Proceedings of Business and Economic Studies, 2026, Volume 9, Issue 10
https://bbwpublisher.com/journal/PBES
Online ISSN: 2209-265X
Print ISSN: 2209-2641

Limitation of Action in Land-Transfer Fee Cases After the Implementation of the Civil Code of the People's Republic of China

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Abstract: Whether the limitation of action shall apply to land-transfer fee cases is doubtful. Before the implementation of the Civil Code of the People's Republic of China, some courts held that the fees belong to the state assets that have not been given to a person or legal person to manage, so according to the judicial interpretation, the limitation of action shall not apply to land-transfer fee cases, while some courts have the opposite view. After the implementation of the Civil Code of the People's Republic of China, the aforementioned judicial interpretation has become invalid. The new judicial interpretation still does not specify that claims for recovery of land transfer fees are exempt from the statute of limitations. Although some local courts continue to follow previous practices and exclude the application of the statute of limitations, most courts adhere to the provisions of the Civil Code of the People's Republic of China and hold that the statute of limitations should apply. Even when natural resources authorities pursue recovery through administrative measures, they cannot entirely avoid this requirement in administrative litigation. Therefore, natural resources authorities should strengthen their efforts to recover land transfer fees and avoid exceptional thinking.

Keywords: Pursuit of land-transfer fees; Limitation of action; Civil litigation; Administrative litigation

Online publication: November 19, 2026

1. Introduction

Land-transfer fees constitute the primary consideration for a land use right holder to acquire such rights. In practice, given the substantial amounts involved in land-transfer fees, the needs of local governments for attracting investment, and the financing requirements of enterprises, the natural resources departments of local governments—acting as the grantors in land-transfer contracts—frequently permit enterprises to pay the land-transfer fees in installments when concluding such contracts. This practice has, in turn, led to instances where the transferee delays payment of the land-transfer fees for various reasons. Due to these complex factors, the natural resources departments may occasionally fail to effectively urge payment of the land-transfer fees;

subsequently, when seeking recovery through litigation, they may encounter defenses raised by the transferee, asserting that the statute of limitations has expired regarding claims against the natural resources department. Given the varying judicial approaches adopted by different people's courts across different periods, this paper will analyze relevant legislation and judicial precedents to draw conclusions and formulate recommendations.

2. Legislation and practice prior to the entry into force of the Civil Code of the People's Republic of China

2.1. Evolution of legal provisions

The statute of limitations refers to the legal effects arising from the passage of time—a legal regime whereby a specific factual state, if sustained within a prescribed statutory period, gives rise to corresponding legal effects [1]. In 1986, the "General Principles of the Civil Law of the People's Republic of China" (hereinafter referred to as the General Principles of Civil Law) first established the statute of limitations regime. Pursuant to those provisions, where the right of a natural resources department to collect land transfer fees was characterized as a civil right, the statute of limitations period for seeking protection of such civil right before a people's court shall be two years; however, if otherwise provided by law, those provisions shall prevail. Subsequently, no law explicitly excluded the claim for reimbursement of land transfer fees from the application of the statute of limitations; therefore, under the legislative framework of that era, such claims by land authorities were subject to the statute of limitations regime. In 2017, the "General Provisions of the Civil Law of the People's Republic of China" amended the statute of limitations period from two years to three years.

However, Article 170 of the "Notice of the Supreme People's Court on Issuing the Opinions on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (For Trial Implementation)" (hereinafter referred to as the "Civil Law Opinions") issued in 1988 set forth an exception to the application of the statute of limitations under the "General Principles of the Civil Law": "Where state property, which has not been authorized for operation or management by a citizen or legal person, is infringed upon, the statute of limitations shall not apply." This provision laid the groundwork for disputes in judicial practice.

2.2. Divergent perspectives in judicial practice

Consider, for example, the differing judicial approaches adopted by two courts during the same period:

In a case in Wuhan, Hubei Province, in 2018 [2], after the District Land and Resources Bureau filed a lawsuit, the transferee contended that, given that the statute of limitations had expired, the transferor had served a demand letter for land transfer fees, and upon receipt of such letter, the transferee explicitly asserted that no payment was required. The transfer fees in question did not involve any issues of operational management; therefore, the provisions of Article 170 of the "Civil Law Opinions" were inapplicable, and the statute of limitations had expired. The District Land and Resources Bureau, however, argued that land transfer fees constitute state-owned assets, and pursuant to Article 170 of the said Judicial Interpretation, the present case is not subject to the statute of limitations. The court upheld the position of the District Land and Resources Bureau.

In a case in Shenzhen, Guangdong Province, in 2017 [3], the court adopted a diametrically opposite view: it held that the act of executing a land-use right grant contract itself constituted the natural resources department exercising its authority over the operation and management of the state-owned land in question; furthermore,

the land in question did not constitute "state property not authorized for operation or management by citizens or legal persons." Accordingly, the land-transfer fees claimed by the natural resources department constituted a claim, which should be governed by the statute of limitations.

2.3. The intended purpose of the law and the appropriate course of action

An examination of the two aforementioned cases, in which opposing views were held, reveals that the core dispute centers on whether land and the corresponding land transfer fees constitute state property that has not been authorized for operation or management by citizens or legal persons. Proponents argue that: first, land transfer fees represent the consideration payable by the natural resources department on behalf of the state in granting state-owned land use rights, and such fees must be remitted to the state treasury in accordance with law; thus, they fall within the category of state property. Second, Article 50 of the "Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas" stipulates that "land use right transfer fees collected pursuant to these Regulations shall be included in the fiscal budget and managed as special funds, primarily for urban construction and land development. Specific measures for their utilization shall be separately formulated by the Ministry of Finance." Furthermore, Article 4 of the "Notice of the Ministry of Finance, the Ministry of Land and Resources and the People's Bank of China on Issuing the Measures for the Management of Income and Expenditure from the Assignment of the Right to Use State-Owned Land" (hereinafter referred to as the "Management of Income and Expenditure from the Assignment of the Right to Use State-Owned Land") provides that "all revenues and expenditures arising from land transfers shall be incorporated into the fiscal budget management of local governments. All revenues shall be remitted to the local state treasury, and all expenditures shall be allocated exclusively from such land transfer revenues through the local government fiscal budget; a strict separate accounting for revenues and expenditures regime shall be implemented. A dedicated account (i.e., a ledger) shall be established within the local state treasury for the specific accounting of land transfer revenues and expenditures." Pursuant to these regulations, the natural resources department, as the governmental agency responsible for land administration, exercises its statutory authority solely to grant state-owned land use rights on behalf of the state, and is entrusted with the collection of such land transfer fees. Upon collection, these fees are directly deposited into designated fiscal accounts; consequently, the natural resources department possesses only the duty to collect such fees, and lacks the authority or responsibility to utilize, operate, or manage them. Accordingly, the state has not authorized any individuals or legal persons to operate these land transfer fees [4]. Those who disagree contend that, first, the state has, through legislation, delegated the land management functions to administrative agencies; the transfer of land use rights constitutes an exercise of such land management functions by these agencies, and the land transfer fees—derived from such transfers—represent state property that has been lawfully delegated to administrative agencies for management; second, pursuant to the "the Management of Income and Expenditure from the Assignment of the Right to Use State-Owned Land," municipal and county-level financial departments and land and natural resources departments possess not only specific authority over the collection and administration of revenues from the transfer of state-owned land use rights, but also the right to directly utilize such revenues; accordingly, land transfer fees and related charges do not constitute "state property not authorized for operation or management by citizens or legal persons."

The author contends that the purpose of Article 170 of the "Civil Law Opinions" was to provide special protection for state-owned property, a decision driven by the national conditions of China at that time; the term

"authorization" used herein is, in fact, a linguistic formulation of "authorization" under a planned economy. If this provision were interpreted broadly, the transfer of land use rights would also constitute "authorizing citizens or legal persons to operate and manage state-owned property." Moreover, with the rollout of pilot programs for an entrusted agency mechanism governing the ownership of natural resource assets owned by the entire people [5], it would be difficult to assert that land resources constitute "state property not authorized for operation or management by citizens or legal persons." The fact that, following the entry into force of the "Civil Code of the People's Republic of China," the "Civil Law Opinions" have become obsolete, and similar provisions no longer appear in judicial interpretations, further supports this position.

3. Legislation and practice following the entry into force of the Civil Code of the People's Republic of China

3.1. Changes in statutory provisions

The aforementioned controversial "Civil Law Opinions" were repealed in 2020. In the same year, Article 1 of the "Provisions of the Supreme People's Court on Several Issues concerning the Application of Statute of limitations during the Trial of Civil Cases" (hereinafter referred to as the "Provisions on the Statute of Limitations") specified the circumstances under which the statute of limitations shall not apply: "(1) claims for payment of the principal and interest of deposits; (2) claims for payment of the principal and interest of government bonds, financial bonds, and corporate bonds issued to unspecified persons; (3) claims for payment of capital contributions arising from investment relationships; (4) other claims for performance of obligations to which the statute of limitations does not apply pursuant to law." It can be seen that the new judicial interpretation neither continues the provisions of the former "Civil Law Opinions," nor does it explicitly state that the right to claim reimbursement for land transfer fees is exempt from the application of the statute of limitations.

3.2. Continued use of divergent practices in practice

Following amendments to the law, courts in various jurisdictions have continued to adopt divergent practices in their adjudicative proceedings. In a 2020 case in Sanming City, Fujian Province [6], the natural resources department of Shaxian County also defended based on Article 170 of the "Civil Law Opinions." During the trial, it was argued that the "Civil Law Opinions" had become invalid. However, the court held that the land transfer fee falls under the "other creditor's rights requests that are not subject to the statute of limitations" as stipulated in Article 1 of the "Provisions on the Statute of Limitations." That is to say, although the "Civil Law Opinions" have become invalid, the court still considers the provisions therein as belonging to the category mentioned in Article 1 of the "Provisions on the Statute of Limitations." Moreover, recovering the land transfer fee also falls within the scope where the statute of limitations does not apply, as stipulated in the "Civil Law Opinions." Therefore, after the implementation of the "Civil Code of the People's Republic of China," recovering the land transfer fee is still not subject to the statute of limitations.

However, in a case in Xining, Qinghai Province, in 2021 [7], when the Xining Municipal Bureau of Natural Resources relied on Article 170 of the "Civil Law Opinions" as its basis for defense—and the court of first instance upheld this argument—the court of second instance explicitly held that, given the repeal of the "Civil Law Opinions" and the subsequent implementation of the Civil Code of the People's Republic of China, the natural resources authority shall comply with the statute of limitations provisions set forth in the "Civil Code

of the People's Republic of China." Nevertheless, the court of second instance determined that the statute of limitations shall be calculated from the date of implementation of the "Civil Code of the People's Republic of China," namely January 1, 2021; therefore, the Natural Resources Bureau's filing of the lawsuit in April 2021 did not exceed the statute of limitations.

3.3. Legislative and practical analysis following the implementation of the Civil Code of the People's Republic of China

First, under the provisions of legislation and judicial interpretations, the matters to which the statute of limitations does not apply have already been explicitly categorized into three types; as for the fourth catch-all category, there are currently no provisions, at least regarding the recovery of land transfer fees.

Secondly, the view adopted by the Fujian regional court clearly constitutes an improper presumption and an overextended interpretation of the judicial interpretation, whereas the view adopted by the Qinghai regional court accurately grasps both the "Civil Code of the People's Republic of China" and the latest judicial interpretations; however, its position regarding the "Civil Law Opinions" still adheres to a previously controversial view, and its reliance on the effective date of the "Civil Code of the People's Republic of China" as the starting point for the limitation of actions also contains flaws. Moreover, given that the three-year period following January 1, 2021, has already elapsed, it can no longer be argued that the limitation of actions has not expired within this three-year window.

Finally, it can be observed that local courts generally strive to uphold the practice of natural resources departments seeking recourse for land transfer fees—which constitute state-owned assets. While this approach is certainly commendable, as previously noted, there are no explicit provisions in current legislation, nor can it be readily justified from a jurisprudential standpoint. Given the progressive implementation of the "Civil Code of the People's Republic of China," it should now be conclusively established that natural resources departments may apply the statute of limitations regime when initiating civil actions to recover land transfer fees.

4. Whether the statute of limitations for civil litigation applies to the recovery of land transfer fees through an administrative decision

Some scholars argue that, under Article 2 of the "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Agreement Cases" issued in 2019—which classifies "agreements on the transfer of state-owned natural resource use rights" as administrative agreements—claims for land transfer fees may be pursued pursuant to the legal framework applicable to administrative agreements. Specifically, a natural resources authority may, by exercising its administrative powers and issuing an administrative decision, require the transferee to pay land transfer fees and other related costs within a specified period. If the transferee disagrees with such administrative decision, they may, in accordance with law, apply for administrative reconsideration or initiate administrative litigation to resolve the matter. Should the payment remain outstanding after the prescribed period, the natural resources authority may apply to a people's court for compulsory enforcement, thereby circumventing the application of the statute of limitations in civil litigation. In practice, there has long been debate over whether disputes arising from land use right transfer contracts should be resolved through civil or administrative litigation; in fact, both civil and administrative trial divisions of courts have accepted such cases, indicating that these contracts inherently possess both civil and administrative legal characteristics.

Under statutory provisions, administrative decisions shall not be subject to the limitation of civil action. However, in a case occurring in Guangzhou, Guangdong Province, in 2020 [8], the court of first instance held that: Since the land transfer fee is an entitlement arising from the transfer of real estate and is non-renewable, and it involves national interests; at the same time, due to the imperfect land management policies, before the original Ministry of Land and Resources and the Ministry of Supervision jointly issued the "71st Order" stipulating that all land should be subject to public bidding and auction as of August 31, 2004, the situation where land transferees were in arrears with the land transfer fee was particularly prominent. The land administration department was also negligent in exercising its right to claim compensation. If the two-year statute of limitations stipulated in the "Civil Law Opinions" were uniformly applied, the land transferees would thereby obtain huge improper benefits, seriously damaging national interests. Therefore, the court generally should support the action of the land administration department to claim the land transfer fee based on its authority. However, the penalty for breach of contract is different from the land transfer fee. The penalty for breach of contract is attached to the land transfer fee. When the land administration department claims the land transfer fee based on its authority, it also claims the penalty for breach of contract at the same time, which has an authority basis and is in line with the provisions of the "Management of Income and Expenditure from the Assignment of the Right to Use State-Owned Land" that "the penalty for breach of contract shall be deposited into the local treasury along with the land transfer income." When the land transfer fee has been fully paid, since the penalty for breach of contract belongs to the legally agreed terms between the parties and its civil factors are far greater than administrative factors, the independent claim for the penalty for breach of contract should follow the provisions of civil legal norms and apply the two-year statute of limitations stipulated in the "Civil Law Opinions."

The appellate court further pointed out that, regarding land transfer contracts executed a considerable period ago, where the land transfer fees have been fully paid, whether the independent claim for liquidated damages should be governed by the provisions of civil law norms (including the application of the statute of limitations) has already been determined in the legally effective administrative judgment (2019) No.834 of this Court, which held that such norms should apply; this case shall therefore be guided by that judgment. The judgment of the court of first instance had already provided a thorough analysis of the legality of the challenged claim-for-remedy decision, among other relevant issues, based on the facts and applicable laws and regulations. The court found that the claim for liquidated damages concerning the disputed land transfer fees had exceeded the statutory limitation period; furthermore, the former Guangzhou Municipal Land and Resources Bureau had failed to exercise its statutory authority to claim such remedies, and had avoided the application of the statute of limitations by issuing an administrative decision. Accordingly, the challenged claim-for-remedy decision shall be set aside, and such conclusion is well-founded.

It is evident that, even under the framework of administrative agreements, seeking recovery of land transfer fees through administrative decisions still cannot eliminate the risk of exceeding the statute of limitations.

5. Conclusion

First, the legal basis for the view that most claims for recovery of land transfer fees are subject to the statute of limitations is Article 170 of the "Civil Law Opinions," but this judicial interpretation has become invalid after January 1, 2021. Consequently, this provision no longer serves as a valid defense against the statute of limitations in litigation by natural resources authorities. Therefore, such authorities should abandon this

"exceptional mindset," instead establishing and refining robust mechanisms for collecting land transfer fees and other related payments, conducting regular audits and collection efforts, thereby mitigating adverse impacts on natural resources management and state-owned assets due to the expiration of statutory limitation periods.

Second, in cases where the statute of limitations has indeed expired, based on existing judicial precedents, natural resources authorities typically attempt to mount a defense from the following perspectives: First, in certain cases, it has been held that an administrative agency's claim for recovery of land transfer fees falls under the scope of Article 1(4) of the "Provisions on the Statute of Limitations," under which such claims are not subject to the statute of limitations; second, the land transferee's delay in paying the land transfer fees constitutes a breach of the contractual agreement between the parties, thereby causing substantial economic losses to the state; consequently, the administrative agency's claim for recovery of such fees constitutes a legitimate exercise of its statutory duties; finally, the administrative agency should actively demonstrate that it had already undertaken collection efforts prior to the commencement of the litigation—such evidence being critical to establishing whether the statute of limitations has been interrupted; if the claim for recovery of land transfer fees could once again be brought within the purview of the statute of limitations, it would significantly facilitate both the administrative agency's defense and its litigation strategy.

Third, given the particular nature of the "Contract for Grant of State-owned Land Use Rights" concerning land-transfer fees, the natural resources department may, pursuant to Article 2 of the "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Agreement Cases," characterize such contracts as administrative agreements, based on the scope of the "Contract for Grant of State-owned Land Use Rights." Where the transferee of the land use rights fails to pay the land-transfer fees or other related charges, the natural resources department may, by exercising its administrative powers, issue an administrative decision requiring the transferee to make such payments within a specified period. If the transferee objects to such administrative decision, they may, in accordance with law, apply for administrative reconsideration or initiate administrative litigation to resolve the matter. Should the payments remain outstanding upon expiration of the prescribed period, the natural resources department may apply to the people's court for compulsory enforcement; in this manner, it may, to a certain extent, circumvent the application of the statute of limitations doctrine, although it cannot entirely exclude the application of said doctrine.

Funding

Shenzhen Polytechnic University Research Fund "Research on the Improvement and Operation of Land Legislation for Promoting High-Quality Urban Development in Shenzhen" (Project No.: 6025310005S)

Disclosure statement

The author declares no conflict of interest.

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