

PUBLICATION

Spotlight on Alabama: Supreme Court Permits Jefferson County to Continue Collecting Occupational Tax

December 15, 2010

The Alabama Supreme Court issued a ruling yesterday, December 14, 2010, permitting Jefferson County (in which the city of Birmingham is situated) to continue to collect its occupational tax. The decision gives some certainty to employers located in Jefferson County who had been faced with the dilemma of whether to continue to collect and remit the tax, which had been declared unconstitutional by the Montgomery County Circuit Court on December 1, 2010.

Employers located in Jefferson County now can confidently continue to withhold the occupational tax from employees and remit the taxes to Jefferson County as usual.

By way of background, on December 1, 2010, the Montgomery County Circuit Court issued an order declaring the Jefferson County Occupational Tax and Gross Business License Tax unconstitutional based on procedural flaws in the passing of that tax law. In the same order, the Circuit Court enjoined Jefferson County from collecting any further taxes but ruled that Jefferson County did not have to refund the taxes it had previously collected. Jefferson County filed a motion requesting the Circuit Court to modify the injunction to allow it to continue collecting the taxes until its appeal to the Supreme Court of Alabama has been resolved. On December 10, 2010, the Montgomery County Circuit Court denied Jefferson County's motion. However, on December 14, 2010, the Supreme Court of Alabama issued an order modifying the Circuit Court's injunction to allow Jefferson County to continue collecting the taxes during its appeal.

Under the Supreme Court's order, Jefferson County must segregate the occupational taxes it collects in an interest-bearing escrow account and keep detailed accounting records as to the collected funds. Employers located in Jefferson County should continue to withhold Occupational Tax from their employees' wages and remit the same until a final order is issued from the Alabama Supreme Court.

If you have any questions relating to your obligations to withhold the Jefferson County Occupational Tax, please feel free to contact one of the attorneys in the Firm's Tax Department.