

## 2,772 people could be eligible for 'crack tax' refunds in TN Class-action lawsuit could benefit those who paid drug levy

By Brian Haas • THE TENNESSEAN • September 28, 2010

When Williamson County Sheriff Ricky Headley was busted for illegal prescription pills, the state taxed him \$13,000 on the value of those drugs.

Headley paid the tax, resigned as sheriff, pleaded guilty to four drug counts and one count of official misconduct, and got just under five years' probation.

Then, he got his money back. Plus interest.

"I got every penny back," said his Nashville lawyer, David Raybin.

Tennesseans in a slow trickle have requested and gotten refunds from the state since the Tennessee Supreme Court struck down the so-called crack tax law in 2009. The state Department of Revenue has refunded \$3.7 million to 161 people, but 2,772 people who paid the tax have not gotten any money back.

The law required people who bought or sold illicit drugs to buy a tax stamp for the amount of drugs they had. If they didn't, state agents seized their property and raided their bank accounts until the state got whatever amount was owed.

"Most of them just don't know, and the state doesn't have any intention of letting them know, that they're eligible for a full refund," said Columbia attorney John Colley, who is leading a class-action lawsuit that would allow attorneys to identify and notify all people who paid the tax while it was still on the books.

Critics called the law absurd, but it went into effect in 2005.

It didn't take long for the state to go after drug suspects. Attorneys rattle off horror stories of surprise seizures with revenue agents chasing people down.

"They've broken children's piggy banks. They've taken properties that have been in families for generations," said Knoxville attorney Philip Lomonaco, the attorney who got

the law struck down. "They've actually chased people down at the courthouse to get gold chains. It's ruthless."

Though the public may have little sympathy for drug dealers and users, the tax seizures typically came before a suspect was even convicted.

The state took \$30,000 from one of Lomonaco's clients before he was convicted on a marijuana charge, and the man lost his house.

The state Supreme Court struck the law down in July 2009 as unconstitutional, saying the legislature overstepped its taxing authority. Basically, drug dealers and users didn't fit into the category of "merchants" or "peddlers" under state law, so they couldn't be taxed. By that time, the state had collected \$10.3 million from people. And every person who paid was eligible for a refund.

"Before the sun set on the Cumberland, I was filing claims," Raybin said. "I've been filing claims left and right, and they will give you a refund as long as you fall within certain parameters."

If Colley's class-action suit is successful before the state Supreme Court, everyone who paid the crack tax will receive a notice that they could be eligible for a refund. If it fails, they're on their own, and some who paid the crack tax — namely those who paid in 2005 and 2006 — won't be able to get refunds because the statute of limitations has passed.

The Supreme Court has not yet said whether it will hear the case.

Legislators in May passed a new version of the crack tax. The new law, which took effect July 1, targets only cases that involve drugs worth \$10,000 or more.

It also redefines drug dealers to be considered "merchants," like any other business in the state, and therefore taxable.

"We really didn't define what a dealer was," said state Rep. Charles Curtiss, D-Sparta, who helped sponsor the original and the new crack tax legislation. "We were making an assumption when we caught someone with X amount of marijuana or X amount of drugs that they were selling it."

Curtiss said the new law was drafted with input from the Tennessee attorney general's office to make it more resistant to challenges.

So far, nobody has been assessed the new tax. But attorneys are predicting a similar outcome the second time around once the tax agents come knocking.

"I don't think there's any way to make this kind of law constitutional," Colley said.

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