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Court of Common Pleas

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By: JAY R. CARSON 0068526

Confirmation Nbr. 3106043

EKATARINA WOS, ET AL.,

CV 24 993917

vs.

Judge: KEVIN J. KELLEY

THE CITY OF CLEVELAND, ET AL.

Pages Filed: 13

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, EX REL. EKATERINA WOS)
15724 Sassafras Dr.)
Strongsville, Ohio 44149)
)
And)
)
DAVID STEFFES)
10591 Glen Drive)
North Royalton, Ohio 44133) CASE NO
)
and others similarly situated)
Plaintiffs,)
) JUDGE:
vs.)
)
THE CITY OF CLEVELAND)
601 Lakeside Ave.)
Cleveland, Ohio 44114)
)
And)
)
AHMED ABONAMAH, in his official)
capacity as Finance Director)
of the City of Cleveland)
601 Lakeside Ave., Room 104)
Cleveland, Ohio 44114)
)
Defendants.) COMPLAINT FOR
) DECLARATORY RELIEF AND
) WRIT OF MANDAMUS

Plaintiffs Ekaterina Wos and Davide Steffes, on behalf of themselves and on behalf of similarly situated individuals hereby states as follows:

NATURE OF THE SUIT

1. The novel coronavirus and the State of Ohio’s efforts to limit its spread forced Ohioans—and non-Ohioans who typically worked within the State—to make significant changes

to how they live and work. Though these changes were sudden and unexpected, by and large individuals and businesses responded by finding ways to continue to live and work safely.

2. Perhaps the most ubiquitous change across Ohio workplaces was the shift to working from home. Indeed, in many cases, the health orders issued by the State of Ohio made working from home the only option for some workplaces. In many cases, those workplaces discovered that—subject to some minor inconveniences—employees could still successfully perform their jobs remotely, without physically setting foot in their offices.

3. It is well-established, however, that where an employee performs his or her work has tax consequences. Specifically, courts have allowed municipalities to impose income taxes on nonresidents only to the extent that the income was earned for work performed within the municipality's limits. Indeed, in 2015, the Ohio Supreme Court has held that “[l]ocal taxation of a nonresidents’ compensation for services must be based on the location of the taxpayer when the services were performed.” *Hillenmeyer v. Cleveland Bd. of Rev.* (2015), 144 Ohio St. 3d 165, 2015-Ohio-1623, ¶ 43.

4. The constitutional basis for taxing nonresidents based on work performed in the municipality was that while performing work within the city, the employee enjoyed the benefits of the city's infrastructure and public safety services. There was thus a direct fiscal relation between the work performed within the city's limits and the city's public expenditures, which contributed to the employee's ability to work within the city.

5. In an attempt to ease the collection of municipal income taxes during the COVID-19 pandemic, in March of 2020, the Ohio General Assembly enacted a provision in uncodified law requiring that work performed by an employee at his or her home as a result of the health crisis

would be deemed to have been performed, for municipal tax purposes, at the employee's regular place of business. See Sec. 29, H.B. 197 (133rd General Assembly).

6. Numerous municipalities, including the City of Cleveland, opposed this change and argued in various court actions brought by taxpayers challenging the constitutionality of Sec. 29 of H.B. 197 that the inability to tax nonresidents for work performed outside of the taxing jurisdiction would be catastrophic to their finances.

7. In June of 2021, the General Assembly enacted H.B. 110, the State's biennial budget, and revised the H.B. 197 to clarify that while a municipality could—as a matter of administrative convenience—withhold municipal income tax for nonresident employees whose typical place of business was within City limits but who were continuing to work from home, it was not expanding the municipal power to tax to nonresidents. Thus, while nonresidents would have municipal income tax withheld when working remotely, for tax year 2021 going forward, the amount withheld was subject to a refund just as it had been before H.B. 197.

8. During tax year 2022, Plaintiffs, Ms. Wos, a Stongsville resident, and Mr. Steffes, also North Olmsted resident, worked from their homes for employers located within the City of Cleveland (the "City"). Pursuant to H.B. 110 and Cleveland Codified Ordinance §§ 192.06 (19)(n)(2) and 192.28, they each sought a refund from the City for municipal income taxes that had been withheld while working from home on the basis that such income is not subject to taxation by the City.

9. The City's codified ordinances provide that when the City owes a tax refund, the refund is subject to interest at a rate of the federal funds rate plus 5%, unless the refund is paid within 90 days after the taxpayer filed their respective returns. Cleveland Cod. Ord. §§ 192.28 (d), 192.92 (a)(4).

10. The City eventually agreed to provide their refunds, but only after unnecessary requests for additional information.

11. Even after the City agreed that a refund was due to each of them, it waited several additional months to actually pay the refunds to Ms. Vos and Mr. Steffes.

12. When the City finally paid those refunds, it did not include interest as required by Cod. Ord. §192.28 (d).

13. On information and belief, the City treated numerous other nonresident taxpayers the same way it treated Ms. Vos and Mr. Steffes—delaying refunds owed and failing to pay interest on those refunds.

PARTIES

14. Katherine Vos is a resident of Strongsville, Ohio. During the 2022 tax year, her employer's usual place of business is located within the City of Cleveland.

15. Plaintiff David Steffes is a resident of North Royalton, Ohio, with his principal place of work located in the City of Cleveland, and who throughout 2021 and 2022, worked from his home outside of the City of Cleveland.

16. Defendant Ahmed Abonamah is the Finance Director of the City of Cleveland, and in his official capacity is responsible for implementation of the City's tax ordinances and collection of municipal income tax and is the public official responsible for issuing tax refund payments and payments for interest thereon.

17. The City of Cleveland is a municipality which collects municipal income taxes and is obligated to timely refund certain tax receipts.

Recent Legislative Changes to Collection of Municipal Income Tax in Ohio

18. The City's income tax ordinance as written limits the taxation of nonresidents to work performed within the municipality. Specifically, the City's codified ordinances define taxable income for nonresidents as "all qualifying wages earned or received . . . by nonresidents of the City *for work done or services performed or rendered within the City or attributable to the City . . .*" Id. at §192.03 (b)(1)(*emphasis supplied*).

19. On March 28, 2020, the Governor signed into law H.B. 197, a measure designed to address various aspects of the health crisis. In that legislation, the General Assembly provided that employees working from home would be retroactively deemed to be working, for municipal income taxation purposes, at their typical work location.

20. Specifically, H.B. 197 provided that:

“[D]uring 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*, 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.*”

(H.B. 197 Sec. 29, as enrolled (*emphasis added*)).

21. Cities across Ohio treated Sec. 29 as an expansion of municipal taxation power, allowing them to tax nonresidents for work performed outside of the municipality.

22. Following constitutional challenges to Sec. 29, some members of the General Assembly publicly stated that they had never intended to expand a municipality's authority to tax—assuming that such an expansion was even constitution— but that they had merely intended to simplify collection of municipal tax for business during the COVID-19 pandemic while various state emergencies orders were in place.

23. On June 30, 2021, in the State's biennial budget, in response to the ongoing litigation and political pressure from voters, the General Assembly included a provision to clarify

and partially repeal Sec. 29. See House Bill 110 (134th General Assembly). Under H.B. 110, a municipalities could—as a matter of administrative convenience—continue to withhold municipal income tax for nonresident employees whose typical place of business was within City limits and who were continuing to work from home, but those employees could seek a refund for that withholding just as they had before H.B. 197.

24. In other words, the legislature allowed a rule of withholding, but made clear that municipalities lacked the ability to tax nonresidents based on work performed outside of the municipality.

25. Ms. Vos did not reside within the city of Cleveland in 2021.

26. During tax year 2021, she worked remotely from her home in Strongsville.

27. Nevertheless, because her employer’s principal place of business was located within the City, under H.B. 110, the City withheld \$1,294 of municipal income tax from her pay.

28. Under H.B. 110, and the law prior to H.B. 197, the withheld amount was subject to a refund.

29. On March 12, 2023, Ms. Vos filed a municipal tax return with the City, requesting a refund of the withheld amounts.

30. On July 24, more than three months after Ms. Vos filed her returns and request for a refund, the City responded requesting verification of Ms. Vos’s employment dates, which she provided on July 24, 2023.

31. On July 24, 2023, the same day that she provided the requested information, the City informed Ms. Vos by email that her “refund form [was] done, but because it is over \$1,000.00 they take longer. Management does not tell us when it will be released.”

32. Ms. Vos continued to contact the City regarding the status of her refund.

33. On August 8, 2023, roughly five months after she filed her return requesting a refund, the City notified Ms. Vos, that her check was “still waiting on signatures from upper management.” The City held the refund amount due to Ms. Vos until September 21, 2023.

34. Similarly, during 2021 and 2022, Mr. Steffes worked from his home in North Royalton, Ohio, for Stantec, a global company with an office located in downtown Cleveland.

35. Like Ms. Vos, Mr. Steffes filed a timely municipal tax return for tax years 2021 and 2022 with the City of Cleveland, requesting a refund for the days he worked outside of the City.

36. Throughout 2022, Mr. Steffes sought a refund for tax withheld in 2021.

37. The City of Cleveland’s Department of Taxation requested additional information from Mr. Steffes and his employer to confirm that he had not worked within the City during 2021.

38. Mr. Steffes and his employer timely responded to all of these requests from the City and has repeatedly provided statements verifying that Mr. Steffes—just like all other Stantec employees in Cleveland—worked remotely for all of 2021.

39. The City, however, declined to provide Mr. Steffes with a refund at first.

40. Indeed, the City has opined that to receive his refund, Mr. Steffes needed to provide some form of verified statement from someone who was actually working in Stantec’s Cleveland office in 2021, confirming that Mr. Steffes was not working out of the Cleveland office.

41. Such verification is, of course, impossible to provide because, as set forth above, ***no one*** was working out of Stantec’s Cleveland office in 2021!

42. Mr. Steffes eventually received his 2021 refund, in late 2023.

43. In addition, in the cases of Ms. Wos and Mr. Steffes, the City of Cleveland treated paid vacation days—as income accruing within the City of Cleveland, even though they were not working in the City of Cleveland on those days.

44. In other words, while they received a refund for days worked at home, they were taxed on their vacation and paid sick days.

45. Indeed, because those were vacation days, they would never have been scheduled to work at their employer’s typical place of work in the City on those days.

46. The City’s codified ordinances provide that when the City owes a tax refund, the refund is subject to interest at a rate of the federal funds rate plus 5%, unless the refund is paid within 90 days after the taxpayer filed her return. Cleveland Cod. Ord. §§s 192.28 (d), 192.92 (a)(4).

47. When the City finally paid, however, it did not include any interest on the refund.

48. Pursuant to the City’s Ordinance, Ms. Wos, Mr. Steffes, and others similarly situated, are due interest on the refund amounts that were paid more than 90 days after the taxpayer’s filing date.

CLASS ACTION ALLEGATIONS

49. Ms. Wos and Mr. Steffes seek to bring this case as a class action, pursuant to Rule 23 of the Ohio Rules of Civil Procedure. The proposed class is defined as follows:

All nonresident taxpayers, as defined in Cod. Ord. § 191.0301, who sought refunds of amounts withheld for municipal income tax who received a tax refund more than 90 days after filing his or her return. (Collectively, the “Class.”)

Expressly excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; and (b) all persons who properly execute and file a timely request for

exclusion from the Class.

50. Representative Plaintiffs reserve the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

Rule 23(A) Criteria

51. **Numerosity.** The City's failure to pay interest as required by its Codified Ordinances has harmed and continues to harm nonresident taxpayers. The members of the proposed Class are so numerous that joinder of all members is impracticable.

52. The exact number of Class members is unknown as such information is in the exclusive control of the City. However, due to the nature of the trade and commerce involved, Ms. Wos and Mr. Steffes believe the Class consists of easily thousands of taxpayers, geographically dispersed primarily throughout Northeast Ohio, but including taxpayers from other areas of Ohio as well as other States, a making joinder of all Class members impracticable.

53. **Commonality.** Common questions of law and fact affect the right of each Class member and common relief by way of damages is sought for Plaintiffs and Class members.

54. The harm that the City has caused is substantially common and uniform with respect to Class members. Common questions of law and fact that affect the Class members include, but are not limited to: (a) whether the City violated its ordinances by failing to pay refunds in a timely manner, (b) failing to include interest on refunds that it paid later than 90 days after the refund was sought, and (c) refusing to refund income earned outside of the City while the Class members were on vacation.

55. **Typicality.** The claims and defenses of the representative plaintiffs are typical of the claims and defenses of the Class. Specifically, the Class members seek payment of interest on municipal tax refunds paid more than 90 days after the filing of their returns, as required by the

City's Codified Ordinances, as well as taxpayer who were taxed on vacation days as if they had worked within the City.

56. **Adequacy of Representation.** The representative plaintiffs will fairly and adequately assert and protect the interests of the Class:

(a) Ms. Wos and Mr. Steffes hired attorneys who are experienced in prosecuting tax refund cases such as this and class action claims and who will adequately represent the interests of the class; and

(b) Representative Plaintiffs have no conflict of interest between themselves and the class members they seek to represent that will interfere with the maintenance of this class action.

Rule 23 (B)(3) Criteria

57. A class action provides a fair and efficient method for the adjudication of this controversy for the following reasons:

a. The common questions of law and fact set forth herein predominate over any questions affecting only individual Class members;

b. While the Class is so numerous as to make joinder impractical, the Class is not so numerous as to create manageability problems. There are no unusual legal or factual issues that would create manageability problems;

c. The City is located in Cuyahoga County, making this forum appropriate for the litigation of the claims of the entire Class; and

d. The claims of the individual Class members are small in relation to the expenses of litigation, making a Class action not only superior to other available options, but the only procedural method of redress in which Class members can, as a practical matter, recover.

COUNT ONE: ACTION FOR DECLARATORY JUDGMENT

58. The Plaintiffs restate the allegations of Paragraphs 1 through 57 and incorporate them as if fully rewritten here.

59. Ohio R.C. §2721.03 provides that “any person whose rights, status, or other legal relations are affected by a constitutional provision, statute . . . may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.”

60. Here, the Plaintiffs seek a declaration that pursuant to Cleveland Cod. Ord. §§s 192.28 (d), 192.92 (a)(4) that she is entitled to interest on her 2021 municipal income tax refund.

61. Ms. Wos and Mr. Steffes have had money withheld from their wages for income earned that was done outside of the City, to wit, vacation pay, and over which the City has no taxing jurisdiction as well as income earned outside of the City for which the City eventually provided refunds.

62. These refunds were made to Ms. Wos and Mr. Steffes, respectively, more than 90 days after they filed their respective tax returns, but in violation of the City’s ordinances, the City declined to pay interest on the refund.

63. Ms. Wos and Mr. Steffes have made timely requests to the City to pay the required interest on their refund, but the City has refused to do so.

64. Accordingly, Plaintiffs respectfully request that this Court declare that they are entitled to interest on their respective municipal income tax refunds.

COUNT TWO: WRIT OF MANDAMUS TO CITY FINANCE DIRECTOR

65. The Plaintiffs restate the allegations of Paragraphs 1 through 64 and incorporate them as if fully rewritten here.

66. Ohio Rev. Code § 2731.02, et seq., permits a party to seek a writ of mandamus to compel a government official to perform a mandatory, non-discretionary act.

67. As set forth above, Cleveland's Codified Ordinances require the City, through its Finance Director, to pay interest on municipal income tax refunds refunded more than 90 days after the tax return for the applicable tax year was filed.

68. Ms. Wos and Mr. Steffes filed municipal income tax returns seeking a refund on income earned outside of the City.

69. The City eventually provided the requested refunds, but did not include the interest required by Cod. Ord. 192.28(d).

70. On information and belief, Mr. Steffes' and Ms. Wos's experiences are representative of other Class Members, who received refunds long after the allotted time, and did not receive interest, and who were improperly taxed on vacation days.

71. Cod. Ord. 192.28(d) creates a mandatory, non-discretionary duty to pay interest on tax refunds paid more than 90 days after the filing of the applicable return.

72. Ms. Wos and Mr. Steffes, and the Class Members are thus entitled to a writ of mandamus ordering the City to make the required interest payment.

WHEREFORE, Plaintiffs pray for the following relief:

- (1) As to Count One, a declaration stating that representative Plaintiffs and the similarly situated Class members, are entitled to the payment of interest on their municipal income tax refunds;

- (2) As to Count Two, a writ of mandamus ordering the Ms. Abonamah and the City to make the required interest payment to Ms. Wos, Mr. Steffes, and the Class members; and
- (3) All costs and fees, including attorneys' fees, and any additional relief the Court deems equitable; and
- (4) Because this Complaint seeks declaratory judgment on a purely legal issue of pressing public importance, the Plaintiff respectfully requests that the Court set an expedited briefing and hearing schedule.

Respectfully submitted,

/s/ Jay R. Carson

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