

# Legal Brief

## CAN A MUNICIPALITY LEVY TAXES RETROSPECTIVELY?

Generally, a municipality may only levy taxes (other than property rates) in terms of empowering legislation. The Municipal Fiscal Powers and Functions Act (Act 12 of 2007) outlines a procedure whereby a municipality may apply to the National Treasury for approval to impose new taxes.

Once the National Treasury approves the new tax, it can only be effected by a valid resolution of the municipal council. If a municipal council is not able to pass the resolution before the start of the financial year, can it pass the resolution after 1 July and make it applicable retrospectively? Section 24(2)(c)(ii) of the Municipal Finance Management Act (MFMA) provides that municipal tariffs can only be set in terms of valid council resolutions which are taken at the start of the financial year. Any subsequent council resolution on municipal tariffs can only deal with the imposition of tariffs for the next financial year.

It is important to note that while the MFMA allows municipal councils to pass adjustments budgets to accommodate amendments and/or changes to the approved budget, an

adjustments budget may not raise new tariffs or taxes (section 28(6)).

Section 177 of the MFMA provides, however, that the Minister of Finance may exempt a municipality from the application of the Act (including the provisions on the imposition of tariffs before the budget year starts). However, this cannot be done retrospectively as this provision is not intended to 'legalise' inadequacies after the fact.

Section 177(1)(b) provides that an exemption is for a specific period and is generally forward-looking. In addition, exemptions are only granted "where practicalities impede the strict application" of the Act. In other words, there should be no question about the validity of the resolution to impose the new tax. The inability of a municipal council to obtain the required majority for a decision to impose the new tax, for example, would not qualify as such a "practicality".

It is therefore important that if municipalities need to impose additional taxes, they do so in terms of valid resolutions before the start of the financial year. If it is found that a tariff is being collected on the basis of an invalid resolution, the municipality may be confronted with the argument that there is no liability to pay the tariff during that financial year.

## Practitioner's Helpdesk

### Have your legal questions answered for free!

The law on local government is complex and legal advice is expensive, but subscribers to the *Bulletin* have access to a free telephonic legal advice service.

Project researchers are on hand to answer legal questions. For a question to qualify for free legal advice, it should relate to the content of the *Local Government Bulletin* or to the framework legislation for local government, i.e. the Municipal Demarcation Act, Municipal Structures Act, Municipal Systems Act, Property Rates Act or Municipal Finance Management Act. The advice is not a full legal opinion. It is verbal advice, or, if necessary, a short letter of up to 500 words.

The issues addressed through the Practitioner's Helpdesk that may benefit other readers will inform the writing of a regular Legal Briefs section in the *Bulletin* (see above).

Please note that the Practitioner's Helpdesk is available only to paid-up subscribers or councillors and officials whose municipalities are paid-up subscribers. To have your questions answered, please contact Valma Hendricks at [vhendricks@uwc.ac.za](mailto:vhendricks@uwc.ac.za) or call 021 959 3707.

021 959 3707

