (4) which made the tax credit provision mandatory. However, this amendment applied only to license fees "imposed . . . on or after July 15, 1986."³ In addition, the 1986 amendment eliminated the requirement of voter approval for adoption of an occupational license fee. In 2000, the General Assembly imposed a two-year moratorium on the mandatory offset required by KRS 68.197(4). However, the legislature specifically excepted "county licence fees enacted for the first time, or increased, on or after January 1, 2000."⁴

This case comes down to the meaning of the word "imposed" as used in KRS 68.197(4). The trial court concluded that the purpose of KRS 68.197(4) was "to protect the established revenue stream of counties and cities as it existed prior to July 15, 1986." Thus, the court reasoned that any fees imposed or increased by the county after that date are subject to an offset for license fees paid to cities within the counties. The trial court also implied that the increase in the tax base is also subject to the mandatory offset. The appellees agree with the

³ In its entirety, KRS 68.197(4) provides: "The provisions of subsection (3) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee."

⁴ In its entirety, KRS 68.197(5) provides: "On July 14, 2000, the provisions of subsection (4) of this section notwithstanding, city license fees not credited against county license fees enacted under this section or KRS 67.083 as of January 1, 2000, shall not be credited against county license fees. However, this exception shall not apply to county license fees enacted for the first time, or increased, on or after January 1, 2000. This provision shall expire July 15, 2002, unless otherwise extended by the General Assembly."

trial court that the word "imposed" as used in KRS 68.197(4) embraces license fees that are increased or enacted after 1986.

Kenton County argues that this interpretation conflicts with the legislative history of KRS 68.197. As noted in the stipulations of fact, Kenton County adopted an occupational licence fee in 1978. Kenton County takes the position that the 1986 amendments to KRS 68.197 envisioned a trade-off: eliminating the requirement of voter approval for adoption of an occupational license fee, but requiring an offset against city fees in counties which adopt license fees after 1986. Consequently, Kenton County contends that the mandatory offset provision of KRS 68.197(4) applies only to license fees which were originally imposed after July 15, 1986, and not to fees which were imposed prior to that date but subsequently increased.

In its brief, the County further argues that the provisions of KRS 68.197(5) apply only to license fees which were subject to the mandatory offset provision of KRS 68.197(4). Because it was never required to allow city license fees to be offset against county fees, Kenton County asserts that the exception from the offset moratorium for fees "adopted for the first time, or increased, on or after January 1, 2000", likewise does not apply to the tax fee and tax base increases enacted in 2000. However, all parties concede that KRS 68.197(5) has now expired by its own terms and is no longer applicable to this dispute. Therefore, we need not consider that section further.

This Court's duty in construing statutes is to ascertain and give effect to the intent of the General Assembly.⁵ Further, statutes are to be liberally construed to give effect to that intent.⁶ A word that has acquired a peculiar and appropriate meaning in the law shall be construed according to such meaning.⁷ When the words of a statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written.⁸ Also, as general propositions, taxing statutes must be strictly construed, and doubts about their meaning must be resolved in favor of the taxpayer.⁹

With these principles in mind, we find that Kenton County's interpretation of KRS 68.197(4) is more consistent with the intent of the entire statute than is the trial court's reading. Subsection (4) refers to "license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986," As Kenton County correctly states, KRS 68.197(1) grants to counties having a population of 30,000 or more the authority to adopt occupational license fees. But that section also permits such counties to impose thereafter

⁵ Beckham v. Board of Education, Ky., 873 S.W.2d 575, 577 (1994).

⁶ KRS 446.080(1).

⁷ KRS 446.080(4); Revenue Cabinet v. JRS Data Systems, Inc., Ky. App., 738 S.W.2d 828, 829 (1987).

⁸ White v. Check Holders, Inc., Ky., 996 S.W.2d 496, 497 (1999); McCracken County Fiscal Court v. Graves, Ky., 885 S.W.2d 307, 309 (1994).

⁹ Tennessee Gas & Transmission Co. v. Commonwealth, 308 Ky. 571, 215 S.W.2d 102 (1948).

additional fees up to one percent of an individual's income or a business's net profits. The use of the word "imposed" in KRS 68.197(4) could refer both to a county's initial adoption of an occupational license fee and to a county's adoption of additional or increased fees.

However, the history of KRS 68.197 resolves this apparent ambiguity. As originally enacted, KRS 68.197(2) provided that "[n]o order or resolution of the fiscal court *imposing* license fees pursuant to subsection (1) of this section shall be valid until it is approved by a majority of the voters of the county at an election called by the fiscal court." This section clearly required voter approval for the initial adoption of an occupational license fee, but not for any subsequent modification of the tax rates. Although the General Assembly eliminated the requirement for voter approval in the 1986 amendment, subsection (4) uses the similar phrase, "imposed under the provisions of subsection (1)" in the same manner as it was used in the prior version of KRS 68.197(2).

Furthermore, we agree with the trial court that one of the effects of KRS 68.197(4) was to protect the established revenue stream of counties and cities as it existed prior to July 15, 1986. However, the primary intent of the amendment was to preserve the authority of counties which had adopted occupational license fees prior to July 15, 1986.¹⁰ KRS 68.197 specifies how

¹⁰ Indeed, it seems unlikely that the six counties which had adopted occupational licence fees prior to 1986 would have supported the amendment if they had understood it to be a limitation on their authority to raise taxes which they were already authorized to impose.

a county with more than 30,000 inhabitants may adopt an occupational license fee. While the continuing power to modify the tax rates flows necessarily from the grant of authority to impose license fees for the first time, it does not exist independently of that authority. Consequently, the word "impose" as used in both KRS 67.197(1) and (4) refers to the fiscal court's initial adoption of an occupational license fee. We conclude, therefore, that the General Assembly intended to exempt counties which had already adopted occupational license fees as of July 15, 1986 from the mandatory offset provisions of KRS 68.197(4).

Therefore, we conclude that the trial court erred in finding that the taxpayers who pay license fees to a city within Kenton County must be allowed to credit their city fee against their county fee. They may do so only if there is an agreement between the cities and the county which allows for such an offset. In so finding, we recognize that the tax rate and tax base increases imposed by the Fiscal Court in 2000 require all residents of Kenton County to pay substantially more in taxes than they paid previously. In addition, city residents may be subject to the full amount of both city and county license fees. Nevertheless, KRS 68.197 does not require Kenton County to allow an offset. The appellees' sole remedy is to seek relief through the political process.

Accordingly, the judgment of the Kenton Circuit Court is reversed, and this matter is remanded to the trial court with

directions to enter a judgment in favor of Kenton County as set out in this opinion.

ALL CONCUR.

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