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Cleveland, Ohio 44113

Court of Common Pleas

BRIEF IN OPPOSITION
October 16, 2025 20:26

By: JAY R. CARSON 0068526

Confirmation Nbr. 3647403

EKATARINA WOS, ET AL.,

CV 24 993917

vs.

Judge: KEVIN J. KELLEY

THE CITY OF CLEVELAND, ET AL.

Pages Filed: 18

challenge to the constitutionality of that practice and thus not cognizable by any administrative agency.

In addition, the City's defense that any delay in providing the refunds owed was due to the Plaintiffs' failure to file timely "complete returns" fails as a matter of fact and law. The facts show that City was not processing the returns in a timely manner and that 90 days had already passed before the City even notified the Plaintiffs of any filing deficiency. An inquiry into whether the City had already missed the 90-day deadline before it even looked at the refund requests and to what extent any delay was caused by the Plaintiffs is necessarily a factual determination unsuited to summary judgment. But more fundamentally, Ohio courts have held as a matter of law that a tax return is "complete" for purposes of the interest clock when it is

II. Legal and Factual Background

A. The City's Interest Statute and Taxation on Withholding on Work Performed Remotely

This is a class action to require the City of Cleveland to abide by its own ordinances and pay interest on municipal tax refunds delivered more than 90 days after the refund was requested and also to enjoin municipal taxation of non-resident remote workers' paid leave days. (Complt. at ¶¶ 60, 61.)

In 2016, Cleveland City Council enacted Cleveland Cod. Ord. § 192.28(d), requiring the City to pay interest on refunds that were delayed more than 90 days after the completed return was filed:

(d) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For 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. Interest shall be paid at the interest rate described in division (a)(4) of Section 192.29 of this chapter.

Cleveland Cod. Ord. § 192.28(d).

The ordinance is self-executing and does not require the taxpayer to make a special request for interest. *See L.J. Minor Corp. v. Breitenbach*, 123 Ohio App.3d 84, 86–87 (8th Dist. 1998)(“Quite clearly, R.C. 718.06(D) does not require, as the city argues, the taxpayer obtaining the refund of a tax overpayment to first request interest as a prerequisite to obtaining interest.”)

Moreover, the interest requirement is mandatory. Cleveland Cod. Ord. § 192.28(d); *L.J. Minor Corp.*, 123 Ohio App.3d at 87 (“The section unambiguously imposes a statutory obligation to pay interest on any overpayment.”).

This case arises out of the city of Cleveland’s collection of municipal income tax from nonresidents of the City who were working remotely in 2021 and 2022. In an attempt to ease the collection of municipal income taxes during the COVID-19 pandemic, in March 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 2020 Am.Sub.H.B. 197, § 29. This was a sea-change in municipal tax law, allowing cities to collect income tax from nonresidents who had performed the work outside of city limits.

In June of 2021, the General Assembly revised Am.Sub.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, but it was not expanding the municipal power to tax to nonresidents. 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 Am.Sub.H.B. 197. 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. 192.28(d), 192.29(a)(4). The ordinance does not condition the payment of interest on a request or an "appeal" from the taxpayer. Cleveland Cod. Ord. 192.28(d).

During the 2022 tax year, Plaintiffs, Ms. Wos and Mr. Steffes, residents of North Olmsted and North Royalton respectively, worked from their homes outside of the City. Their employers, however, were located within the city of Cleveland. Pursuant to Am.Sub.H.B. 110 and Cleveland Cod. Ord. 192.06(19)(n)(2) and 192.28, their employers withheld Cleveland municipal income tax from their pay and remitted it to the City.

B. MS. WOS' REFUND REQUEST

On March 12, 2023, Ms. Wos filed a municipal tax return with the City requesting a refund of the \$1,294 that had been withheld in 2022. (See Exhibit A, filed under seal). Ms. Wos completed the form in full and included a letter from her employer stating that she had worked remotely from January 1, 2022 through June 24, 2022. (Id.) On July 24, 2023, more than three months after Ms. Wos filed her returns and request for a refund, the City called her requesting additional verification of her employment dates, which she provided that day. She provided the requested information, the City informed Ms. Wos 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." (See Exhibit B Wos Correspondence with CCA, filed under seal). On August 8, 2023, roughly five months after she filed her return requesting a refund, the City notified Ms. Wos that her check was "still waiting on signatures from upper management." (Id.). The City held the

refund amount due to Ms. Wos until September 21, 2023. When she received the refund, it did not include interest as required by Cleveland Cod. Ord. 192.28(d) and 192.29(a)(4).

C. MR. STEFFES REFUND REQUEST

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. Like Ms. Wos, Mr. Steffes filed a timely municipal tax return for tax year 2021 with the city of Cleveland, requesting a refund for the days he worked outside of the City. (A copy of Mr. Steffes' filing is attached as Exhibit C). Throughout 2022, Mr. Steffes sought a refund for tax withheld in 2021.

While Mr. Steffes filed his refund request in April of 2022, his correspondence with the City's Tax Department shows that as of June 10, 2022, City had not even begun to process the return. (See Steffes' email correspondence with CCA, attached as Exhibit D). Following a string of prior requests for the status of his refund, an employee of the City's Tax Division emailed Mr. Steffes that his "refund request remains in batched status, and it is not possible to give you a time frame in which it will be processed, approved, or a check mailed." (Id.) It was not until December of 2022 that 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. Mr. Steffes and his employer timely responded to that request on December 15, 2022, providing the City with a statement Mr. Steffes' employer verifying that Mr. Steffes—just like all other Stantec employees in Cleveland—had worked remotely for the entirety of 2021. (Id.) Still, the City declined to provide a refund to Mr. Steffes. Indeed, the City told Mr. Steffes that to receive his refund, he 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. (Id.) Not only was this request inconsistent with HB 110's requirements,

but such verification was also impossible to provide because, as set forth above, *no one* was working out of Stantec's Cleveland office in 2021! Mr. Steffes eventually received his 2021 refund on April 13, 2023, but like Ms. Vos, without the interest required by the ordinance.

In addition, in the cases of Ms. Vos 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. In other words, while they received a refund for days worked at home, they were taxed on their vacation days. 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.

Ms. Vos and Mr. Steffes filed suit, seeking to certify a class of similarly situated plaintiffs who had had their vacation days taxed, their refunds delayed, and interest withheld. The trial court dismissed the Complaint for failure to exhaust administrative remedies before the Board of Tax Appeals.

III. Law and Argument

Under Civ.R. 56, summary judgment is appropriate when no genuine issue exists as to any material fact and, viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion that is adverse to the nonmoving party, entitling the moving party to judgment as a matter of law. *Buonpane v. M. Co., Ltd.*, 2022-Ohio-4210, ¶ 11 (8th Dist.). As set forth below, the Plaintiffs have administrative remedies to exhaust as a matter of law because the legislature limited the jurisdiction of local tax appeal boards to affirming, reversing, or modifying the tax administrator's assessment. *See* R.C. 718.11(E). A refund is not an assessment. Nor are the Plaintiffs required, as a matter of law, to request interest on their refund when it has been delayed by more than 90 days. To the extent that the City argues that the 90-day

period does not begin to run until it has received what it deems a completed return, it faces a factual and a legal problem. The factual problem is that the correspondence between the City's tax department and the Plaintiffs shows that the delay in providing the refunds was not caused by any failure by the Plaintiffs' to provide needed information. The message indicate that the City had not even begun to process the refund requests within 90 days. The City cannot delay processing of returns for months, ask for information, and then claim that the delay is the Plaintiffs fault. These factual issues are fatal to summary judgment. The City's legal problem with its argument that Plaintiffs had not filed "complete" returns is that Ohio courts will not allow municipalities "to circumvent" the interest requirement "by focusing on key terms which are not statutorily defined and insisting upon its own definition" of a "complete return." *Cincinnati Imaging Venture v. City of Cincinnati*, 116 Ohio App.3d 1, 4–5 (1st Dist. 1996). The motion for summary judgment should therefore be denied.

A. The Plaintiffs have no administrative remedies to exhaust

Ohio courts have long recognized in exhausting their administrative remedies, plaintiffs are not required to perform a "vain act." *See, e.g., Driscoll v. Austintown Assoc.*, 42 Ohio St.2d 263, 275, 328 N.E.2d 395 (1975), *State ex rel. Teamsters Local Union 436 v. Cuyahoga Cty. Bd. of Commrs.*, 132 Ohio St.3d 47, 2012-Ohio-1861, 969 N.E.2d 224. A vain act is one where the "administrative body lacks the authority to grant the relief sought." *State ex rel. Teamsters Local Union 436 v. Cuyahoga Cty. Bd. of Commrs.*, 2012-Ohio-1861, ¶ 24 (internal citations omitted). The question is whether the administrative body has the power to afford the requested relief. *Id.*

Ohio law is equally clear that administrative agency can exercise only the jurisdiction and authority that the legislature has conferred on it. *M6 Motors, Inc. v. Nissan of N. Olmsted, LLC*, 2014-Ohio-2537, ¶ 41 (8th Dist.); *see also Bierlein v. Grandview Heights Bd. of Zoning Appeals*, 2020-Ohio-1395, ¶ 17 (noting that a municipal administrative agency "that is created by a

legislative body is limited to exercise only such authority granted to it by the legislative body”). Here, the statute creating local tax review boards, on which the City relies, limits the jurisdiction of the tax review board (and the tax administrator) to reviewing *assessments*: “Any person who has been issued an assessment may appeal *the assessment* to the board created pursuant to this section” (Emphasis added.) R.C. 718.11(C). The Ohio Revised Code defines “assessment” for purposes of municipal taxation and appeals to the board of tax appeals as “a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation” R.C. 718.01(PP)(1). In addition to defining what an assessment is, the Ohio Revised Code also explains what it is not:

“Assessment” does not include an informal notice denying a request for refund issued under division (B)(3) of section 718.19 of the Revised Code, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a tax administrator’s request for additional information, a notification to the taxpayer of mathematical errors, or a tax administrator’s other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (PP)(1) of this section.

R.C. 718.01(PP)(2).

The City’s Codified Ordinances (as required by statute) incorporate these same definitions at section 192.06(b)(1):

“Assessment” means any of the following:

- A. A written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation;
- B. A full or partial denial of a refund request issued under division (b)(2) of Section 192.14 of this chapter;

- C. A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under division (b)(2) of Section 192.14 of this chapter;
- D. A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under division (b)(3) of Section 192.14 of this chapter; or
- E. For purposes of division (b)(1) of this section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review under Section 192.40 of this chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

Cleveland Cod. Ord. 192.06(b)(1).

Under the plain language of the Revised Code and the City's Codified Ordinances, a refund is categorically not an assessment. On the contrary, the City has acknowledged that the Plaintiffs *overpaid* their taxes. Nor did the City deny the claimed refunds or communicate that it was imposing an "ASSESSMENT" as required by Cleveland Cod. Ord. 192.06(b)(1)(E).¹ There was thus no finding for the Plaintiffs to appeal or notice that they were not receiving the interest mandated by statute. Setting aside the taxation of their paid leave days, which presents a statutory question of law, Appellants do not disagree with the City as to the amount of their refunds. They are simply insisting that the City pay them (and other taxpayers) the interest due on those refunds. They are seeking to compel the City to engage in the purely ministerial act of calculating and paying interest according to the ordinance's mandatory language.

The statute limits local boards of tax review to affirming, reversing, or modifying the tax administrator's assessment. *See* R.C. 718.11(E). Again, there is no assessment here to affirm, reverse, or modify. Instead, Appellants seek an order in mandamus requiring the City to comply

¹ The Appellants would have no reason to request, nor ability to calculate interest due at the time they requested the refund—i.e. when they filed their tax returns.

with its ordinance and pay the appropriate interest on refunds to all nonresident Cleveland taxpayers to whom it has determined refunds are due. This relief exceeds the board's statutory authority.

Further, Appellants seek relief not only for themselves, but for the entire class of nonresident taxpayers who have been approved for refunds and are due interest because the refunds were not timely paid. Plainly, a local board of tax appeals lacks the authority to provide that remedy. The relief the Plaintiffs have sought is in essence indivisible—they seek a single order compelling the City to pay interest as mandated by the ordinance and a declaration that the practice of taxing paid leave as work performed in the City is unconstitutional. See *Hillenmeyer*, 2015-Ohio-1623, at ¶ 43 (“[L]ocal taxation of a nonresidents’ compensation for services must be based on the location of the taxpayer when the services were performed.”); (Compl. at ¶¶ 43–45, ¶ 70). “[T]he indivisible nature of the injunctive or declaratory remedy warranted [supports] the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011), quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009). This type of indivisible relief in mandamus—ordering an official to perform a mandatory official duty as to an entire class—and the declaratory relief requested are simply not available in an administrative appeal.

In addition, the Plaintiffs have also sought declaratory judgment claim regarding the propriety of taxing non-resident remote employees’ paid leave as if they were present in the City on those days, presenting a legal claim with constitutional dimensions. The Ohio Supreme Court has held that absent specific legislation from the General Assembly directing otherwise, due process requires 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* at ¶ 43. By taxing paid

leave days of nonresident remote employees, the City is taxing nonresidents not only when they are outside of the City, but while they are not performing any services. As an administrative agency, the Board of Tax Appeals is without jurisdiction to determine the constitutional issues. *State ex rel. Mallory v. Pub. Emp. Retirement Bd.*, 82 Ohio St.3d 235, 240 (1998); *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988), paragraph one of the syllabus. It would therefore be futile to force a party to exhaust an administrative appeal to an agency that cannot provide the requested relief. *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St.3d 109, 115 (1990).

That the City and perhaps the board itself might be willing to hear any of these disputes administratively is of no moment: Neither the City's tax department nor the board itself can expand its jurisdiction beyond its statutory bounds.

B. The board has no expertise to offer in calculating interest

Digging deeper, the requirement to exhaust administrative remedies rests on the notion that the administrative agency has particular expertise to offer in evaluating the factual or legal questions brought to it and that the court will be aided by the administrative agency's creating a record for judicial review. As the Ohio Supreme Court has explained "[t]he purpose of the doctrine [of administrative remedies] '... is to permit an administrative agency to apply its special expertise and in developing a factual record without premature judicial intervention.'" *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St. 3d 109, 111, 564 N.E.2d 477, 480 (1990) (citing *Southern Ohio Coal Co. v. Donovan* 774 F.2d 693, 702 (6th Cir. 1985)). Because administrative experts may be best able to determine complex facts, for example relating to tax assessments, the presumption is that administrative review is both more efficient and accurate than judicial review.

But that rationale does not apply here, where the suit seeks the enforcement of an unambiguous statute mandating the payment of interest on amounts that have already been determined. While the City is correct that local boards of tax appeals may have special expertise

in tax matters, those tax matters typically concern application of complex tax code provisions, appraisals, and property valuation models. *See, e.g., Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 575, 635 N.E.2d 11, 14 (1994)(Douglas, J., dissenting)(“The Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness * * *”; “[t]he Board of Tax Appeals is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before the board * * *”; and “[t]he fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities, and this court will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful. * * * ”)(citing *Cardinal Fed. S & L. Assn. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St. 2d 13, paragraphs two three and four of the syllabus (1975)).

The issue here has nothing to do with tax policy or determining valuations. The City has determined that refunds are due. The statute requires payment of interest if the refund is not made within 90 days of the request. There is no apparent dispute concerning those dates. It is at this point a matter of arithmetic. Indeed, courts outside of Ohio have consistently held that “[e]xhaustion [of administrative remedies] is also not required where only an issue of law is involved (*see Apex Air Frgt. v. O’Cleireacain*, 210 A.D.2d 7, 619 N.Y.S.2d 38 [1994], *lv. denied* 86 N.Y.2d 712, 635 N.Y.S.2d 949, 659 N.E.2d 772 [1995]), or where the issue involved “is purely the construction of the relevant statutory and regulatory framework.” *Coleman v. Daines*, 79 A.D.3d 554, 560, 913 N.Y.S.2d 83, 89 (2010), *aff’d sub nom. Coleman ex rel. Coleman v. Daines*, 19 N.Y.3d 1087, 979 N.E.2d 1158 (2012).²

² *See also, Ind. Dep’t of Envtl. Mgmt. v. Twin Eagle LLC*, 789 N.E. 839, 845(Ind. Sup. Ct. 1991)(Developers not required to exhaust administrative remedies where issues raised “are pure issues of law.”); *Blue Spirits Distilling, LLC v. Washington State Liquor & Cannabis Bd.*, 15

C. The Plaintiffs are not required to demand interest

In its motion and supporting affidavits, the City seems to argue that in order to receive a refund, the Plaintiffs were required to specifically request it. The Eighth District has held, however, that “[q]uite clearly, R.C. 718.06(D) does not require [. . .] the taxpayer obtaining the refund of a tax overpayment to first request interest as a prerequisite to obtaining interest.” *L.J. Minor Corp. v. Breitenbach*, 123 Ohio App.3d 84, 87 (8th Dist. 1998). As the *L.J. Minor* court explained, “[t]he section unambiguously imposes a statutory obligation to pay interest on any overpayment” and when there is an overpayment and the refund is made outside of the 90-day window, “[b]y operation of law, the taxpayer is entitled to interest on the overpayment pursuant to R.C. 718.06(D).” *Id.* The statute and the case law are clear, and the City can point to no contrary authority. This reading makes abundant sense, of course, when one considers the relative power and sophistication of the City tax department and the average taxpayer. Few taxpayers—indeed, few lawyers—would even be aware of the interest requirement. Thus, the state legislature and Cleveland City Council placed the burden on the City to provide interest whether it is requested or not. Notably, neither the state statute nor the City ordinance indicate that requests for interest ought to be made to the local review board.

Wash.App.2d 779, 792, 478 P.3d 153, 161 Wash. App. 2020)(“[F]ailure to exhaust administrative remedies does not necessarily preclude” resolution of purely legal issue); *Schlumberger Technology Corp. & Subsidiaries v. State, Dept. of Revenue*, 331 P.3d 334, 341 (Alaska 2014)(Requiring exhaustion of administrative remedies “unless the claim involves only a pure issue of law that requires no factual context.”); *MAG-T, L.P. v. Travis Cent. Appraisal Dist.*, 161 S.W.3d 617, 634–35 (Tex. App. 2005)(“[A] party need not exhaust all administrative remedies when pure questions of law are involved.”)

D. The evidence shows that the City sat on the refund requests for months

The City's argument that no interest was due on the Plaintiffs' refunds because the refunds were paid within 90 days of the City's receipt of what it deemed a "completed" return may appear compelling at first blush. But the evidence of the communications between the Plaintiffs and the City show that the City had not even begun to process the refund requests within 90 days. Certainly, the City owes its taxpayers some measure of good faith and fair dealing in processing returns in a timely manner. Undoubtedly, the ubiquity of work-from-home arrangements in 2021 and the corresponding spike in refund requests placed a significant burden on the City's tax department. The correspondence suggests that the department was overwhelmed by these requests. But regardless of why the delay occurred, the City cannot fairly put the blame on the taxpayers. As the correspondence makes clear, both Ms. Wos and Mr. Steffes were diligent in communicating with the City—asking if the City had what it needed—and responsive to the City's requests as soon as they received them. (See Exhibits B and D). In Ms. Wos's case, the City did not alert her to the alleged deficiencies in her filing until 90 days had already passed. And, in Mr. Steffes' case, even after providing multiple versions of the requested information in December and January of 2023, he still did not receive his refund until April of that year.

Fundamental fairness requires that the City cannot avoid the interest requirement by claiming that the delay was caused by the taxpayers' error when in fact, the evidence suggests that it arose because the City was simply unable to process the increased volume of refund requests. The ordinance does not include an exception to the interest requirement when refund request volume is high. Instead, the drafters of the ordinance and statute allocated the risk of such events to the City, rather than taxpayers. If the City contends that it could not process the returns in a timely manner because the Plaintiffs' returns were deficient, that necessarily raises factual issues. If, as the correspondence and filing dates show, the City was already beyond the 90-day mark before it even notified the Plaintiffs

of any deficiency, it should not excuse its own lack of diligence by claiming that the return was “incomplete” and thus resetting the clock to day one. (See Ex. B, D).

D. The City cannot avoid the statute by applying its own definition of when a return is “complete.”

Nor can the City simply avoid the statute by deeming filings “incomplete.” The First District Court of Appeals addressed that scenario in *Cincinnati Imaging Venture v. City of Cincinnati*, 116 Ohio App.3d 1 (1st Dist. 1996). There, the City of Cincinnati argued that it did not owe interest because the taxpayers’ returns were not “complete.” The court would have none of it, holding that such an arrangement put the fox in charge of henhouse security:

[I]t strikes us as far more “nebulous” and “murky” to allow a municipality to circumvent a state statute which is a legitimate exercise of the state's preemptive power by focusing on key terms which are not statutorily defined and insisting upon its own definition. As argued by CIV, such a position “directly conflicts with the overriding authority of the state of Ohio to regulate how municipalities will levy and administer local income taxes.”

Id. at 4. The court recognized that the definition that the City of Cincinnati proffered for a “complete return” that was “entirely one of convenience.” *Id.* at 4-5. Like the City’s apparent definition in this case, a “complete return” meant “an absolutely correct return, *i.e.*, one not subject to further amendment.” *Id.* at 5. The court was not convinced “that the phrase “complete return” as used in R.C. 718.06(D) was intended to have such elastic meaning” and held—as a matter of law that a “complete return” in the context of R.C. 718.06(D) is simply that, a complete (meaning fully filled-out) return for the appropriate tax year.” *Id.*

The returns filed by the Plaintiffs here were fully filled out. (See Exs. A, C). The City did not need the additional information to calculate the refund, only to verify it. And once it received that verification, there should have been no delay in processing the refund. But the City kept moving the goalposts, asking for more and different types of verification. This is precisely the

conduct that the *Cincinnati Imaging Venture* court found to directly conflict with the state's regulation of local income taxes.

D. Public Policy Favors Hearing this Case as a Class Action Rather than Through Piecemeal Appeals.

Finally, requiring Plaintiffs' to individually "exhaust" the administrative procedures provided by Defendant's own administrative department would preclude the efficiency of resolving the common elements of this case as a class action. The City seems to hope that taxpayers abandon their rights either because they are unaware of the interest requirement or because the administrative burden in seeking to vindicate those rights outweighs the modest financial reward. But this type of situation is exactly why the class action mechanism exists. In *Musial Cjfs., Ltd. v. Cuyahoga Cty.*, 2014-Ohio-602, 8 N.E.3d 992, after dispensing with a similar argument concerning the plaintiff's failure to exhaust administrative remedies in a tax assessment case, the Eighth District Court of Appeals engaged in a lengthy review of the practicalities of resolving, through class action, the ministerial dereliction of duty of a taxing authority. The Court of Appeals stated, "... facts [relating to amount of damages] are readily ascertainable from the county's Fiscal Officer's computer system... Since there is no need to litigate these facts, there would be no need for mini trials to establish them." The procedural economy available by determining this matter as a class is substantial. The dis-economy of case-by-case administrative adjudication before overburdened tax review boards would serve only to increase the delay and frustration of taxpayers. As in *Musial*, facts which the City points to in its motion to dismiss as "complex" are readily ascertainable from the City's own files or computer systems. Such facts do not require any specialized acumen to establish.

The City appears to seek to exploit the lack of a class action remedy in the administrative context to undercut the economic viability of pursuing relief. Because any single individual is

likely to receive only nominal interest, the cost of each individual appeal before the administrative agency becomes uneconomical. Adjudicating these matters as a class, however, they become economically viable while remaining factually uncomplicated. Any concerns over disparate dates and other facts not common to class members should be addressed in an objection to class certification, not through a motion to dismiss for failure to state a claim.

Moreover, there is a significant public policy interest in allowing the Plaintiffs to proceed as a class rather than requiring individual appeals. The City enacted an ordinance to protect taxpayers against delays in receiving their refunds. Unfortunately, most taxpayers are probably unaware of Cleveland Cod. Ord. § 192.28(d). Allowing the City to avoid the ordinance's interest requirement would cause minimal harm to individual plaintiffs but might allow the City to keep a windfall³. Taxpayers should not have to acquaint themselves with all the remedies of the City's tax code and then file an appeal to get what the City owes them. And a taxpayer who failed to remit an overdue tax deficiency would not be permitted to avoid statutory interest on the basis that the City had not specifically requested it. Kicking the interest question to an administrative agency would allow the City to avoid the requirements enacted for the protection of taxpayers by requiring them to go through a lengthy and burdensome process to recover a modest amount to which the taxpayer is undoubtedly entitled.

For the foregoing reasons, the Defendants' Motion for Summary Judgment should be denied.

Respectfully submitted,

/s/ Jay R. Carson

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³ Or in the alternative, if the amount of interest owed will be insignificant, why make taxpayers jump through the hoop of requesting the statutorily required interest?

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CERTIFICATE OF SERVICE

The foregoing Response was served on all counsel of record via the Court's electronic filing system this 16th day of October, 2025.

/s/ Jay R. Carson
One of the attorneys for the Plaintiffs