

**IN THE NINTH DISTRICT COURT OF APPEALS
SUMMIT COUNTY, OHIO**

KAREN KRESEVIC,	)	Case No. CA-31616
	)	
Plaintiff-Appellant,	)	On appeal from the Summit
	)	County Court of Common Pleas
vs.	)	
	)	Common Pleas No. CV-2023-01-
SHALEAH KIMMEL,	)	0031
	)	
Defendant-Appellee.	)	ORAL ARGUMENT
	)	REQUESTED

AMENDED BRIEF OF APPELLANT KAREN KRESEVIC

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STATEMENT OF THE ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred when it determined that Ms. Kresevic's claim is time-barred.

Assignment of Error No. 2: The trial court erred when it determined that Ms. Kresevic voluntarily paid the tax.

Assignment of Error No. 3: The trial court erred when it denied Ms. Kresevic's motion for summary judgment because the settlement proceeds are not taxable income under the City of Akron's tax ordinance or the Ohio Revised Code.

Assignment of Error No. 4: The trial court erred when it denied Ms. Kresevic's motion for summary judgment because there is no fiscal relation between the tax imposed on Ms. Kresevic and the City of Akron.

STATEMENT OF THE ISSUES PRESENTED

Ohio Revised Code 2723.01 provides that courts of common pleas may hear actions to recover illegally collected taxes. Ohio law is clear that, but for a specific statutory exception during the COVID pandemic, municipalities may not engage in extra-territorial taxation. *See, e.g., Hillenmeyer v. Cleveland Bd. of Rev.*, 2015-Ohio-1623; *Czubaj v. City of Tallmadge*, 2003-Ohio-5466 (9th Dist.). The statute of limitations for filing an action to recover an illegally collected tax is one year. **In the case of money withheld by an employer for potential municipal tax, did the trial Court err in determining that the statute begins to run when the money is withheld by the employer, rather than when the taxpayer is denied a refund of the illegally collected funds? Yes.**

Similarly, the trial court found that Ms. Kresevic could not seek the refund of the extraterritorial tax on her settlement proceeds because by allowing the payment to be processed through her former employer's payroll system, she voluntarily paid the tax. This notion that withholding equates to voluntary payment, however, is at odds with Ohio's statutes and Akron's ordinances governing the refund of improperly paid taxes. **Does money withheld by an employer as required by law constitute a voluntary payment by the taxpayer, when the taxpayer seeks a refund in due course? No.**

And most fundamentally, Ohio law has long held that a municipality may only

tax a non-resident for work performed within City limits. While HB 197 created a brief statutory exception to that rule during the COVID pandemic, the legislature repealed the extraterritorial tax exception in HB 110, which was effective for the 2021 tax year. **May a municipality tax a settlement payment to a non-resident made in exchange for a release claims, as if it was work performed within the City? No.**

STATEMENT OF THE CASE

This case involves the legality of the City of Akron's taxation of a settlement payment to Ms. Kresevic, a nonresident of the City of Akron. Following the termination of her employment with Alteon Health in July 2020, Ms. Kresevic reached a settlement with Alteon around June 2021. (T.d.. 1, Complt., at ¶¶ 19-23, 1/5/23) Alteon withheld 2.5% of local income tax from Ms. Kresevic's settlement payment and remitted that amount to the City of Akron. (Id. at ¶ 24). Ms. Kresevic requested a refund pursuant to the City's tax code, which the City denied in June of 2022. (Id. at ¶¶ 25-26). After the City of Akron denied Ms. Kresevic's 2022 request for a refund, Ms. Kresevic filed this action for declaratory judgment, six months later, on January 5, 2023, in the Summit County Court of Common Pleas. (Id. at ¶27).

In February 2023, Akrn filed its answer and moved to stay the case pending the Ohio Supreme Court's decision in *Schaad v. Adler*, 2024-Ohio-525. (T.d. 29,

Answer, 2/28/23; T.d. 30, Mot to Stay, 2/28/23). In March 2023, the trial court granted the motion to stay. (T.d. 31, Order, 3/23/23). Following the court's decision in *Schaad*, the parties filed cross motions for summary judgment in October 2024. In November 2024, the parties each filed oppositions to the respective motions for summary judgment. (T.d.s 41, 42, 51, 52, Cross MSJs and responses, 10/11/24-11/25/24). On July 21, 2025, the trial court denied Ms. Kresevic's motion for summary judgment and granted Akron's motion for summary judgment. (T.d. 59., Decision on MSJ, 7/21/25). The court dismissed the complaint with prejudice, noting that the dismissal was a final, appealable order and that there is no cause for delay. (Id.) Ms. Kresevic timely filed her notice of appeal on August 19, 2025. (T.d.,105, Not. of App., 8/19/25).

STATEMENT OF THE FACTS

During 2020, Ms. Kresevic was employed as a physician assistant by Alteon Health, working at Akron City Hospital, located in the City of Akron. (T.d. 1, Compl. at ¶19, 1/5/23) Historically, Ms. Kresevic had paid municipal income taxes to the City of Akron for the wages that she earned while physically working within the City of Akron. On July 24, 2020, Ms. Kresevic was terminated from her job. (Id. at ¶20).

Ms. Kresevic challenged the termination as wrongful, without cause, and in violation of her employment contract with Alteon. (Id. at ¶22). In June of 2021, Ms.

Kresevic reached a confidential settlement with her Alteon, and Ms. Kresevic was paid a certain sum pursuant thereto. (Id. at ¶23).

For the administrative convenience of Alteon and Ms. Kresevic, Alteon made the payment through its payroll system, meaning Ms. Kresevic received the settlement payment like she would receive a paycheck from her employer, including the tax withholding that the employer was required to make under R.C. Chapter 718 and the uncodified provisions of HB 110, which was allowed municipalities to withhold pay to remote workers subject to a refund if the taxpayer showed that the work subject to the tax had been performed outside of the taxing municipality. (T.d. 1, Complt., at ¶24). Accordingly, the City of Akron withheld municipal income taxes from Ms. Kresevic's pay from her settlement payment. The settlement, however, did not represent wages earned for work performed—at all—let alone for work performed in the City of Akron, but rather *for a release of her potential claims*. (T.d. 41, Pltf. MSJ at 2, 8, Ex. A, 10/11/24). Again, Ms. Kresevic had ended her employment with Alteon a year earlier and had not worked within the City since. (Id. at 3, Ex. A).

On April 15, 2022¹, Ms. Kresevic requested a refund on the municipal taxes withheld from the settlement payment from the City, explaining on the prescribed form that those payments were a settlement, not wages—let alone not wages earned

¹ The refund request is dated April 15, 2022, the day tax filings were due, but the trial court found that the submission date was May 5, 2022. The distinction does not matter, however, for purposes of this appeal and the statute of limitations.

for work performed within the City of Akron. (T.d. 41, MSJ, Ex. A). On July 11, 2022, Ms. Kresevic received a notice from the City of Akron denying her request for a refund. The letter cited the Ohio General Assembly's enactment of HB 197—a COVID era measure that allowed municipalities to tax nonresidents who worked remotely, and who, but for the pandemic, would be physically working within City limits—as the reason for the denial of the refund. (T.d. 1, Compl. at ¶27, 1/5/25). The denial stated that even though Ms. Kresevic had not been working—again, she had been terminated a year earlier—for purposes of the settlement, the City of Akron deemed that those payments were for work she had performed within the City of Akron. (Id.) Notably, the legislature had repealed the remote taxation provision of HB 197 in June of 2021 when it enacted HB 110. That legislation allowed municipalities to withhold income from nonresidents whose employer was located in the City, subject to refund upon a showing that the work to be taxed had been performed outside of the City. On July 22, 2022, Ms. Kresevic received a second notice from the City of Akron that she was being assessed municipal income taxes and funds were being withheld from the payments due to her even though she had not actually worked within the City—or at all—following her termination. (Id. at ¶28). On January 5, 2022, less than six months after she had been notified that the City would not grant her the requested refund, Ms. Kresevic filed this action under R.C. 2723.01 challenging the constitutionality and applicability of HB 197 to her

settlement and seeking a refund of the illegally held taxes. (Id.) The City argued successfully at the trial court level that Ms. Kresevic’s time to file an action under R.C 2723.01 began to run in June of 2021, when she received her settlement payment and the potential taxes were withheld by her employer, rather than on July 11, 2022, when she received notice that the City would not grant her refund. (T.d. 59, Order Granting MSJ, 7/21/25).

ARGUMENT AND LAW

I. Standard of Review

This Court reviews an award of summary judgment de novo, “applying the same standard used by the trial court.” *Rigby v. Fallsway Equip. Co.*, 2002-Ohio-6120, ¶ 8 (9th Dist.), citing *McKay v. Cutlip*, 80 Ohio App.3d 487, 491 (9th Dist.1992).

Summary judgment is appropriate under Civ.R. 56 when: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party.

Bevelacqua v. Tancak, 2025-Ohio-217, ¶ 14 (9th Dist.), citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977). The party moving for summary judgment has the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679 (1995), paragraph three of the syllabus, citing *Dresher v. Burt*, 75

Ohio St.3d 280, 292–293 (1996). Once the moving party satisfies its burden, the nonmoving party may not rest on the mere allegations and denials in the pleadings, but rather, must point to or submit some evidentiary material that shows a genuine dispute over the material facts exists. *See Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385 (1996); *Henkle v. Henkle*, 75 Ohio App.3d 732, 735 (12th Dist.1991). “A trial court does not have the liberty to choose among reasonable inferences in the context of summary judgment, and all competing inferences and questions of credibility must be resolved in the nonmoving party’s favor.” *Bevelacqua* at ¶ 14, quoting *Jones v. Soto*, 2023-Ohio-3107, ¶ 26 (9th Dist.).

II. Assignment of Error No. 1: The trial court erred when it determined that Ms. Kresevic’s claim is time-barred.

Standard of Review

This Court reviews an award of summary judgment de novo, “applying the same standard used by the trial court.” *Rigby v. Fallsway Equip. Co.*, 2002-Ohio-6120, ¶ 8 (9th Dist.), citing *McKay v. Cutlip*, 80 Ohio App.3d 487, 491 (9th Dist.1992).

Discussion

The trial court erred when it determined that Ms. Kresevic’s claim was filed outside of R.C. 2723.01’s one-year statute of limitations. The Ohio Revised Code provides two roads by which a taxpayer may challenge an overpayment of municipal income tax, R.C. 2723.01 and R.C. 718.19. *State ex rel. Rittman v. Spitler*, 2024-Ohio-5668, ¶¶ 12–13. Under R.C. 2723.01,

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.

In cases like this one, that challenge the legal authority of the taxing jurisdiction to impose any tax on the taxpayer, rather than contest the amount of a tax, R.C. 2723.01 is the appropriate path. *See State ex rel. Rittman* at ¶ 17 (applying 2723.01, rather than 718.19, because the claims that tax that was not properly authorized by legislative authority “fit squarely within the ambit of 2723.01”). In other words, Ms. Kresevic was not challenging an improper computation of the municipal tax imposed or a factual determination of where she earned the income; she was challenging the City’s authority to levy municipal income tax on a non-resident on the proceeds of settlement agreement. This is apparent from the City’s denial of the refund, which specifically stated that the it was denying the refund on the legal basis that the tax was authorized by HB 197.²

To the extent that the City would argue that Ms. Kresevic could have or should have brought her claims under R.C. 718.19, which has a three-year statute of limitation, neither the trial court or this Court is “bound by [the plaintiff’s] labels or characterizations of [her] claims.” *Id.* at ¶ 17; *see also Lingo v. State*, 2014-Ohio-

² It bears repeated that on July 11, 2022, when Ms. Kresevic received her denial letter, that the extraterritorial tax provision of HB 197 had been repealed for over a year and did not apply to the 2021 tax year. See

1052, ¶ 38 (“Regardless of how an action is labeled, the substance of the party’s arguments and the type of relief requested determine the nature of the action.”). Thus, if this Court finds that Ms. Kresevic’s complaint actually stated a claim for relief under R.C. 718.19, it should apply that statute’s three-year statute of limitations.

Regardless, the City’s contention that since R.C. 2327.01 refers to the “collection” of taxes, the statute began to run on June 14, 2021, the date Ms. Kresevic received her settlement payment, and her employer withheld potential municipal taxes, cannot be squared with R.C. 2327.01. This City, and the trial court, erroneously equate the “collection” of taxes, i.e., the actual payment of a tax liability, with the “withholding” of income for the payment of future taxes when due. The former is an actual payment, while the latter is contingent on a determination of tax liability and a potential refund. Again, when there is a statutory refund process in place, there is no illegal tax collected until the City refuses to grant the refund.

The City’s argument also ignores R.C. 2327’s purpose, which is to permit the recovery of illegal taxes. In this case, in light of the operation of HB 110 and R.C. 718.03, and Akron Mun. Ord. 104.01, which require withholding by employers but expressly allow for refunds, Ms. Kresevic would not have had any case to bring until the City denied her refund. The illegality of which Ms. Kresevic complains was not in the withholding of the tax, which is plainly permitted—indeed, required—by

statute, but the City’s retaining those funds after the taxpayer has used the City’s own channels to request a refund because the City lacked taxing jurisdiction over her.

The City’s tax ordinances and forms recognize the distinction between collections and withholdings. An individual’s tax liability is not determined—and a tax is not paid—until after she files her return. *See, e.g.,* Akron Mun. Ord. 104.02(13)(B) (defining income subject to taxation); 104.81(J) (excess withholding to be credited back to taxpayer); Akron Department of Finance, *Non-Resident Employee refund Application Form*, <https://cms2.revize.com/revize/akronoh/Documents/Departments/Finance/Income%20Tax/Residential/Non%20Rresident%20Refund%20Form%202024.pdf> (last visited Oct. 14, 2025). *Compare* Akron Mun. Ord. 104.091 (not designating withheld qualifying wages as being paid to the City) *with* Akron Mun. Ord. 104.093(I) (specifically designating amounts “deducted and withheld on behalf of a municipal corporation” for gambling winnings as being “treated as taxes paid for purposes of Section 104.10 of this chapter”). Because withholdings are refundable and contingent on the nonresident’s final tax liability, no tax is paid until that liability is determined and the refund is denied. Indeed, if the payment of tax withholding, rather than a determination of actual tax liability after the filing and processing of a return, amounted to the final and conclusive “collection” of a tax, the concept of a refund for overpayment would be nonsensical.

In fact, the City's tax ordinances governing tax refunds expressly states that "[f]or the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return." Akron Mun. Ord. 104.086(D). Simply put, one does not admit to tax liability simply because an employer sends money to the City as withholdings.

Likewise, the Ohio General Assembly recognized the difference between the collection of taxes and withholdings subject to refund in its HB 110 revisions to HB 197. Before HB 197, the law of municipal taxation was generally that a city could tax nonresidents only on work performed within the municipality. *See, e.g., Hillenmeyer v. Cleveland Bd. of Rev.*, 2015-Ohio-1623; Akron Mun. Ord. 104.02(13)(B) (defining income as "income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident *for work done, services performed or rendered or activities conducted in the Municipality*" (Emphasis added.)). During the COVID emergency, the General Assembly enacted HB 197, which, in order to simplify municipal taxation and allow cities to capture income from employees working from home rather than their usual workplace, allowed cities to deem work performed from home during the COVID emergency period as being performed at their usual workplace.

In June of 2021, however, the General Assembly revised 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 had not expanded municipalities’ power to tax non-residents. 2021 Am.Sub.H.B. 110. Thus, while non-residents would have municipal income tax withheld when working remotely for tax year 2021 going forward, the City was required to refund the withheld taxes just as it did before H.B. 197. Indeed, the City’s refund process and forms speak directly to recovering these excess payments through a refund. Again, given the refund infrastructure that has been in place for decades, a taxpayer would have no reason to believe that withholding, for which the taxpayer had requested and expected a refund, had actually been “collected” as a tax until that refund request was denied.

Ms. Kresevic followed the City’s process for obtaining a refund on the settlement payment withholding. She received the payment, and the withholding occurred on June 14, 2021. In the Spring of 2022, following the City’s processes to request a refund for the 2021 tax year, she requested a refund on the basis that the settlement payment had not been “for work done, services performed or rendered, or activities conducted in the Municipality,” Akron Mun. Ord. 104.02(13)(B). Rather, as the Settlement Agreement made clear, as consideration for waiving claims

against her former employer nearly a year after she had left employment.

Because the City did not deny that refund request until July 11, 2022, Ms. Kresevic would have had no basis to contest any “collection” of any tax on the settlement payment. Any claim brought in court for a refund while the refund request was still pending would not have been ripe. Yet in the City’s view, Ms. Kresevic’s time to bring a claim under R.C. 2723.01 would have expired in June of 2022, before she even received the denial of her refund request. This reading would place taxpayers who follow the City’s refund process in an unconscionable catch-22: A taxpayer would have no basis to bring a claim until the City denied their refund request, but if she followed the City’s process for requesting a refund when she filed her municipal tax return, in most cases, she would not know that she had a claim under R.C. 2723.01 until the time to bring a claim under the statute had passed. This is particularly the case here, where the City erroneously denied the refund as a matter of law based on HB 197, which was no longer applicable in the 2021 tax year. Because Ms. Kresevic challenges the legality of the tax—i.e., whether the taxing entity has the authority to impose the tax—R.C. 2723.01 was the appropriate mechanism.

The City’s contention that the statute begins to run when income is withheld, rather than when the refund request is denied and the withheld amount becomes the City’s property, cannot be squared with the statute’s purpose, the City’s ordinances,

or any notion of notice. Ms. Kresevic filed this action less than six months after her refund was denied and after significant correspondence with the City arguing for her refund. It is thus timely filed under the statute.

III. *Assignment of Error No. 2: The trial court erred when it determined that Ms. Kresevic voluntarily paid the tax.*

Standard of Review

This Court reviews an award of summary judgment de novo, “applying the same standard used by the trial court.” *Rigby v. Fallsway Equip. Co.*, 2002-Ohio-6120, ¶ 8 (9th Dist.), citing *McKay v. Cutlip*, 80 Ohio App.3d 487, 491 (9th Dist.1992).

Discussion

The lower court held Ms. Kresevic’s claims to be voluntarily waived because she requested a refund on Tax Day, 2022, rather than on the day her employer withheld 2.5% of her settlement and then remitted the amount to the city of Akron. Determining that Ms. Kresevic’s employer’s action of withholding the tax amount was a voluntary payment by Ms. Kresevic would be to read R.C. 2723.03 out of context with the statutory scheme and to read Ms. Kresevic’s actions out of context with reasonable taxpayer conduct. In fact, because Ms. Kresevic’s former employer paid the settlement through its payroll system, it was required to withhold for potential municipal taxation. *See* R.C. 718.03.

Any taxes on Ms. Kresevic’s income for the July 2021 lump sum payment, like any other income she received in 2021, would be finalized until after Ms. Kresevic

filed her estimated tax liability, i.e., her tax return. That her filing did not come until ten (10) months after the July 2021 settlement payment does not mean Ms. Kresevic voluntarily agreed with her employer's decision.

Indeed, to read 2703.03 to limit recovery so stringently would defeat any reasonable taxpayer's challenge under the traditional tax withholding scheme. The court should look to R.C. 2723.01 for context. There, taxpayers have 12 months to bring claims "enjoin[ing] the illegal levy or collection of taxes and assessments." R.C. 2723.01.

While Ms. Kresevic, in exchange for the severance payment, did agree to forbear from certain acts and from making certain claims, the Confidential Settlement Agreement contains an express acknowledgement that she had been paid for her past service and that the payment was made in exchange for the promises in the agreement—not for work done in the City.

And although Ms. Kresevic agreed that her employer would classify the payments as W2 "wages," that language was agreed for the convenience of her former employer and relates to the manner in which the payment was expensed by her former employer, not the timing of the expense, which was to eliminate a future liability rather than as an obligation due for past service. The settlement payment was thus not income for "for work done, services performed or rendered, or activities conducted in the Municipality." Akron Muni. Ord. 104.02(13)(B).

IV. *Assignment of Error No. 3: The trial court erred when it denied Ms. Kresevic’s motion for summary judgment because the settlement proceeds are not taxable income under the City of Akron’s tax ordinance or the Ohio Revised Code.*

Standard of Review

This Court reviews an award of summary judgment de novo, “applying the same standard used by the trial court.” *Rigby v. Fallsway Equip. Co.*, 2002-Ohio-6120, ¶ 8 (9th Dist.), citing *McKay v. Cutlip*, 80 Ohio App.3d 487, 491 (9th Dist.1992).

Discussion

Ms. Kresevic is entitled to summary judgment because the settlement payments are not taxable income under the City’s or Ohio’s codes. The City’s tax framework starts with the simple formula that municipal taxable income equals “income reduced by exempt income to the extent otherwise included in income . . . ,” and, in the case of a nonresident, as apportioned according to Section 104.42. Akron Mun. Ord. 104.02(19)(iii). In the case of nonresidents, “Income” is defined differently than for residents. Income for nonresidents is limited to income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident “*for work done, services performed or rendered, or activities conducted in the Municipality.*” (Emphasis added.) Akron Mun. Ord. 104.02(13)(B).

The Confidential Settlement Agreement makes clear that the payment to Ms. Kresevic was made in consideration of her waiver of any future claims, not as

compensation for past work performed within the City. *See* Paragraph A of Confidential Settlement Agreement (See, Confidential Settlement Agreement was filed under seal with the trial court). The settlement payment was thus not income “for work done, services performed or rendered, or activities conducted in the Municipality.” Akron Mun. Ord. 104.02(13)(B); R.C. 718.01(A)(1)(c), (B)(2) (defining “taxable income” and “income” for municipal tax purposes). It is thus not subject to taxation under the City’s ordinance.

In this case, the City denied Ms. Kresevic’s claim for a refund on the basis of Section 104.064(1)(H) of its Code of Ordinances, which addresses “exempt income,” providing that “awards for personal injuries or for damages to property from insurance proceeds . . . *excluding* compensation paid for lost salaries or wages or punitive damages.” Akron Mun. Ord. 104.064(1)(H). The City reads this provision to give the City an affirmative right to tax payments for “lost salaries or wages.” The problem with the City’s reasoning here is that it leapfrogs over the initial determination of whether the payment qualifies as “income” in the first place. Since Akron’s Code calculates Ms. Kresevic’s municipal tax liability based on her “income reduced by exempt income to the extent otherwise included in income . . . ,” Akron Mun. Ord. 104.02(19)(iii), the City must first establish that the payment is “income” before proceeding to the next step of determining whether it is “exempt income” that should be deducted. Again, Ms. Kresevic is a nonresident, being

compensated for actions—in this case, her forbearance from suit—performed outside of the municipality. Indeed, the Confidential Settlement Agreement makes clear that Ms. Kresevic was being paid for the release of her potential claims and not for work that had been performed within the City’s borders. Under Akron Mun. Ord. 104.02(13) and R.C. 718.02(B)(2), such payments are not “income” because they were not made “earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation.” R.C. 718.01(B)(2). Under the City’s interpretation, any settlement paid by any entity within the City to any nonresident entity would be taxable income to the nonresident entity. Such an interpretation cannot be squared with the ordinance, the statute, or common sense.

Further, and perhaps most importantly, this Court directly addressed the question of whether payment made to a nonresident for something other than work performed or services provided within the municipality qualifies as income. *See Czubaj v. City of Tallmadge*, 2003-Ohio-5466 (9th Dist.). In *Czubaj*, the City of Tallmadge, under an ordinance identical to Akron’s, sought to tax severance payments to a nonresident as income earned within the municipality. The City of Tallmadge argued that because the employer was located within the city and accrued a benefit from the former employee’s forbearance from working, the city had jurisdictional authority to tax the former employee’s severance payments. The *Czubaj* court noted that the word

“performed” in R.C. 718.011 (as applicable at the time) further substantiated the notion that personal service required some affirmative act rather than a mere forbearance. It cannot be said that consideration for the forbearance of personal service is compensation for personal services rendered in the context of the Revised Code. Further, the *Czubaj* court made clear that because Cjubaz was a nonresident and the payments were not being made for any services “actually rendered” within the municipality, they were not “taxable income.” *Id.* at ¶ 23. The same principle applies to Ms. Kresevic.

Pursuant to the Ohio legislature’s comprehensive rewrite of the municipal tax framework, former Section 718.011 of the Ohio Revised Code referenced in *Czubaj* was re-purposed, among other things, to address the peculiarities of apportioning municipal tax on professional athletes, professional entertainers, and public figures. The operative limitations that were relied on by the *Czubaj* court were relocated and reworked as modifications to the definition of income. Under the current Ohio Revised Code, “In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities *conducted in the municipal corporation*, including any net profit of the nonresident,” continue to be property taxable as at the time of *Czubaj*. (Emphasis added.) R.C. 718.01(B)(2). And, similarly, the *Czubaj* analysis of the italicized language

continues to be applicable under the current limitations imposed by the Ohio legislature.

It bears repeating, Ms. Kresevic, in exchange for the severance payment, agreed to forbear from certain acts and from making certain claims. The Confidential Settlement Agreement contains an express acknowledgment that she had been paid for her past service—outside of the Confidential Settlement Agreement—and that the settlement payment was made in exchange for the promises in the agreement. Although Ms. Kresevic agreed that her employer would classify the payments as W2 “wages,” that language was agreed to for the convenience of her former employer and relates to the manner in which the payment was expensed by her former employer, not the *timing* of the expense, which was to eliminate a future liability rather than as an obligation due for past service. Ms. Kresevic attempted to explain these circumstances to the tax review board; however, as noted above, without making a reasonable inquiry into whether the payments should be income for purposes of R.C. 718.01(A) and (B), Akron simply noted that verbiage in R.C. 718.01(C) prevents exclusion of settlement awards of “lost wages” from being subtracted from income as exempt income.

V. *Assignment of Error No. 4: The trial court erred when it denied Ms. Kresevic’s motion for summary judgment because there is no fiscal relation between the tax imposed on Ms. Kresevic and the City of Akron.*

Standard of Review

This Court reviews an award of summary judgment de novo, “applying the same standard used by the trial court.” *Rigby v. Fallsway Equip. Co.*, 2002-Ohio-6120, ¶ 8 (9th Dist.), citing *McKay v. Cutlip*, 80 Ohio App.3d 487, 491 (9th Dist.1992).

Discussion

Ms. Kresevic is entitled to summary judgment because there is no fiscal relation between the tax imposed on Ms. Kresevic and the City of Akron. Since the adoption of municipal income taxation of nonresidents, Ohio courts have held that to satisfy the Due Process Clause, the taxing authority must show that it had *in rem* jurisdiction over the work taxed. In other words, the work must have been performed within the taxing district’s borders. *See, e.g., Hillenmeyer*, 2015-Ohio-1623, at ¶ 42 (“Beyond *in personam* taxing jurisdiction over residents, local authorities may tax nonresidents only if theirs is the jurisdiction ‘within which the income actually arises and whose authority over it operates *in rem*.’”); *see also Willacy v. Cleveland Bd. of Income Tax Rev.*, 2020-Ohio-314, ¶ 22; *Thompson v. City of Cincinnati*, 2 Ohio St.2d 292 (1965), paragraph one of the syllabus (“[A] municipal corporation may levy a tax on the wages *resulting from work and labor performed within its boundaries* by a nonresident of that municipal corporation.” (Emphasis added.)).

The Ohio Supreme Court explained the reasoning behind this limitation in *Angell v. City of Toledo*, 153 Ohio St. 179 (1950), the first case to recognize any municipal power to tax nonresidents. Similarly, in the line of cases stretching from

Angell in 1950 through *Willacy* in 2020, the Ohio Supreme Court made clear that to satisfy due process, the *municipality imposing the tax*—not the State—had to have jurisdiction over the person or the thing taxed. In articulating this rule, the Ohio Supreme Court analogized the situation to States imposing income taxes on nonresidents. In *Angell*, the Ohio Supreme Court looked to the U.S. Supreme Court’s decision in *State of Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 439 (1940) and applied a “fiscal relation” test to municipal taxation. *Angell* at 185. Under that fiscal relation test, the question is whether the tax imposed “bears some fiscal relation to the protections, opportunities, and benefits” given by the taxing entity; and whether the taxing authority “has given anything for which it can ask for a return.” *Id.* For municipalities, this means that the city provided the *taxpayer* with municipal services. *See id.*; *McConnell v. City of Columbus*, 172 Ohio St. 95, 100, 173 (1961); *see also Vonkaenal v. City of New Philadelphia*, 2001 WL 81700, *3 (5th Dist. Jan. 23, 2021) (“[T]he mere fact that the City of New Philadelphia provides services to appellants’ employer, such as protection against fire and theft, is insufficient, to justify a tax upon appellants under the ‘fiscal relation’ test for work performed by appellants outside of the City of New Philadelphia.”).

Indeed, both the U.S. Supreme Court and the Ohio Supreme Court have long recognized that “the seizure of property by the State [or local government] under pretext of taxation when there is no jurisdiction or power to tax is simple confiscation

and a denial of due process of law.” *Corrigan v. Testa*, 2016-Ohio-2805, ¶ 15, quoting *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 342 (1954). Simply put, “[j]urisdiction is as necessary to valid legislative as [it is] to valid judicial action.” *Id.*, quoting *Miller Bros.* at 342. *Gloucester Ferry Co. v. Com. Of Pennsylvania*, 114 U.S. 196, 209 (1885); *see also City of St. Louis v. Wiggins Ferry Co.*, 78 U.S. 423, 430 (1870) (“Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra vires* and void.”).

A. *Schaad v. Alder* does not change the general prohibition on a municipal corporation levying a tax on money resulting from a settlement unrelated to work and labor performed within its boundaries.

In the court below, the City devoted substantial discussion to H.B. 197 and the Ohio Supreme Court’s decision in *Schaad v. Alder*, 2024-Ohio-525. This is understandable given the City’s belief that its jurisdiction to tax Ms. Kresevic’s settlement payment arises from that statute. H.B. 197 provided the lone (and temporary) statutory exception to the rule that “local authorities may tax nonresidents only if theirs is the jurisdiction ‘within which the income actually arises and whose authority over it operates *in rem*.” *Hillenmeyer*, 2015-Ohio-1623, at ¶ 42, quoting *Shaffer v. Carter*, 252 U.S. 37, 55 (1920). If *Schaad* had invalidated HB 197 as unconstitutional, that decision would have required the City (absent some other rationale which it has never articulated) to give Ms. Kresevic her refund, even if her settlement check were construed to be “work.” But *Schaad*, in declaring H.B. 197

valid, does not affect Ms. Kresevic's claim. Ms. Kresevic's Complaint and her Motion for Summary Judgment make clear that her is not for "work performed" and so the City cannot tax that payment. H.B. 197 is simply not relevant here—it was a limited stopgap measure enacted to address the special problem of municipal taxation of nonresidents created by pandemic stay-at-home mandates. 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.

(Emphasis added.) 2020 H.B. 197, Sec. 29.

In *Schaad*, the plaintiff had in fact been an employee performing personal services at his home in Blue Ash, Ohio. Subject to H.B. 197, those personal services were deemed to have been performed in and were thus taxable by the city of Cincinnati. Mr. Schaad challenged the legislature's authority to expand municipal taxation beyond the limits set in *Hillenmeyer* and *Willacy*. The Ohio Supreme Court held that because Schaad was an Ohio resident, the General Assembly had the authority to determine where his municipal tax locus was, and under the statute, could deem that personal services performed in one jurisdiction were—for municipal tax purposes—actually performed in another. But HB 197, by its own terms, limited

itself to personal services performed for an employer.

In this case, Ms. Kresevic ceased to be an “employee” when she was terminated on July 24, 2020. Almost a year later, she reached a settlement with her former employer, which was paid to her on July 11, 2021. As Ms. Kresevic explained in her summary judgment motion, the payment she received was not payment for her prior employment or for personal services performed in the City in 2020. It was made in consideration of her waiver of any future claims. See Exhibit A to Ms. Kresevic’s Summary Judgment Motion. Even assuming that H.B. 197 applied to the 2021 tax year, its text makes clear that it applies only to personal services performed for an employer. Simply put, waiving future claims as part of a settlement is not a “personal service” performed for an employer.

Further, this case is easily distinguishable from *Willacy*. In *Willacy*, the taxpayer received stock options as part of her compensation while she was working for her employer. *Willacy*, 2020-Ohio-314, at ¶ 9. When Ms. Willacy exercised those options after retirement and in another jurisdiction, the proceeds were properly subject to Cleveland municipal tax because she had actually earned the compensation while working in Cleveland. *Id.* at ¶¶ 11–13. In essence, Willacy received deferred compensation for work she performed in Cleveland. *Id.* at ¶ 27. But unlike Ms. Willacy, in this case, Ms. Kresevic was not receiving or realizing deferred compensation through the settlement agreement. The agreement makes

clear that the payment was not for any past wages and was not a payment to which she would be entitled without releasing her potential claims. See Exhibit A to Kresevic MSJ, at ¶¶ A, B. Again, the dispositive question in *Willacy* is also dispositive here: Is the income sought to be taxed fairly attributable to the taxpayer's activities in the taxing jurisdiction? See *Willacy* at ¶ 24. In *Willacy*, the income was derived from compensation that the taxpayer earned while working in the taxing jurisdiction. In contrast, in this case, Ms. Kresevic's settlement payment was made in consideration of her releasing certain claims unrelated to past wages, more than a year after she had left employment. Again, the facts in this case—payment for something other than work—are much more akin to those in *Czubaj*, 2003-Ohio-5466, at ¶ 17, where this Court noted that the word “performed” in R.C. 718.011 (as applicable at the time) further substantiated the notion that personal service required some affirmative act rather than a mere forbearance.

B. Beyond *Schaad*, H.B. 197 is irrelevant to Ms. Kresevic's settlement payment because H.B. 110 repealed H.B. 197's extraterritorial tax authorization for tax year 2021.

Even assuming that Ms. Kresevic performed some “personal service” for her employer by entering into a settlement agreement, H.B. 197 has no application here because the General Assembly repealed the extraterritorial taxation allowed by H.B. 197 when it enacted H.B. 110 in June of 2021. The relevant portion of H.B. 110 repealed Sec. 29 of H.B. 197 and returned municipal taxation to the status quo ante,

allowing withholding subject to a refund:

(D) On and after January 1, 2021, this section applies only for the purposes of municipal income tax withholding under section 718.011 of the Revised Code and for apportioning or situsing the employer's net profit under section 718.02 or 718.82 of the Revised Code and not for purposes of determining the location at which a nonresident employees work was completed, services were performed or rendered, or activities were conducted for the purpose of determining the employee's municipal income tax liability.

(Emphasis added.) 2021 Am.Sub.H.B. 110, Sec. 610.115–116. The facts are undisputed that Ms. Kresevic received her settlement in exchange for a release that she signed in June of 2021. Regardless of its facial constitutionality, H.B. 197 cannot serve as the basis for the City's taxation because it was repealed for tax year 2021 when Ms. Kresevic received her settlement payment.

It is worth noting that the legislative rubric in place for the 2021 tax year undercuts the City's statute of limitations argument and its argument that Ms. Kresevic somehow "voluntarily paid" municipal income tax on her settlement. Under H.B. 110, the City arguably had legal authority for withholding potential tax payments, pending Ms. Kresevic's request for a refund when she filed her tax return. Again, Ms. Kresevic had no objection to raise, or suit to file when the withholding occurred on June 14, 2022. Rather, she relied on the usual process and sought a refund of tax paid on activity conducted outside of the City in the time and manner recommended by the Revised Code and the City's ordinances and using the City's forms designed for that purpose.

* * *

Here, there is no dispute that the City withheld the municipal income tax in question from a settlement paid to Ms. Kresevic, a nonresident, nearly a year after she had performed any work within the City's borders. There is thus no fiscal relation between that payment and any benefits provided to Ms. Kresevic by the City. The imposition of the tax thus violates Ms. Kresevic's due process rights. The Court should therefore declare this tax illegal and unconstitutional as applied to Ms. Kresevic and order that the municipal tax withheld from her settlement be returned to her, with interest.

CONCLUSION

For the above reasons, and the reasons set forth in Ms. Kresevic's motion for summary judgment below and opposition to the City's motion for summary judgment, the Court should reverse the lower court's decision and find that Ms. Kresevic is entitled to summary judgment.

Respectfully submitted,

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October 16, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Brief of Appellant was served this 16th day of October 2025 via e-mail on:

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in Ninth District Local Rule 19(B)(2). This Brief is printed using Times New Roman 14-point typeface using Microsoft Word processing software and contains 7,048 words.

/s/ Jay R. Carson

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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	)	<u>ORDER</u>
	)	
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 court 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 payed municipal income taxes to the City of Akron. She did not live in the City of Akron while working for Aleton, nor after her employment ended. In July 2020, Aleton terminated her employment.

Around June 2021, Ms. Kresevic reached a settlement with Aleton 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[.]”¹ 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.

¹ 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.



JUDGE KELLY L. McLAUGHLIN

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