

## Tennessee tax on illegal drugs ruled unconstitutional

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The Tennessee Supreme Court ruled Friday that a state law taxing illegal drugs — dubbed the “crack tax” — is unconstitutional.

The court found in a 3-2 decision that the law exceeds the state’s taxing power because it isn’t a tax on “merchants, peddlers and privileges.” But the court also ruled that the law didn’t violate constitutional protections against self-incrimination, leaving open the possibility that the General Assembly could develop a new tax on drugs that would be constitutional.

The state Supreme Court decision stemmed from the 2005 arrest of Loudon County carpenter Steven Waters. Waters, a first-time offender who was then 51, was arrested for possession of 1,000 grams of cocaine he bought for \$12,000 in a reverse sting undercover investigation by the Knox County Sheriff’s Office.

The tax, approved by the legislature in 2004, took effect in January 2005 and has since generated \$10.4 million, State Department of Revenue spokeswoman Sophie Moery said. Tax stamps are available for anonymous purchase in various values at the Department of Revenue. Moery said 75 percent of the revenue goes to law enforcement in the community where it was collected. She said the Supreme Court decision stops collection of the tax. She said the question of making repayments is “going to be another thing we need to talk to the attorney general’s office about.”

A sizable amount of the tax money could be returned with the ruling, said Nashville attorney David Raybin. He has several clients who were forced to pay the tax, and he filed lawsuits immediately after the payments were made in the event this occurred.

One of those clients is former Williamson County Sheriff Ricky Headley, who paid \$13,000 in drug taxes immediately after his arrest — well before he was convicted, Raybin said.

“Fortunately he had the funds to pay the tax for it, but we didn’t have any choice,” Raybin said. “Otherwise they would’ve taken his car, his house.” Headley pleaded guilty last year to five misdemeanor charges attached to allegations that he fraudulently obtained prescription pain pills from a Nashville pharmacy.

Raybin said he and many other attorneys have had their cases put on hold, and he knows there are many other people who couldn’t afford to both pay the tax and hire an attorney. If you didn’t pay the tax right away, Raybin said, the state would go after your home or car or put a lien on your bank accounts.

“They wrap it up as a tax but it is in fact a punishment, because it’s so disproportionate to the value of the offense,” he said.

State Department of Revenue spokeswoman Sophie Moery said officials had just received the ruling and “right now what we are trying to do is figure out what our next steps are. Obviously we are disappointed.”

The ruling differed from reasoning of lower courts that struck down the tax because of the self-incrimination issue and because it seeks to generate revenue from illegal activity.

Justice Gary Wade acknowledged in the court’s opinion the “enormous burden” of using, possessing and selling illegal drugs places on Tennessee. “Our legislature is worthy of commendation for its effort to defray the costs incident to the struggle against illegal drugs,” Wade wrote. “Even under these circumstances, however, it is our duty to dispassionately apply the rule of law in a fair and impartial manner, unswayed by genuine public concerns, partisan interests, or fear of criticism.”

In dissent, Justice William Koch Jr. wrote that he believes the tax can be imposed in a constitutional manner on drug dealers.

“The illegal drug trade ... destroys individual lives and tears families apart,” Koch wrote. “It undermines our economic well-being by impairing productivity, requiring taxpayers to bear the expense of treatment and social services for the drug abusers and their families, and forcing the public to bear the collateral expenses of drug-related crimes.”

Chief Justice Janice Holder and former Chief Justice William M. Barker concurred with Wade’s opinion. Justice Cornelia A. Clark joined in the dissent.