

Two judges lose last appeal on tax

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WASHINGTON - The 13-year effort by two federal judges to avoid paying Jefferson County's occupational tax failed Tuesday after a final decision by the U.S. Supreme Court.

"This means they start paying," said Jefferson County Commissioner Gary White. "I hope they've been setting it aside in some kind of interest-bearing account."

But U.S. District Judge U.W. Clemon, one of the two who protested the tax, said Tuesday he's not ready to cut a check until a separate lawsuit on the constitutionality of the occupational tax is resolved. That case is pending before the Alabama Supreme Court.

U.S. District Judges William Acker Jr. and Clemon have questioned the ½ percent income tax ever since its creation in 1987, saying it shouldn't apply to the federal judiciary. Their protest was to withhold tax payments, and the county sued them.

On Tuesday, the justices of the U.S. Supreme Court stuck by their 1999 decision, which overturned a lower court ruling in the judges' favor.

Back then, the justices found the occupational tax was a revenue-generating measure, like an income tax, and not an attempt to license or regulate federal judges.

Not surprised

The case was returned to the 11th U.S. Circuit Court of Appeals, and that court in 2000 decided that the judges had clear notice that being appointed to their positions could subject them to Jefferson County's tax on their salaries.

Clemon said he wasn't surprised when the high court let that decision stand Tuesday because a recent ruling in another case overturned the legal precedent on which he and Acker had relied.

He said the separate but related pending state case is key.

The Alabama Supreme Court heard arguments in April on a lower court's 1998 ruling that the tax was unconstitutional.

"We won't owe unless the Alabama Supreme Court overturns the circuit court decision which declared the tax to be unconstitutional," Clemon said.

It is possible the judges could eventually be forced to pay the tax retroactively.

Based on their annual salaries, the judges probably would owe less than \$700 in occupational taxes for one year.

Salaries have been adjusted over the years, so the county will have to calculate exactly what each judge owes. The formula also would have to prorate the tax to take into account that judges hear cases outside of the county, Clemon said.