

**IN THE COURT OF COMMON PLEAS****COUNTY OF SUMMIT**

KAREN KRESEVIC	)	CASE NO. CV-2023-01-0031
	)	
Plaintiff	)	JUDGE KELLY L. McLAUGHLIN
-vs-	)	
	)	
SHALEAH KIMMEL	)	<b><u>ORDER</u></b>
	)	
Defendant	)	
	- - -	

This matter comes before the court on Plaintiff Karen Kresevic's Complaint for Declaratory Relief, Defendant Patricia Chittock's Answer, and the parties' cross-motions for Summary Judgment. Because the Defendant is the tax commissioner for the City of Akron (and the named Defendant has changed multiple times over the course of this lawsuit), the court will refer to the Defendant as "the City of Akron."

**Facts and Procedural History**

Prior to July 2020, Ms. Kresevic worked at Akron City Hospital as a physician assistant, employed by Impatient Medical Services, Inc., an Alteon Health Managed company ("Alteon"). While working for Alteon, Ms. Kresevic physically worked in the City of Akron, and paid municipal income taxes to the City of Akron. She did not live in the City of Akron while working for Alteon, nor after her employment ended. In July 2020, Alteon terminated her employment.

Around June 2021, Ms. Kresevic reached a settlement with Alteon and received a one-time lump sum payment. The payment was "payable to [her] as W2 wage losses[.]" The settlement agreement further provided, "Legally

required tax withholdings and deductions will be deducted from the Payment.” Aleton withheld 2.5% in local income tax from the payment, and remitted 2.5% of the payment amount to the City of Akron in July 2021. Ms. Kresevic received a statement in June 2021 that itemized the taxes withheld from the payment.

On May 5, 2022, Ms. Kresevic requested a refund of her “Akron City 2021 tax withholding[.]”<sup>1</sup> This was the first communication from Ms. Kresevic to the City of Akron indicating she was requesting a refund or otherwise objecting to the City of Akron collecting municipal tax from the settlement. On July 11, 2022, the City of Akron denied Ms. Kresevic’s request for a refund.

Ms. Kresevic filed this action for declaratory judgment on January 5, 2023. She brings claims for declaratory relief that H.B. 197 is unconstitutional (Count One); and an action under R.C. 2723.01 (Count Two).

The parties now make cross motions for summary judgment.

#### Summary Judgment Standard

Rule 56(C) of the Ohio Rules of Civil Procedure provides:

A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.

*See also Anderson Dresher v. Burt*, 75 Ohio St. 3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264.

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<sup>1</sup> In her Complaint, Ms. Kresevic claims that she “requested the refund” on April 15, 2022. Her letter is part of the record, and it is dated May 2, 2022, and stamped, “RECEIVED MAY 05 2022.” Defendant also has provided an affidavit from Donald Smith, who avers that the City of Akron received Ms. Kresevic’s letter on May 5, 2022. She did not produce any summary judgement evidence to refute these dates.

It is the moving party that “bears the initial responsibility of informing the court of the basis for the motion and identifying those portions of the record which support his or her claim.” *Vahilla v. Hall*, 77 Ohio St.3d 421, 430, 1997-Ohio-259, 674 N.E.2d 1164. However, if this initial burden is met, the non-moving party has a reciprocal burden to respond, by affidavit or as otherwise provided in the rule, in an effort to demonstrate a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St. 3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264. Any doubts must be resolved in favor of the nonmoving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12, 13 Ohio App. 3d 7, 13 Ohio B. 8, 467 N.E.2d 137 (6th Dist. 1983).

### Law and Argument

The court will first address Count Two of Ms. Kresevic’s Complaint: “ACTION UNDER R.C. 2723.01 AND TO RECOVER ILLEGAL TAX.” The City of Akron argues that Ms. Kresevic’s claim is barred by the statute of limitations, and that recovery is barred because she voluntarily paid the tax.

### ***Statute of Limitations***

Ms. Kresevic brings her claim pursuant to R.C. 2723.01, which states,

Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions to recover them when collected, without regard to the amount thereof, ***but no recovery shall be had unless the action is brought within one year after the taxes or assessments are collected.***

(Emphasis added.) The City of Akron argues, “[b]ecause Ms. Kresevic filed her complaint on January 5, 2023, the taxes she seeks to recover had to have been collected by the City of Akron no earlier than January 5, 2022.” The City of Akron further argues that it collected the taxes in July 2021.

In response to the City of Akron's argument, Ms. Kresevic attempts to draw a "distinction between collections and withholdings." She argues that, "[a]n individual's tax liability is not determined – and a tax is not paid – until after she files her return."

The problem with Ms. Kresevic's argument is that it requires the court to equate "collected" with "paid." "If, as here, a term is not defined in the statute, it should be accorded its plain and ordinary meaning." *Rhodes v. New Philadelphia*, 129 Ohio St.3d 304, 2011-Ohio-3279, ¶17. With respect to taxes, "collect" is commonly defined as, "to gather or exact from a number of persons or sources." *Merriam-Webster.com*. 2025. <https://www.merriam-webster.com> (2025). The most applicable definitions of "pay" include, "to discharge indebtedness for," and "to give or forfeit in expiation or retribution." *Id.* The court finds that "collected" and "paid" have different meanings. Had the legislature intended to take Ms. Kresevic's view, it would have used the word "paid" rather than "collected."

The court finds that there is no dispute that the City of Akron collected the taxes at issue in this case in July 2021, more than one year prior to Ms. Kresevic filing her Complaint. Therefore, her claim is time barred.

### ***Voluntary Payment***

The City of Akron also argues that Ms. Kresevic voluntarily paid the taxes, and that voluntary payment bars an action to collect the taxes. R.C. 2723.03 provides, in part,

If a plaintiff in an action to recover taxes or assessments, or both, alleges and proves that he or the corporation or deceased person whose estate he represents, at the time of paying such taxes or assessments, filed a written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality

thereof, together with notice of his intention to sue under sections 2723.01 to 2723.05, inclusive, of the Revised Code, such action shall not be dismissed on the ground that the taxes or assessments, sought to be recovered, were voluntarily paid.

Interpreting this language, the Supreme Court of Ohio has held,

The provisions of R.C. 2723.03, relating to the filing of a written protest and notice of intention to sue, are mandatory and a failure to comply with them shall bar an action brought under R.C. 2723.01 *et seq.* to recover previously paid taxes or assessments.

*Ryan v. Tracy*, 6 Ohio St.3d 363, paragraph one of the syllabus (1983).

Ms. Kresevic does not dispute the applicable law; rather, she argues that she did not voluntarily pay the tax, and that she filed a written protest when she filed her 2021 tax return and requested a refund. However, it is undisputed that Ms. Kresevic did not file a written protest at the time the City of Akron collected the taxes, and she did not file her 2021 tax return until approximately ten months after the City of Akron collected the taxes. A written protest must be filed “at the time of paying the tax or assessment.” *Gottlieb v. S. Euclid*, 157 Ohio App.3d 250, 2004-Ohio-2705, ¶28. Even if the court were to find that the taxes were not “paid” at the time the City of Akron collected the taxes (and that Ms. Kresevic was not required to file a protest at the time the taxes were collected), Ms. Kresevic did not file a notice of intention to sue when she filed her 2021 tax return.

It is undisputed that: (1) Ms. Kresevic agreed that taxes would be deducted from her lump sum payment; (2) Ms. Kresevic received a notice in June 2021 that itemized the taxes withheld from the payment, including to the City of Akron; (3) Aleton withheld and remitted 2.5% of Ms. Kresevic’s payment to the City of Akron in July 2021; and (4) Ms. Kresevic did not make

any written objection or protest prior to filing her 2021 tax return in May 2022; and (4) Ms. Kresevic did not give notice of intent to sue when she filed her 2021 tax return. Based on these undisputed facts, the court finds that there is no dispute that Ms. Kresevic voluntarily paid the taxes, and did not make a written protest and give notice of intent to sue at the time that the taxes were remitted to the City of Akron.

Based on the above, the court finds that summary judgement as to Count Two of Ms. Kresevic's Complaint in favor of Defendant is appropriate. There are two independent basis for granting summary judgment: (1) the Complaint is time barred; and (2) Ms. Kresevic voluntarily paid the taxes and did not file a written protest and give notice of intent to sue.

Count One of Ms. Kresevic's Complaint seeks a declaratory judgment as to H.B. 197, "which for municipal income tax purposes deems income earned by persons working from home due to the health crisis to have been earned at the employee's principal place of work[.]" Specifically, she "seeks a declaration that the City's taxing of nonresidents on income earned outside of the Cities is unconstitutional on its face, as well as a declaration that the City's taxation of her income from the settlement is unconstitutional as applied to her." Based on the resolution of Count Two, and the facts of the case, the court finds that Ms. Kresevic does not have standing to request a declaratory judgment as to H.B. 197.

Ms. Kresevic also brings a Motion for Summary Judgment. Based on the above findings, the court DENIES her Motion for Summary Judgment.

### Conclusion

Having considered the pleadings, both Motions for Summary Judgment, the evidence, and the applicable law, the court finds that reasonable minds can come to but one conclusion, that conclusion is adverse to the Plaintiff, and Defendant is entitled to judgment as a matter of law. The court DENIES Plaintiff's Motion for Summary Judgment and GRANTS Defendant's Motion for Summary Judgment. The court DISMISSES the Complaint with prejudice.

This is a final, appealable order. There is no cause for delay.

IT IS SO ORDERED.



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JUDGE KELLY L. McLAUGHLIN

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