



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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**U.S. SUPREME COURT DECIDES IN CITY'S FAVOR
AND ALLOWS TAX CLAIMS
AGAINST INDIA AND MONGOLIA TO PROCEED**

***RULES 7-2 THAT AMERICAN COURTS HAVE JURISDICTION TO HEAR CASE DESPITE
U.S. GOVERNMENT'S OPPOSITION***

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New York, June 14, 2007 – The U.S. Supreme Court ruled 7-2 today that real estate tax claims asserted by New York City against the governments of India and Mongolia can proceed to trial in district court, despite opposition of both the U.S. government and the foreign governments involved. The case involves the City's efforts to collect over \$18 million in property taxes on buildings that those countries use to house staff of their United Nations missions. Corporation Counsel Michael A. Cardozo personally argued the case in Washington, D.C., on April 24th of this year.

In its opinion today, written by Justice Clarence Thomas, the Supreme Court decided that U.S. courts have jurisdiction to hear and resolve the dispute between the City and two sovereign nations. However, it is now up to the district court to decide whether India and Mongolia actually owe the taxes.

"This is a critical decision for the rule of law," Corporation Counsel Cardozo said. "Without this ruling, the City had no other legal avenue under which it could obtain recourse. The justices took a proactive, groundbreaking stand in upholding the City's argument. Now India and Mongolia, as well as other countries, know the City 'means business' in pursuing appropriate taxes that are owed."

After attempting to settle these outstanding tax bills, the City Commission requested that the Law Department pursue these claims; the Commission, together with the New York City Department of Finance, worked with the Law Department to develop this case.

"We are gratified that the Supreme Court ruled that U.S. courts have jurisdiction in this matter. This will allow New York City to argue the merits of the pending tax dispute against India and Mongolia," said Marjorie Tiven, Commissioner, NYC Commission for the United Nations, Consular Corps and Protocol. "New York City welcomes the diplomatic community and provides many services, such as public safety, at no cost to foreign governments. We do, however, expect them to pay their fair share of taxes for portions of property used for non-diplomatic purposes."

"The City seeks taxes for non-diplomatic uses; in this case, housing for foreign government personnel who use City services daily," added Bradford Billet, Deputy Commissioner, NYC Commission. "These countries do receive an exemption for the property actually used for diplomatic purposes."

In its case, the City argued that its claims should be heard, because they fall within a federal law (the

Foreign Sovereign Immunities Act) that provides certain exceptions to the immunity from lawsuits typically granted foreign countries under international and domestic law. Both lower courts that initially heard the case – the U.S. District Court for the Southern District of New York (ruling on July 6, 2005) and the U.S. Court of Appeals for the Second Circuit (ruling on April 26, 2006) – upheld the City’s argument and decided that the courts did have jurisdiction to hear the case.

Those courts concluded, as the Supreme Court did in its ruling today, that there was in fact jurisdiction, because the City’s tax claims put at issue “rights in immovable property,” thereby fitting within an exception to immunity provided under the Foreign Sovereign Immunities Act, a federal statute that governs when foreign countries can be sued in U.S. courts. The Supreme Court’s decision backs the two lower courts, allowing the City’s case to return to U.S. District Court in New York City for hearing on the merits.

The Court wrote that, “Property ownership is not an inherently sovereign function,” and therefore, this dispute is subject to the jurisdiction of U.S. courts. “The practical effects of a lien,” the Court added, “bear out these definitions of liens as interests in property. As such, ‘a lien has an immediate adverse effect upon the amount which [could be] receive[d] on a sale, . . . constitut[ing] a direct interference with the property”

Joining Justice Clarence Thomas’s majority opinion were Chief Justice John G. Roberts Jr. and Justices Samuel Anthony Alito, Jr.; Ruth Bader Ginsberg; Anthony M. Kennedy; Antonin Scalia; and David Hackett Souter.

Justice John Paul Stevens wrote the dissent, joined by Justice Stephen G. Breyer.

The properties involved in the current Supreme Court case are located in Manhattan. India owns a building in midtown located at 235 E. 43rd St., and Mongolia owns a building on the Upper East Side located at 6 E. 77th St. India’s tax arrears date back to 1991 and Mongolia’s date back to 1980. As of Jan. 31, 2003, India owed approximately \$16 million in taxes and interest, and Mongolia owed approximately \$2 million.

The U.S. Government had opposed the City’s position. The United States Solicitor General had filed an amicus or “Friend-of-the-Court” brief in support of India’s and Mongolia’s argument that the courts lacked jurisdiction over the City’s claims. During oral argument in April, the Court expressed deep skepticism over the government’s assertions.

In particular, it focused on a 1985 position the U.S. Government took in a case pending in the U.S. Court of Appeals for the Third Circuit – one opposite from the position it now advocates. In that case, it had urged that Court to find jurisdiction over a case virtually identical to the City’s. As to the dispute’s merits (i.e. whether property taxes must be paid on staff housing), the U.S. Government has continuously advised U.N. missions that they must pay property taxes on such staff housing.

(Mr.) Sri Srinivasan of the Solicitor General’s Office of the United States represented the Government at oral argument, and John J.P. Howley, of the law firm of Kaye Scholer, LLP, argued on behalf of India and Mongolia.

In addition to Corporation Counsel Cardozo, Norman Corenthal, John Low-Beer and Brad Snyder of the New York City Law Department have also worked extensively on the case, as had Bradford E. Billet, Deputy Commissioner, NYC Commission for the United Nations, Consular Corps and Protocol.

Amicus curiae or “Friend-of-the-Court” briefs supporting the City was filed by the International Municipal Lawyers Association and the U.S. Conference of Mayors.

Reporters or editors seeking copies of the legal decision can contact the New York City Law Department’s at media@law.nyc.gov or (212) 788-0400. Those with questions for the NYC Commission for the United Nations, Consular Corps and Protocol can contact Jason Post in the City Hall Press Office, (212) 788-2958 or jpost@law.nyc.gov.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600’s, the Department’s 650-plus lawyers handle

more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov/law.

New York City hosts the largest diplomatic community in the world – the United Nations, 192 permanent missions to the United Nations and 107 consulates. The New York City Commission for the United Nations, Consular Corps and Protocol is the City's primary liaison to the United Nations, the missions, the consulates and the U.S. Department of State. The Commission, part of the Office of the Mayor, is the point of first contact for City officials with foreign governments and for diplomats on all City matters.

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