IN THE SUPREME COURT OF OHIO

KAREN KRESEVIC, Plaintiff-Appellant, vs. SHALEAH KIMMEL, in her official capacity as Tax Commissioner, City of Akron, Ohio Defendants-Appellants.	)	Case No. On Appeal from the Ninth District Court of Appeals, Summit County Court of Appeals Case No. CA-31616

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT KAREN KRESEVIC

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TABLE OF CONTENTS

INTRODUCTION

This case presents the question of public and great general interest of when a taxpayer needs to raise the issue of a wrongfully withheld tax refund. Ohio R.C. 2723, which allows a taxpayer to challenge and seek a refund of an illegal tax in the court of common pleas "within one year after the taxes or assessments are collected." R.C. 2723.01. Petitioner Karen Kresevic filed suit less than six months after her request for a refund of municipal tax withholding was denied, contending that a tax is "collected" only after a taxpayer's tax liability has been determined and refund denied. The Ninth District Court of Appeals, however, held that the time to challenge a wrongfully withheld refund begins to run when money is first withheld by the municipality, rather than when the municipality determines tax liability, denies refund and keeps the money. As applied in this case, the Ninth District's interpretation meant that Ms. Kresevic's time to challenge the City's refusal to provide a refund on her municipal tax withholding expired ***before*** the City had even determined her tax liability or denied her request.

Even worse, the Ninth District held that even if Ms. Kresevic had the prescience to challenge the denial of her refund before it happened, allowing the funds to be withheld in the first place—which was required by law—amounted to a voluntary payment of the tax. This has implications for every taxpayer in Ohio. It will require any nonresident who plans to seek a refund for work performed outside of the taxing municipality to object every time municipal tax is withheld from his or her pay and threaten to sue in order to avoid the claim that he or she voluntarily paid the tax.

This is plainly not what the statute intended and equates a "tax" with amounts withheld to pay potential taxes. The Ninth District's decision also threatens to upend the well-established procedure by which a nonresident taxpayer requests a refund and could allow municipalities to abuse the process, as the City of Akron has done here, by simply delaying a decision on tax liability until after the statute has run. Given the number of municipalities in the State of Ohio, and the number of Ohioans who work in municipalities in which they do not reside, this presents a question of public and great general interest. The Court should accept jurisdiction to clarify that a taxpayer's obligation to challenge amounts withheld for municipal income tax begins only after the municipality has determined actual tax liability.

STATEMENT OF THE FACTS AND CASE

1. The merits of this case, which the Court of Appeals did not reach, involve the legality of the City of Akron's taxation of a settlement payment made to Ms. Kresevic, a nonresident of the City of Akron, over a year after she had last worked within the City and in consideration of her waiver of potential claims, rather than any actual work performed. The more specific issues on appeal here are when the time to challenge such illegal taxation begins to run and whether withholding potential taxes from a taxpayer's paycheck amounts to a voluntary payment of the tax and thus a waiver of any right to challenge it.

Throughout 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, Complt. at ¶ 19, 1/5/23) As an Alteon employee, Ms. Kresevic received a paycheck and had funds withheld from it to pay 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, before filing suit, Ms. Kresevic reached a confidential settlement of her wrongful termination claims with Alteon, which included Alteon paying her a monetary settlement. (*Id.* at ¶ 23). For Alteon's administrative convenience, Alteon made the settlement payment through its payroll system. Under R.C. Chapter 718..03 and the uncodified provisions of HB 110 from the 133rd General Assembly, which requires municipalities to withhold pay to remote workers subject for potential refunds for amounts earned outside of the municipality, Alteon withheld 2.5% of Ms. Kresevic's settlement payment for local income tax and remitted that amount to the City of Akron. (*Id.* at ¶ 24). (T.d. 1, Complt., at ¶ 24). The settlement payment, however, did not represent wages earned for work performed—let alone for work performed in the City of Akron—but rather payment *for a release of her potential claims*. (T.d. 41, Pltf. MSJ at 2, 8, Ex. A, 10/11/24). The Ninth District had previously held that payments made outside of the municipality that were not for work performed within the municipality violated a taxpayer's due process rights and were, in effect, illegally levied. See *Czubaj v. Tallmadge*, 2003-Ohio-5466, ¶ 12 (9th Dist.) (Severance payments made to former employee outside of municipality not taxable by municipality); see also, *Hillenmeyer v. Cleveland Bd. of Review*, 2015-Ohio-1623 ¶ 42 ("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.*'"). Alteon made its settlement payment and withheld the funds on June 14, 2021. 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).

Ms. Kresevic did not object to the withholding when it occurred or threaten to sue under R.C. 2723.01. Instead, on April 15, 2022[1], consistent with the procedures created by the General Assembly and the City of Akron, 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

[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.

were a settlement, not wages—let alone wages earned 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 within the City—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 following her termination. (*Id.* at ¶ 28). Ms. Kresevic attempted to avail herself of her administrative remedies through the relevant Board of Tax Appeals.

2. On January 5, 2022, one day after her appeal was denied by the Board of Tax Appeals and less than six (6) months after she had been notified that the City would not grant her the requested refund, and after attempting to avail herself of her administrative remedies, 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 one year in which 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). In short, by the time the City denied her refund in July 11, 2022, Ms. Kresevic's time to challenge that refusal had already expired.

In February 2023, the City 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). On August 12, 2026 the Ninth District Court of Appeals issued a decision affirming the trial court. (A copy of the decision is attached as an appendix to this filing). On September 28, 2026, Ms. Kresevic filed the instant Notice of Appeal and Jurisdiction Memorandum with this Court.

THIS CASE RAISES A QUESTION OF GREAT PUBLIC AND GENERAL INTEREST

I. This case affects the rights of every Ohioan who pays municipal income tax.

The State of Ohio contains nearly 1,000 individual municipalities, each with the authority to levy their own tax on income earned by residents and on non-residents for work performed within the municipality. Ohio Municipal League, Testimony to Ohio House Local Government Committee, Feb. 26, 2025, at 3. As of 2025, 661 municipalities levied an income tax. *Id.* Importantly, as a matter of due process and political accountability, a significant portion—in many cases a majority—of those municipal income taxes are paid by Ohioans who work in the municipality, but do not live there. In many cities, a substantial majority of the municipal income taxes collected come from non-residents. In 2019, the Legislative Service Commission reported that non-residents paid 53% of the municipal income taxes in the City of Columbus and 48% of Akron's municipal taxes. Ohio Legislative Service Commission, *Fiscal Note & Local Impact Statement to S.B. 206*, 133rd G.A., Oct. 28, 2019 at 6. As of 2020, in the City of Cleveland, nonresidents making up a staggering 77.4% of all municipal income taxpayers. *See A Mortal Threat to Ohio's Competitiveness: SB 352, HB 754, and the Buckeye Institute Lawsuit*, Greater Ohio Policy Center, September 2020, available at https://static1.squarespace.com/static/59396fee59cc6877bacf5ab5/t/5f5944a606dbf65c41e858ad/1599685802995/GOPCIncomeTaxRebuttal_20200909.pdf (accessed 9/28/26). The City of Akron was not far behind, with 72.8% of municipal taxpayers residing outside of the City. *Id.*

In other words, the lion's share of municipal tax revenue comes from people who have no say in how that money is spent or who is elected to appropriate it. Ohio's cities and villages rely on these non-resident income tax funds generated by municipal income tax. See *Suburbanites pay 87 percent of Cleveland's income taxes, but don't get a vote: How does that work?* Emily Bamforth, Cleveland.com, Feb. 2, 2016; available at https://www.cleveland.com/metro/2016/02/suburbanite_pay_income_tax.html.

The General Assembly has created a system to balance this tension, allowing cities a steady and predictable revenue stream, while at the same time protecting due process. If a non-resident's employer is located within the municipality, the municipality may tax all worked performed within its limits; *see Hillenmeyer v. Cleveland Bd. of Rev.*, 2015-Ohio-1623 at ¶ 42 ("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.*'"). And municipalities can withhold ***all*** of the potential municipal tax due from a non-resident employee. See HB 110. But the non-resident employee is entitled to a refund of municipal tax withheld for work performed outside of the municipality. R.C. 718.19; *Hillenmeyer*, at ¶ 42. *See, e.g.*, Akron Mun. Ord. l04.02(13)(B) (defining income subject to taxation); Akron Mun. Ord. 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%20Fom%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").

Notably, during the height of the COVID pandemic, the General Assembly temporarily altered this arrangement to allow municipalities to tax work performed outside of its borders. See HB 197, Sec. 29; *Schaad v. Alder*, 2024-Ohio-525. The following year, however, the General Assembly returned the law to prior state, allowing municipalities to withhold potential taxes from nonresidents' pay on the assumption that all work was performed within the municipality but allowed those taxpayers to seek a refund of funds withheld for work performed outside of municipal limits. See 2021 Am.Sub.H.B. 110.

The process for seeking such refund was the same as it had been before the pandemic: file a return and request a refund. If the municipality refused to provide a refund, the taxpayer retained the protections of R.C. 718 and R.C. 2723.01 to challenge what, at that point was no longer mere withholding, but an actual tax due was improperly calculated or illegally levied.

Here, the Ninth District's decision effectively repeals R.C. 2723.01 and betrays taxpayers' reliance on the process set forth in R.C. 718 (and incorporated into the relevant municipal tax codes) for the refund of extraterritorial taxes. The math speaks for itself. Ms. Kresevic received her settlement payment, which was subject to mandatory withholding, on June 14, 2021. She applied for a refund in April of the following year through the ordinary refund request process. On July 11, 2022, the City denied her refund request and kept the extraterritorial taxed funds. If the time to challenge wrongful withholding under R.C. 2723.01 begins when the withholding takes place and runs for a year, the statute had already run before the City even denied Ms. Kresevic's refund request.

This allows cities to evade R.C. 2723.01 and places an unreasonable burden on taxpayers. While Ms. Kresevic's case involved a one-time payment, the Ninth District's rule would place a ridiculous and unreasonable burden on taxpayers. Under the Ninth Circuit's ruling, in order to claim any refund of withheld municipal tax based on work performed outside of the municipality, i.e. overpaid withholding, the taxpayer would have to object and threaten suit each time withholding occurred, that is with every paycheck. This works a fundamental change to Ohio's tax law, affecting millions of Ohioans. It also, ironically, risks burdening Ohio's municipalities with countless objections and threats of suit from the nonresident taxpayers who under the Ninth District's reading of R.C. 2723.01 must make such demands to preserve their right to request a refund. The case thus presents a question of great public and general interest.

ARGUMENT

First Proposition of Law: ***The time to challenge the wrongful withholding of municipal tax begins to run when the taxpayer receives a denial of his or her request for a refund.***

The City's contention that since R.C. 2723.01 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. 2723.01. The 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. Black's Law Dictionary defines a "tax" as "[a] charge by the government on the income of an individual, corporation or trust, as well as the value of an estate or gift." Black's Law Diction, 5th Ed., 15457. The government must first tally the taxpayer's liability before it can present that "charge." Otherwise, the refund processes created by the General Assembly and local tax codes are superfluous.

The City's argument also ignores the purpose of R.C. 2723, 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 requires withholding by employers but expressly allows 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. Setting aside the now-repealed statutory exception of 2020, this Court has long recognized that

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. l04.02(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. One cannot have paid a "tax or assessment" until the taxing authority had made a determination as to the tax payable.

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,* 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 HB 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 HB 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 Ninth District's holding 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 (6) 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.

Under HB 110, the City plainly had authority to *withhold* from the settlement payment made to her. But the City lacks the authority to *retain* that withheld amount unless the work for which she was being compensated was performed within the City or by virtue of a special statutory allocation like HB 197, which had expired. *See Hillenmeyer*, 2015-Ohio-1623, at ¶ 43 ("[L]ocal taxation of a nonresident's compensation for services must be based on the location of the taxpayer when the services were performed."); *Schaad*, 2024-Ohio-525, at ¶ 47 (recognizing that legislature could "empower a municipality that is not the one where the employee works to collect a tax from that employee."); *see also*, *Czubaj,* at ¶ 12.

Second Proposition of Law: *Payment of withholding required by law is not a voluntary waiver of the right to contest the legality of the tax or calculation of the amounts withheld.*

The lower court held and the Ninth District affirmed that Ms. Kresevic had voluntarily waived her right to challenge the extraterritorial tax because she requested a refund on Tax Day 2022, rather than immediately objecting and threatening to sue 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, however, reads R.C. 2723.03 out of context with the statutory and regulatory scheme for requesting refunds of overpaid municipal taxes. Reading Ms. Kresevic's accepting the initial withholding, which she rightfully believed to be subject to a refund, as an intentional waiver is inconsistent with any reasonable definition of "voluntarily." 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 2723 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. Again, by the Ninth District's math, Ms. Kresevic's time to challenge the illegal withholding expired before the City had determined her liability and rejected her refund request.

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 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. The settlement payment was thus not income for "for work done, services performed or rendered, or activities conducted in the Municipality." Akron Mun. Ord. 104.02(13)(B).

Third Proposition of Law***: To the extent that Ms. Kresevic's Complaint could be read to as a claim under R.C. 718.19, which has a three-year statute of limitations, the Court of Appeals should applied that statute.***

The Court of Appeals also erred in its determination of Ms. Kresevic's claim when it overlooked the alternative appeal route under R.C. 718.19. The Ohio Revised Code provides two (2) 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 a settlement agreement. This is apparent from the City's denial of the refund, which specifically stated that it was denying the refund on the legal basis that the tax was authorized by HB 197.[2]

Regardless, whether 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 the Court of Appeals is "bound by [the plaintiff's] labels or characterizations of [her] claims." *Id.* at ¶ 17; *see also Lingo v. State*, 2014-Ohio-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 Ms. Kresevic's complaint actually stated a claim for relief under R.C. 718.19, the Court of Appeals should have applied that statute's three-year statute of limitations. By accepting jurisdiction of this case, the Court can bring clarity to the interplay of claims made under R.C. 2723.01 and 718.19.

CONCLUSION

For all the foregoing reasons, the Court should accept jurisdiction over this appeal.

[2] It bears repeating 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.

Respectfully submitted,

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September 28, 2026

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above memorandum in support of jurisdiction was served this 28th day of September 2026 via e-mail on:

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