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LUCAS COUNTY

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COMMON PLEAS COURT
BLAKE OLENDER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Joel Curcio, et al,

Plaintiffs,

-vs-

Kathleen Hufford, et al.,

Defendants.

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Case No. CI-2021-1522

Judge Lori L. Olender

OPINION AND JUDGMENT ENTRY

This cause is before the court on the city of Toledo's ("Toledo") Motion to Dismiss, filed on behalf of John Zawisza in his official capacity as tax commissioner of the city of Toledo. Also before the Court is the city of Oregon's ("Oregon") Motion to Dismiss filed on behalf of Kathleen Hufford in her official capacity as finance director of the city of Oregon. Lastly, Defendant Ohio Attorney General Dave Yost ("Yost") also filed a Motion to Dismiss. Toledo filed their Motion to Dismiss on June 11, 2021, Plaintiff Summer Curcio filed her brief in opposition on June 25, 2021, and Toledo filed their reply on July 12, 2021. Oregon filed their Motion to Dismiss on June 16, 2021, Plaintiffs Joel Curcio and Chris Ackerman filed their brief in opposition on June 25, 2021, Oregon filed their reply on July 16, 2021, and Plaintiffs filed a Sur-Reply on July 30, 2021. Yost filed his Motion to Dismiss on May 12, 2021 and Plaintiffs responded to that motion on May 21, 2021.

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I. Factual Background

Plaintiffs filed this complaint for Declaratory Judgment and Injunctive Relief on March 12, 2021. Plaintiff Joel Curcio is a resident of Springfield Township, Ohio and is employed in the petroleum refining industry with a usual place of business in the City of Oregon, Ohio.¹ Plaintiff Summer Curcio is a resident of Springfield Township, Ohio and is employed in the social services industry with a usual place of business in the City of Toledo, Ohio.² Plaintiff Chris Ackerman is a resident of Walbridge, Ohio and is employed in the petroleum refining industry with a usual place of business in the City of Oregon, Ohio.³ From March 15, 2020 to the time this complaint was filed each Plaintiff had worked entirely from his or her home in Springfield Township or Walbridge.⁴ Plaintiffs request this Court to declare that Section 29 of House Bill 197 (“H.B. 197”) of the 133rd Ohio General Assembly unconstitutional and void. Plaintiffs’ further request preliminary and permanent injunctions enjoining the collection of municipal income taxes from nonresidents on income earned outside of the Cities of Oregon and Toledo and a refund of all withholding or payments already collected on such income.

On March 14, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D in response to the public health threat posed by the Covid-19 virus. Executive Order 2020-01D declared a state of emergency in Ohio and authorized the Ohio Department of Health to issue “[g]uidelines for private businesses regarding appropriate work and travel restrictions, if necessary” and urged “[a]ll citizens . . . to heed the advice of the Department of Health and other

¹ Compl. at ¶ 9.

² Compl. at ¶ 10.

³ Compl. at ¶ 11.

⁴ Compl. at ¶ 12.

emergency officials regarding this public health emergency in order to protect their health and safety.”⁵

On March 22, 2020, the State Director of Health issued a “Stay at Home Order” to help prevent the spread of the Covid-19 virus. The “Stay at Home” order provides in part:

With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this order . . . All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations, all as defined below.⁶

All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses, including home-based businesses, may also continue operations consisting exclusively of employees or contractors performing activities at their own residence (i.e., working from home).⁷

On March 27, 2020 H.B. 197 enacted in an effort to “continue essential operations of state government and maintain the continuity of the state tax code in response to the declared pandemic and global health emergency related to COVID-19, to make appropriations, and to declare an emergency.”⁸ Specifically at issue here is Section 29 of House Bill 197 that provides:

Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718. of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee’s home, to which the employee is required to report for employment duties because of the declaration shall be deemed to be a day performing personal services at the employee’s principal place of work.⁹

Plaintiffs’ complaint asserts that Section 29 of H.B. 197 is an unconstitutional violation

⁵ Compl. at ¶ 12; See Executive Order 2020-01D

<https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/executive-order-2020-01-d>.

⁶ <https://coronavirus.ohio.gov/static/publicorders/DirectorsOrderStayAtHome.pdf>, ¶¶ 1-2; Compl. at ¶¶ 28-29.

⁷ *Id.*; Compl. at ¶ 30.

⁸ Am. Sub H.B. 197.

⁹ Am. Sub H.B. 197 § 29.

of the Plaintiffs' due process rights as secured by the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section I of the Ohio Constitution.¹⁰ The Complaint asserts that Toledo and Oregon do not have in personem jurisdiction of the Plaintiffs or in rem jurisdiction over the property being taxed and that there is neither a nexus nor fiscal relation between the cities and the income being taxed.¹¹ Finally, the Plaintiffs assert that because the Cities of Oregon and Toledo are taxing persons who neither live nor work within their boundaries, the Cities have violated and continue to violate the Plaintiffs' due process rights.¹²

II. Motion to dismiss

A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of the complaint.¹³ The complaint is to be construed in a light most favorable to the plaintiff, and material allegations are taken as admitted.¹⁴ In determining what causes of actions a plaintiff has alleged in a complaint, the court is required to look to the actual nature or subject matter pleaded in the complaint, rather than labels used to identify a particular cause of action.¹⁵ To sustain a motion to dismiss it must appear beyond doubt from the complaint that no set of facts exists which may entitle the plaintiff to the relief requested.¹⁶ The Court is required to examine only the four corners of the complaint.¹⁷ "Outside evidentiary materials may not be considered."¹⁸

¹⁰ Compl. at ¶ 37.

¹¹ Compl. at ¶ 38.

¹² Compl. at ¶ 48.

¹³ *Blausey v. VanNess*, 2011-Ohio-4680 at ¶9, citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 605 N.E.2d 378.

¹⁴ *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753.

¹⁵ *Funk v. Rent-All Mart, Inc.*, 91 Ohio St.3d 78, 81, 2001-Ohio-270, 742 N.E.2d 127.

¹⁶ *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753.

¹⁷ *Haas v. Village of Stryker*, 2013-Ohio-2476, ¶24.

¹⁸ *McCallister v. New London*, 2001 Ohio App. LEXIS 4683, *2, citing *Thompson v. Central Ohio Cellular, Inc.*, 93 Ohio App.3d 530, 639 N.E.2d 462.

III. Analysis

A. Defendant Ohio Attorney General Dave Yost

Defendant Ohio Attorney general Dave Yost was named in the Complaint in his official capacity as a necessary nominal party to the action pursuant to R.C. § 2721.12(A).¹⁹ R.C. § 2721.12(A) provides “[I]f any statute or the ordinance or franchise is alleged to be unconstitutional, the attorney general also shall be served with a copy of the complaint in the action or proceeding and shall be heard.” Plaintiffs’ Complaint does not state a claim for which relief can be granted. Plaintiffs are in agreement that the Attorney General should be dismissed as defendant in this action and that the Attorney General only needed to be served with the complaint under R.C. § 2721.12(A).²⁰ As of this time a stipulation of voluntary dismissal has not been recorded as to the Attorney General and this Court will find that Plaintiffs complaint fails to state a claim for which relief can be granted and finds Defendant Attorney General Dave Yost’s Motion to Dismiss well taken and granted.

B. Defendants City of Oregon and City of Toledo

Initially, “A regularly enacted statute of Ohio is presumed to be constitutional and is therefore entitled to the benefit of every presumption in favor of its constitutionality. This court has held enactments of the General Assembly to be constitutional unless such enactments are clearly unconstitutional beyond a reasonable doubt.”²¹ Further, “[S]tatutes are presumed to be constitutional and that courts have a duty to liberally construe statutes in order to save them from constitutional infirmities.”²² “Furthermore, it is incumbent upon the party alleging

¹⁹ Compl. at ¶ 17.

²⁰ See Plaintiff’s Response to Attorney General Dave Yost’s Motion to Dismiss.

²¹ *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 147, 128 N.E.2d 59 (1955).

²² *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, 908 N.E.2d 401, ¶ 12 (citing *Desenco, INC. v. City of Akron*, 84 Ohio St.3d 535, 538, 706 N.E.2d 323 (1999)).

unconstitutionality to bear the burden of proof, and to establish his assertion beyond a reasonable doubt.”²³ The burden of proof is significant because “[T]he General Assembly may pass any law unless it is specifically prohibited by the state or federal Constitutions.”²⁴

The Ohio General Assembly has broad powers in relation to intrastate taxation. “The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. “This Court fifty years ago concluded that “the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation,” and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies.”²⁵ “[a]nd the Constitution grants legislators, not courts, broad authority (within the bounds of rationality) to decide whom they wish to help with their tax laws and how much help those laws should provide.”²⁶

Under the Ohio Constitution the General Assembly has the authority to establish municipal income tax allocation classifications among Ohio Municipal Corporations.²⁷ The Ohio Supreme Court has also held that “[a] state's taxing jurisdiction may be exercised over all of a resident's income based upon the state's in personam jurisdiction over that person.”²⁸ The General Assembly may also pass legislation that puts limitations or restrictions on the power of municipalities to tax.²⁹ “[i]t is well settled that assessment of taxes is fundamentally a

²³ *Hilton v. Toledo*, 62 Ohio St.2d 394, 396, 405 N.E.2d 1047 (1980) (citing *State v. Renalist, Inc.*, 56 Ohio St.2d 276, 279, 383 N.E.2d 892 (1978)).

²⁴ *State ex rel. Jackman v. Court of Common Pleas*, 9 Ohio St.2d 159, 162, 224 N.E.2d 906 (1967).

²⁵ *Madden v. Kentucky*, 309 U.S. 83, 87-88, 60 S.Ct. 406, 84 L.Ed. 590 (1940) (internal citations omitted).

²⁶ *Fitzgerald v. Racing Assn.*, 539 U.S. 103, 105, 123 S.Ct. 2156, 156 L.Ed.2d 97 (2003)

²⁷ See Ohio Const., Art. XVII, § 3 & 7.

²⁸ *Corrigan v. Testa*, 149 Ohio St.3d 18, 2016-Ohio-2805, 73 N.E.3d 381, ¶ 31.

²⁹ *City of Athens v. McClain*, 163 Ohio St.3d 61, 2020-Ohio-5146, 168 N.E.3d 411, ¶ 21-23.

legislative responsibility, and "[t]his already deferential standard 'is especially deferential' in the context of classifications arising out of complex taxation law."³⁰

Here, Plaintiffs rely primarily on *Hillenmeyer v. Cleveland Bd. of Rev.* and *Willacy v. Cleveland Bd. of Income Tax Rev.* in making their due process challenge in that due process rights are violated when a municipality taxes income earned outside the taxing municipalities jurisdiction. *Hillenmeyer* and *Willacy* are distinguishable from the case at bar. Neither case cited addressed the same factual due process issues or the Ohio General Assembly's power to tax Ohio residents within Ohio borders, or to form a scheme in coordinating limitations for intrastate taxation.

Hillenmeyer involved the city of Cleveland taxing Hunter Hillenmeyer, a professional football player for the Chicago Bears, who was a resident of Illinois and was working for an Illinois Corporation.³¹ The question in *Hillenmeyer* was if the city of Cleveland's method of allocating income on a games-played basis violated the due process rights of NFL players.³² The court in *Hillenmeyer* found that "Cleveland's power to tax reaches only that portion of a nonresident's compensation that was earned by work performed in Cleveland. The games-played method reaches income that was performed outside of Cleveland, and thus Cleveland's income tax as applied is extraterritorial."³³ In reaching that decision, the court took part in a due process analysis consisting of:

In guarding against extraterritorial taxation, "[t]he Due Process Clause places two restrictions on a State's power to tax income generated by the activities of an interstate business." *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 272-273, 98 S.Ct. 2340, 57 L.Ed.2d 197 (1978). The first is to require "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to

³⁰ *Ohio Apt. Assn. v. Levin*, 127 Ohio St.3d 76, 2010-Ohio-4414, 936 N.E.2d 919, ¶ 35 (quoting *Park Corp. v. City of Brook Park*, 102 Ohio St.3d 166, 2004-Ohio-2237, 807 N.E.2d 913, ¶ 23.).

³¹ *Hillenmeyer v. Cleveland Bd. of Rev.*, 144 Ohio St.3d 165, 2015-Ohio-1623, 41 N.E.3d 1164, ¶ 1-3.

³² *Id.* at ¶ 5.

³³ *Id.* at ¶ 39.

tax.'" *Quill Corp. v. North Dakota*, 504 U.S. 298, 306, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), quoting *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 344-345, 74 S.Ct 535, 98 L.Ed. 744 (1954). The second restriction is that "the income attributed to the State for tax purposes must be rationally related to 'values connected with the taxing State.'" *Moorman Mfg. Co.* at 272-273, quoting *Norfolk & W. Ry. Co. v. Missouri State Tax Comm.*, 390 U.S. 317, 325, 88 S.Ct. 995, 19 L.Ed.2d 1201.³⁴

In applying the due process analysis used in *Hillennmeyer* to the case at bar the analysis seems to support the Defendants. Specifically, there is a nexus between the three Plaintiffs and to the state. Summer Curcio is subject to in personam jurisdiction to the city of Toledo in regards to her employment in the city of Toledo. The same is true for Joel Curcio and Chris Ackerman with the city of Oregon. Further, each Plaintiff would necessarily be dividing their time between the respective municipalities before and after the "Stay at Home" order was issued. Lastly, based on the text of H.B. 197, the tax code treated the three Plaintiffs as working the respective municipality, even if the work was being performed in Springfield Township or Walbridge.

As to the second prong, there is a rational relationship between the state of Ohio and the cities of Toledo and Oregon. The work performed by the Plaintiffs, whether that work is performed in Springfield Township, Walbridge, or the cities of Toledo and Oregon, the income derived from that work is rationally related to the state of Ohio.

Willacy involved Hazel Willacy who was employed by Sherwin Williams in Cleveland, Ohio.³⁵ Willacy received some compensation in the form of stock options during her employment.³⁶ Willacy subsequently moved to Florida and exercised some of those stock options, at which time Cleveland collected income tax on the exercised stock options value.³⁷ The question was "[w]hether Cleveland may tax the options as income when Willacy did not

³⁴ *Id.* at ¶ 40.

³⁵ *Willacy v. Cleveland Bd. of Income Tax Rev.*, 159 Ohio St.3d 383, 2020-Ohio-314, 151 N.E.3d 561, ¶ 1.

³⁶ *Id.*

³⁷ *Id.*

work or live in the city during the tax years at issue.”³⁸ The court in *Willacy* performed the two-prong due process analysis due to *Willacy* being a resident of Florida and if the income earned in Cleveland could be taxed.³⁹

The Due Process Clause establishes a "twofold test" for determining whether a taxing authority exceeded its jurisdiction. *T. Ryan Legg Irrevocable Trust v. Testa*, 149 Ohio St.3d 376, 2016-Ohio-8418, 75 N.E.3d 184, ¶ 64; *Hillenmeyer* at ¶ 40. Due process first requires "some definite link, some minimum connection" between the local taxing authority "and the person, property or transaction it seeks to tax." *Miller Bros.* at 344-345. Second, it demands the presence of a rational relationship between the income taxed by the jurisdiction and the income-producing activity or property within that jurisdiction. *See Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 273, 98 S.Ct. 2340, 57 L.Ed.2d 197 (1978). These inquiries involve distinct but related concerns: While the former focuses on the presence of either in personam jurisdiction over the taxpayer or in rem jurisdiction over her income or property, the latter focuses on how much of a nonresident's income the local taxing authority may fairly reach.⁴⁰

The Ohio Supreme Court found that the first prong is satisfied, regardless of residency, when a municipality imposes taxes on income earned from work that was performed in the jurisdiction, since there was a sufficient connection between the taxing jurisdiction and the person being taxed.⁴¹ Under the second prong the question is “[w]hether the income sought to be taxed is fairly attributable to the taxpayer's activities in the taxing jurisdiction.”⁴² The *Willacy* court found that Cleveland taking the income from the exercised stock options did not violate the due process clause because the income was earned from work that was performed in Cleveland.⁴³

The two-prong due process analysis performed in *Hillenmeyer* and *Willacy* is the same or substantially similar test when applied to the varying factual differences involved. When applying that two-prong test here, there is not a due process violation because the taxes

³⁸ *Id.*

³⁹ *Id.* at ¶ 29-33.

⁴⁰ *Id.* at ¶ 22.

⁴¹ *Id.* at ¶ 23.

⁴² *Id.* at ¶ 24.

⁴³ *Id.* at ¶ 26-27.

ultimately arise from work performed in the jurisdiction of the three Plaintiffs and there is a sufficient connection between the party being taxed and the taxing municipality.

The Court will next address the Ohio General Assembly's power to tax Ohio residents for income earned in Ohio and the ability of the General Assembly to set limitations between Ohio municipalities for an organized taxation scheme. Section 29 of H.B. 197 designated the employee's regular principal place of work as the location to impose income tax even if the employee was working from home in another municipality. At the time H.B. 197 was enacted, it was done in an effort to maintain uniformity and some certainty during the uncertainty of the Covid-19 pandemic. In the area of taxation, the Ohio Constitution specifically authorizes the General Assembly to limit municipal home-rule power. Article XVIII, Section 13 confers on the General Assembly the authority to pass laws to "limit the power of municipalities to levy taxes and incur debts for local purposes."⁴⁴ Section 40 of H.B. 197 states:

This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to continue essential operation of various facets of state government, maintain the continuity of the state tax code, and respond to the declared pandemic and global health emergency related to COVID-19. Therefore, this act shall go into immediate effect.

H.B. 197 compelled the cities of Toledo and Oregon to apply its tax code to individuals working from home in other jurisdictions or municipalities. The Supreme Court recently addressed the General Assembly's authority to limit the power to tax, holding:

The General Assembly's authority to limit the power of municipalities to tax allows it to broadly preempt municipal income taxes and to require that such taxes be imposed in strict accordance with the terms dictated by legislation passed by the General Assembly. Specifically, we agree with the Tenth District's determination that "[b]ecause Article XVIII, Section 13 permits the General Assembly to limit the municipalities' power to levy taxes, the General Assembly can require municipalities to enact legislation that accomplishes this aim."⁴⁵

⁴⁴ *City of Athens v. McClain*, 163 Ohio St.3d 61, 2020-Ohio-5146, 168 N.E.3d 411, *Id.* at ¶ 22.

⁴⁵ *City of Athens v. McClain*, 163 Ohio St.3d 61, 2020-Ohio-5146, 168 N.E.3d 411, ¶ 51.

Further, the Home Amendment Rule to the Ohio Constitution provides the power impose municipal taxes, subject to the limits and control of the General Assembly.⁴⁶ Following the holding in *Athens* and the power granted to the General Assembly through Oh. Const. Art. XVIII, § 13. This Court finds that Section 29 of H.B. 197 is a limitation on a municipalities reaching in levying taxes and ultimately provides a uniform rule regulating when a municipality may or may not tax. Section 29 directs municipalities to treat income earned as if it was earned at the principal place of business and limits the ability of another municipality to tax income if the person was working from home in a different municipality. Whether a municipality benefits or suffers losses based on the General Assembly's directed form of taxation, the municipality is ultimately at the direction and limitation of the General Assembly, in line with the Home Rule.

IV. Conclusion

This Court finds that H.B. 197 is constitutional under the General Assembly's broad intrastate powers of taxation over its residents. The Bill was enacted uniformly in an effort to legislatively address municipal taxing authority in a time of uncertainty by attempting to maintain tax revenues for municipalities. This Court also finds that the Plaintiffs' Due Process rights were not violated. For the above stated reasons, Defendant Attorney General Dave Yost's Motion to Dismiss is granted, Defendant city of Toledo's Motion to Dismiss is granted, and Defendant city of Oregon's Motion to Dismiss is granted. Due to this Court finding that H.B. 197 is constitutional, Plaintiffs' request for injunctive relief is denied and Count two of the complaint is moot.

⁴⁶ See Oh. Const. Art. XVII, § 13.


JUDGMENT ENTRY

It is therefore **ORDERED, ADJUDGED, and DECREED** that the city of Toledo's Motion to Dismiss is granted

It is therefore **ORDERED, ADJUDGED, and DECREED** that the city of Oregon's Motion to Dismiss is granted

It is therefore **ORDERED, ADJUDGED, and DECREED** that the Attorney General Dave Yost's Motion to Dismiss is granted

There is no just cause for delay.

A handwritten signature in cursive script, reading "Lori L. Olender", is written over a horizontal line.

Judge Lori L. Olender

December 15, 2021

cc:	Jay R. Carson	Dale Emch
	Robert Alt	John Bibish IV
	Melissa Purpura	Jeffrey Charles
	Allison Daniel	