MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

MARK BOLES, et al.,	)	
	)	
Plaintiffs,	)	
	)	Cause No. 2122-CC00713
v.	)	
	)	Division No.: 18
CITY OF ST. LOUIS, et al.,	)	
	)	
Defendants.	)	

ORDER AND JUDGMENT

Before this Court is the motion for summary judgment of Plaintiffs Mark Boles, Nicholas Oar, Kos Semonski, Christian Edward Stein, III, Marc S. Kolaks[1], and Ray Jaeger[2] (collectively "Plaintiffs") as well as the joint motion for summary judgment of Defendants the City of St. Louis, Missouri ("the City") and Gregory F.X. Daly, in his official capacity as the Collector of Revenue for the City, ("the Collector") (collectively "Defendants"). The motions were called, heard, and taken under submission on October 6, 2022. Having been fully briefed, this Court now rules on the cross motions as follows.

Initially, the Court notes in a January 3, 2022 Order, this Court granted Defendants' motion to dismiss Counts I, II, and IV-VIII of Plaintiffs' Second Amended Petition. Thus, the only causes of action at issue at this time are Count III for refunds pursuant to Section 139.031 RSMo and Count IX for declaratory judgment concerning an alleged violation of the Hancock Amendment. The parties have stipulated to the undisputed material facts and the applicable authority in this matter.

[1] On August 20, 2022, Cause No. 2222-SC00095-01, Mark Kolaks v. City of St. Louis, et al. was consolidated with this matter.
[2] On October 26, 2022, Cause No. 2222-SC00191, Ray Jaeger v. Gregory F.X. Daly was consolidated with this matter.

As background, the City adopted the Earnings Tax in 1959. Since then, the City has imposed a one percent (1%) tax on the earnings of non-residents of the City "for work done or services performed or rendered in the City" (the "Earnings Tax"). The Earnings Tax is codified at Section 92.111.2(2) RSMo, the enabling statute for City Code Section 5.22.020. City Code Section 5.22.020 has not been amended since its enactment in 1959. Moreover, the Collector has not engaged in formal rule making, pursuant to the Missouri Administrative Procedures Act, regarding the Earnings Tax at any time.

Plaintiffs were not, at any time relevant to this case, residents of the City, but they were employed in the City and paid the Earnings Tax. The City is both a city and a county by virtue of Article VI, Section 31 of the Missouri Constitution of 1945. The Collector, as the duly-elected official, is responsible for collecting all Earnings Tax due to the City.

The parties have stipulated to the definition of "virtual work," "remote work," and "telework" as "using technology, including, but not limited to, electronic, computer, and similar equipment, to work physically from a location outside the City for a city-based employer, but not while traveling for that employer for a business purpose."

In 2018, 2019 and 2020, Boles worked for his employer at its location within the City. In 2018, 2019 and 2020, Boles also worked virtually for his employer from his home outside the City. Boles's duties and the work he performed for his employer virtually from his home were substantially the same as the work he performed at his employer's location in the City. To perform his duties and work from his home, Boles's employer supplied him with (or paid or reimbursed him the cost of) some or all of the hardware and software technologies he used and his employer used when Boles was working virtually from home. At all relevant times, Boles's employer withheld the Earnings Tax from his salary and paid the Earnings Tax to the Collector, regardless of the physical location from which Boles performed his work. Boles worked a total of 260 days

in 2020 for his City-based employer. Of those days, he spent 245 days working for his City-based employer virtually from his home outside of the City. Boles seeks a refund in the amount of $794.49 for the year 2020, based on these 245 days. In 2019 and 2020, Boles submitted Earning Tax refund requests for the tax years 2018 and 2019 based on the number of whole days he "worked outside the city." The Collector provided Boles with refunds as requested. In 2021, Boles submitted a request for a refund for the days he worked virtually in 2020. The Collector denied Boles's refund request for the days worked virtually in 2020.

In 2019 and 2020, Oar worked for his employer at its location within the City. In 2019 and 2020, Oar also worked virtually for his employer from his home outside of the City. Oar's duties and the work he performed for his employer virtually from his home were substantially the same as the work he performed at his employer's location in the City. To perform his duties and work from his home, Oar's employer supplied him with (or paid or reimbursed him the cost of) some or all of the hardware and software technologies he used and his employer used when Oar was working virtually from home. At all relevant times, Oar's employer withheld the Earnings Tax from his salary and paid the Earnings Tax to the Collector, regardless of the physical location from which Oar performed his work. Oar worked a total of 260 days in 2020 for his City-based employer. Of those days, he spent 228 days working for his City-based employer virtually from his home outside of the City. Oar seeks a refund in the amount of $841.27 for the year 2020, based on these 228 days. In 2020, Oar submitted an Earning Tax refund request for the tax year 2019 based on the number of whole days he "worked outside the city." The Collector provided Oar with a refund as requested. In 2021, Oar submitted a request for a refund for the days he worked virtually in 2020. The Collector denied Oar's refund request for the days worked virtually in 2020.

In 2019 and 2020, Semonski worked for his employer at its location within the City. In 2019 and 2020, Semonski also worked for his employer from his home outside of the City.

Semonski's duties and the work he performed for his employer virtually from his home were substantially the same as the work he performed at his employer's location in the City. To perform his duties and work from his home, Semonski's employer supplied him with (or paid or reimbursed him the cost of) some or all of the hardware and software technologies he used and his employer used when Semonski was working virtually from home. From at least the beginning of tax year 2019 up until October 2020, Semonski's employer withheld the Earnings Tax from his salary and paid the Earnings Tax to the Collector, regardless of the physical location from which Semonksi performed his work. In October 2020, Semonski's employer stopped withholding the Earnings Tax after changing his status to permanent "work from home" with no actual office assignment other than his home. Semonski worked a total of 264 days in 2020 for his City-based employer. Of those days, he spent 233 days working for his City-based employer virtually from his home outside of the City. Semonski seeks a refund in the amount of $999.86 for year 2020, based on these 233 days. This amount consists of the $541.01 that was withheld by his employer and paid to the City, for which he was denied his refund request, and the $458.84 he paid to the City under protest in November 2021, after receiving a "Statement of Tax Delinquency" from the Collector for amounts not withheld from his pay from October through December 31, 2020. In 2020, Semonski submitted an Earnings Tax refund request for the tax year 2019 based on the number of whole days he "worked outside the city." The Collector provided Semonski with a refund as requested. In 2021, Semonski submitted a request for a refund for the days he worked virtually in 2020. The Collector denied Semonski's refund request for the days worked virtually in 2020, and remains in possession of the additional amount paid under protest in November 2021.

In 2019 and 2020, Stein worked for his employer at its location within the City. In 2019 and 2020, Stein also worked outside the City while traveling for a business purpose. In 2019 and 2020, Stein also worked for his employer virtually from his home outside of the City. Stein's

duties and the work he performed for his employer virtually from his home were substantially the same as the work he performed at his employer's location in the City. To perform his duties and work from his home, Stein's employer supplied him with (or paid or reimbursed him the cost of) some or all of the hardware and software technologies he used and his employer used when Stein was working virtually from home. At all relevant times, Stein's employer withheld the Earnings Tax from his salary and paid the Earnings Tax to the Collector, regardless of the physical location from which Stein performed his work. In 2020, Stein worked a total of 42 days at his employer's City-based location, 4 days while traveling on business, and 214 days working for his City-based employer virtually from his home outside of the City. In years prior to the tax year 2020, Stein submitted requests for refunds based on total days "worked outside the City," both days virtually working and days while traveling for a business purpose. The Collector provided Stein with refunds prior to tax year 2020 as requested. For years prior to tax year 2020, Stein was not required to specify the number of days he spent working virtually as opposed to the number of days he was traveling outside the City for a business purpose. For tax year 2020, Stein submitted a refund request of $2,344.63 for his teleworking days, which the Collector denied.

The parties filed an additional joint stipulation of facts pertaining to Kolaks. In 2022, Kolaks filed suit in small claims court for a refund of the Earnings Taxes he paid in 2020. Kolaks received a judgment in his favor. Then the City and the Collector filed for a trial de novo, and Kolaks's case was consolidated with this case. According to the parties' joint stipulation, Kolaks was not, at any time relevant to this case, a resident of the City. Kolaks works for an employer that at all times relevant to this case maintained an office location in the City. Kolaks is a non-resident payer of the City's Earnings Tax. Prior to March of 2020, Kolaks maintained an office with his employer at its location within the City. Since 2008, Kolaks has worked many days of the year remotely from his house and/or from other locations outside the City. Prior to tax year

2020, and dating back to at least 2008, Kolaks received Earnings Tax refunds based on the number of days he worked outside City. At all times relevant hereto, Kolaks's duties and the work he performed for his employer virtually from his home were substantially the same as the work he performed at his employer's location in the City. To perform his duties and work from his home, Kolaks's employer supplied him with (or paid or reimbursed him the cost of) some or all of the hardware and software technologies he used and his employer used when Kolaks was working virtually from home. Prior to July 31, 2020, Kolaks's employer routinely withheld the Earnings Tax from his salary and paid it to the Collector, regardless of the physical location from which Kolaks performed his work. Due to the COVID-19 Pandemic, beginning in late March 2020, Kolaks ceased going to his employer's office in downtown St. Louis. A few days after that date, Kolaks requested that his employer allow him to permanently perform his work and duties for his employer remotely from his home outside the City. On or around July 31, 2020, Kolaks's employer granted his request, permanently reassigned his work location from the City to his home outside of the City, and stopped withholding the 1% Earnings Tax from his pay. Since that date, Kolaks has not maintained a permanent office with his employer in the City. For the year 2020, Kolaks worked a total of 260 days in 2020 for his City-based employer. Of those days, he spent 244 days working outside the City. Kolaks submitted a refund request and/or protested the amounts withheld and/or paid for tax year 2020. The Collector denied his refund request. Kolaks seeks a refund of Earnings Tax withheld and/or paid for tax year 2020 in the amount of $1,564.74, based on the 244 days he worked outside the City.

Jaeger was not included in either joint stipulation of facts pertaining to the other plaintiffs because his case was consolidated after the motions for summary judgment were taken under submission. In 2022, Jaeger filed suit in small claims court for a refund of the Earnings Taxes he paid in 2021. In his petition, Jaeger alleged he always worked remotely outside of the City of St.

Louis. Jaeger seeks a refund of $1,816.32 for Earning Tax he paid in 2021. Before any ruling was issued in the small claims case, the Collector filed a motion to consolidate Jaeger's case with this case, and that motion was granted.

Thus, as demonstrated above, prior to the advent of the COVID-19 pandemic in early 2020, the Collector did not distinguish virtual work outside the City from business travel outside the City for purposes of issuing Earnings Tax refunds. However, for the tax year 2020 and later, the Collector is not issuing Earnings Tax refunds for virtual work outside the City, but is issuing Earnings Tax refunds for business travel outside the City. At all times relevant hereto, the Collector has used a standard of 260 work days per year in calculating Earnings Tax refunds, except in instances where the taxpayer provides evidence to support a different number of work days.

Therefore, to sum up the general facts, Plaintiffs worked remotely in their homes, which were located outside of the City. The remote work Plaintiffs performed for the city-based employers was substantially the same as the work performed at their employer's location in the City. Plaintiffs' employers supplied them with (or paid or reimbursed them the cost of) hardware and software technologies to work remotely from their homes.

These non-residents sought refunds for the Earning Tax automatically deducted from their paychecks and/or paid under protest. In 2019 and 2020 and presumably prior years, the non-residents submitted Earning Tax refund requests for the prior tax years based on the number of whole days they "worked outside the city." The Collector provided the refunds as requested. In 2021, the non-residents submitted refund requests for the days they worked virtually in 2020. The Collector denied those refund requests for the days worked virtually in 2020. So beginning in tax year 2020, despite no changes in the Earning Tax law, the Collector stopped issuing refunds for

work conducted outside of the City, unless the work was done while traveling, a distinction that was not previously made.

As a result of these disputes and based on the stipulated facts outlined above, both Plaintiffs and Defendants have filed cross-motions for summary judgment.

The decision "to grant summary judgment [is] based on the pleadings, record submitted, and the law." Green v. Fotoohighiam, 606 S.W.3d 113, 115 (Mo. banc 2020), citing Goerlitz v. City of Maryville, 333 S.W.3d 450, 452-3 (Mo. banc 2011). Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Id. Although the parties have agreed that all of the facts are undisputed, the summary judgment standard remains, and the proceedings are not converted to a non-jury trial. Byers v. Auto-Owners Insurance Co., 119 S.W.3d 659, 662 (Mo. App. S.D. 2003).

The Earnings Tax provides in relevant portion:

> A tax for general revenue purpose of one percent is imposed on:
>
> ...
>
> B. Salaries, wages, commissions and other compensation earned after July 31, 1959, by nonresident individuals of the City for work done or services performed or rendered in the City...

City Code Section 5.22.020. Moreover, Section 92.111.2(2), in relevant part, defines the term Earnings Tax as "[s]alaries, wages, commissions and other compensation earned by nonresidents of the city for work done or services performed or rendered in the city."

Statutory construction is a matter of law. Dubinsky v. St. Louis Blues Hockey Club, 229 S.W.3d 126, 130 (Mo. Ct. App. 2007). The primary rule of statutory construction is to determine the intent of the legislature from the language used by considering the plain and ordinary meaning of the words used in the statute. Id. Where the language of a statute is unambiguous and clear, this Court will give effect to the language as written, and will not engage in statutory construction. Id. This Court presumes the legislature intended that each word, clause, sentence, and provision

of a statute have effect and should be given meaning. Id. Conversely, this Court presumes that the legislature did not insert superfluous language or idle verbiage in a statute. Id. Courts are not authorized to read a legislative intent into a statute that is contrary to the intent made evident by the plain and ordinary meaning of the statutory language. Id.

Thus, absent a definition in the ordinance, courts refer to the plain and ordinary meaning of the ordinance's language. DMK Holdings, LLC v. City of Ballwin, 646 S.W.3d 708, 712 (Mo. App. E.D. 2022). The language is clear and unambiguous if its terms are plain and clear to a person of ordinary intelligence. Id.

In addition, "[a]n ordinance enacted as a taxing measure must be given a strict interpretation and construed against the taxing authority and in favor of the taxpayer." Bachman v. City of St. Louis, 868 S.W.2d 199, 202 (Mo. App. E.D. 1994).

As noted above, the Earning Tax statute and ordinance seek to impose the Earnings Tax on "nonresidents of the city for work done or services performed or rendered in the city." Section 92.111.2(2) RSMo and City Code Section 5.22.020. The key issue in this case is what was the intent of the legislatures in including the phrase "services . . . rendered in the city" in the Earnings Tax statute and ordinance.

Webster's Third International Dictionary defines "render" in pertinent part as:

> 2
> a: to transmit to another : DELIVER
> b: GIVE UP, YIELD
> c: to furnish for consideration, approval, or information: such as
> (1): to hand down (a legal judgment)
> (2): to agree on and report (a verdict)
> 3
> a: to give in return or retribution
> b (1): GIVE BACK, RESTORE
> (2): REFLECT, ECHO
> c: to give in acknowledgment of dependence or obligation: PAY
> d: to do (a service) for another

Webster's Third New International Dictionary (3d. ed 2002).

Plaintiffs argue "rendered in the City" means the Earnings Tax liability can only be established when the non-resident is physically present and working in the City. Plaintiffs argue that prior to the pandemic, Defendants issued refunds for any work conducted outside of the City, without drawing a distinction between teleworking and travel days.[3] However, when Plaintiffs sought refunds for the remote work performed in 2020 outside of the City, the Collector denied or refused to issue the refund.

On the other hand, Defendants argue "rendered" in the context of working remotely means "services transmitted, delivered, given, or provided to an employer or customer in the City," which requires taxation under the Earnings Tax. Defendants contend this interpretation incorporates the plain and ordinary meaning of the term "render," but also accords with another maxim of statutory construction, that is, that each term be given meaning and should not be interpreted in a manner that causes it to be superfluous. Defendants contend the City's Earnings Tax is applicable to people working within the City's physical boundaries and those who deliver services whose benefit is received, or rendered within the City. The City concludes that Plaintiffs rendered the same exact services while physically located in the City, and while working remotely at their homes outside of the City. Their employers, who received the benefit of Plaintiffs' service, remained in the City at all times and including the time Plaintiffs transmitted the benefit of their services. Therefore, the Earnings Tax was properly levied on Plaintiffs' remote services because the benefit of their services was received in the City.

[3] The Collector issued a refund to Mr. Boles for the work he performed outside of the City from 2018 to 2019. Mr. Oar, Mr. Semonski, and Mr. Stein also received refunds from the Collector for the work they performed outside of the City in 2019. Plaintiffs did not provide any information regarding the amount of days refunded under those prior refunds, or whether the work outside of the City was done because of telework or business-related travel.

Thus, the Court is asked to discern what the legislature intended when it used the word "render." Did it mean "deliver" or did it mean "do?" Defendants contend it must have meant "deliver" because the other construction would render it superfluous as "do," or more precisely "done" (or "performed") is already in the ordinance and statute. However, on the other hand, because each word is the be given meaning, the Defendants' contention that "rendered" equals "delivered" also forces them to change the preposition "in" to "into" or "to," which are not in the statute or ordinance. Essentially, for Defendants' interpretation to work, the statute and ordinance would have to impose the Earnings Tax on "nonresidents of the city for work done or services performed or rendered INTO the city." (Emphasis added.) However, that is not what the statute and ordinance provide. They impose the Earnings Tax on "nonresidents of the city for work done or services performed or rendered IN the city." (Emphasis added.) The preposition "in" is commonly used to denote location; whereas, the preposition "into" commonly denotes entry, introduction, or insertion. When one envisions remote work, one envisions someone doing work away from their office or headquarters, but transmitting it to the office or headquarters. Thus, movement is contemplated and "into" is the better descriptor, while "in" is more indicative of stationary work. Indeed, Defendants seem to agree with this determination as they use "into" instead of "in" when arguing for their preferred interpretation of the word "render."

Thus, the problem with Defendants' interpretation is the language of the Earnings Tax provides "for work done or services performed or rendered IN the city." (emphasis added). Their interpretation would be appropriate if the language were "rendered to the city" or "rendered into the city," but that is not the case. The fact is that the work and/or services at issue here were not rendered IN the City. That language is very clear and unambiguous.

Further, the Court notes Defendants' contention that "performed" and "rendered" mean the same thing if Plaintiffs' interpretation is accepted is not clear from their plain definitions. Taking

Defendants' argument a step further, one might question what the legislatures meant by including "work done" and "services performed" in the statute and ordinance. After all, those terms have similar meanings, but no one contends they constitute superfluous language. Work done and service performed can plainly refer to different things. Similarly, services may be performed in the City, but they may also be rendered or done in the City. It is not clear that this is superfluous language. Even if that point is arguable, Defendants' interpretation leads to other problems with prepositions discussed above, and the Court is mindful that an ordinance enacted as a taxing measure must be given a strict interpretation and construed against the taxing authority and in favor of the taxpayer.

In addition to the above analysis, the Court also finds it is notable that Defendants seemed to operate according to Plaintiffs' interpretation until the onset of the Covid-19 pandemic and the accompanying rapid and exponential increase in telework. Telework is an employment arrangement in which the employees do not physically commute to a central location, but instead work through use of the internet, email, video or web-based conferencing platforms, and the telephone through the employers' secured internet service, software, and hardware to provide the same work or services as they render in the employers' physical office. Telework has been in existence in some form for over twenty years. However, during the Covid-19 pandemic, the tools used for remote or telework were popularized and its use grew exponentially due to the demand of lockdowns because such tools made possible the closing or reduction of many physical office spaces while allowing employees to continue to work through the use of these technological advancements.

It seems this sudden surge in telework caused the Collector to fear a high demand for the Earnings Tax refund and its potentially profound effect on the City's budget. As a result, it seems the Collector unilaterally altered the criteria for the refunds without pursuing any kind of formal

rule-making process or any amendments to the existing Earnings Tax statute or ordinance. While Defendants contend they always had the power to collect the Earnings Tax from teleworkers, they just never exercised it until recently, the Court finds that untrue given the analysis of the Earnings Tax above. Moreover, it strains credibility to think Defendants always believed they were entitled to more tax dollars but just decided for reasons unknown not to attempt to collect them.

Further, it is axiomatic to the existence of the rule of law that a society must have a set of rules; such rules must be publicized in advance; such rules must serve to predominantly guide prospective behavior; such rules must be understandable to the populace; such rules must not be internally contradictory, such rules must be able to be followed, such rules cannot change too frequently; and such rules must be congruent with their actual administration. See Eight Ways to Fail to Make Law: From Lon L. Fuller, The Morality of Law (New Haven: Yale University Press, 1964). One of the problems in this case is Defendants undercut a properly made rule by simply unilaterally changing its interpretation, which taxpayers had come to rely upon, without engaging with the legislative process to properly alter the Earnings Tax statute or ordinance. In other words, Defendants' sudden change in their interpretation of the Earnings Tax statute violated several of the above doctrines upon which the rule of law depends. To be clear, the Court is not basing its judgment on these equitable doctrines, but they are included as a reminder for how things ought to work.

With respect to the other remaining count in this suit, whether Defendants have violated the Hancock Amendment, as noted above, prior to 2020, the Defendants and Plaintiffs treated the Earnings Tax statute and ordinance in the same way. Now, and only in light of the potential loss of substantial revenue, Defendants have unilaterally and impermissibly changed their application of the earnings tax to teleworking. In doing so, Plaintiffs contend the Defendants violated the Hancock Amendment in two ways: (1) by creating a new tax or expanding the tax levy; and (2) by

broadening the definition of the base of an existing tax without reducing the maximum authority levy to yield the same estimated gross revenue.

Defendants argue the method and amount the Collector levied and the Earnings Tax rate on non-residents did not change, only the liability on the non-resident taxpayer changed, which is not a violation of the Hancock Amendment. Defendant further argues the Collector's policy change was done by the executive branch, which is not a violation of the Hancock Amendment. Instead, only the legislature can be charged with violating the scope of the Hancock Amendment. Therefore, Defendant contends because Plaintiffs are not attacking the Earnings Tax, but instead the application thereof by the Collector, their challenge pursuant to the Hancock Amendment is not appropriate.

The Missouri constitution was amended in 1980 by the Hancock Amendment. Mo. Const. Art. X Sections, 16 to 22. The Hancock Amendment provides, in relevant part "[p]roperty taxes and other local taxes and state taxation spending may not be increased above the limitations specified herein without direct voter approval . . .." Mo. Const. Art. X Section 16. Further, relevant to this issue, the Hancock Amendment states:

> Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base.

Mo. Const. Art. X Section 22(a).

As can be observed in the above provision, the first section of the Hancock Amendment is primarily concerned with the "levy" of taxes. The word "levy," in this context, "is the formal and

official action of a legislative body invested with the power of taxation . . . whereby it determines and declares that a tax of a certain amount, or of a certain percentage on value, shall be imposed on persons and property subject thereto. See State ex rel. Indus. Servs. Contractors, Inc. v. Cnty. Comm'n of Johnson Cnty., 918 S.W.2d 252, 256 (Mo. 1996). When it is used in connection with the authority to tax, "levy" "denotes exercise of legislative function, whether state or local, determining that a tax shall be imposed and fixing the amount, purpose and subject of the exaction. Id.

In this case, the levy of the 1% has not changed since its inception. The policy change brought about by the Defendants in this case constitutes action by the executive branch, not the legislative branch. As a result, Plaintiff's first argument that Defendants have violated the Hancock Amendment by creating a new tax or expanding the tax levy has no merit.

Plaintiffs' second argument related to the Hancock Amendment is that Defendants violated the Hancock Amendment by broadening the definition of the base of an existing tax without reducing the maximum authority levy to yield the same estimated gross revenue. In other words, Plaintiffs contend Defendants have broadened the base by taxing teleworking days, but have not enacted any corresponding reduction so as to result in the same estimated gross revenue.

The parties have stipulated that (1) neither the Hancock Amendment, Mo. Const., Art X, Section 23, Section 92.110 RSMo, nor City Code Section 5.22.020 contains a definition of the phrase "base of an existing tax," (2) the Earnings Tax is 1% of all earnings of residents and applicable nonresidents at whatever those wages were (subject to the dispute in this case), and is not on a specific dollar amount; (3) that there has never been a "maximum authorized current levy of taxation" regarding the Earnings Tax as applied to the City of St. Louis; and (4) the Earnings Tax has not been "reduced to yield the same estimated gross revenue as on the prior base."

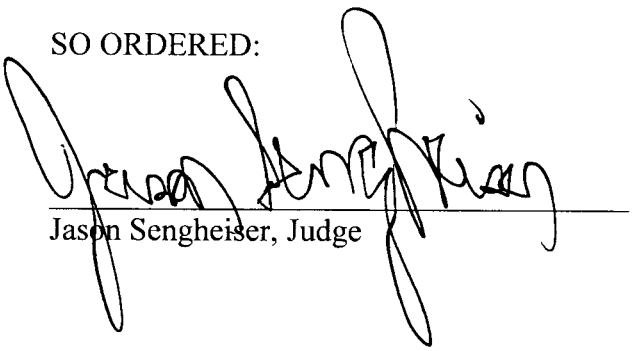
The phrase "base of an existing tax" has been construed by the Missouri Supreme Court as "that property against which the law allows a government to levy a tax." Tannenbaum v. City of Richmond Heights, 704 S.W.2d 227, 229 (Mo. banc 1986). Thus, a broadening of the definition of the base of an existing tax would necessarily involve the inclusion of new types of property, not previously taxed, within the tax base and against which a tax could be levied. Id. While these definitions are helpful, the Court notes ultimately they were not helpful to the decision in Tannenbaum, which also concerned legislative action.

The Court finds that in order to constitute a violation of the Hancock Amendment, the broadening of the definition of the base of an existing tax must have been done by legislative function. See Feese v. City of Lake Ozark, 893 S.W.2d 810, 811 (Mo. banc 1995) (challenging legislative enactment of an ordinance establishing a schedule of monthly sewerage service charges). Plaintiffs have not, and cannot, cite to a single case where the Hancock Amendment was applied to the executive branch's enforcement of a law. Here, the undisputed facts show that the Earnings Tax is applicable to the exact same property – Plaintiffs' earnings – in 2020 as it was on November 4, 1980. There has been no legislative change redefining that base. All that has changed here is how the Collector applies the Earnings Tax to remote work, an interpretation which this Court finds incorrect, but which does not constitute a violation of the Hancock Amendment.

THEREFORE, it is Ordered, Decreed, and Adjudged, for the reasons stated herein, that Plaintiffs' Motion for Summary Judgment is GRANTED IN PART; and Defendants' Joint Motion for Summary Judgment is GRANTED IN PART. Judgment is granted in favor of Plaintiffs and against Defendants on Count III of Plaintiffs' Second Amended Petition. Judgment is granted in favor of Defendants and against Plaintiffs on Count IX of Plaintiffs' Second Amended Petition.

Because Plaintiffs prevail on Count III, they will be entitled to refund of the Earnings Tax they paid in 2020 and subsequent years while they were teleworking remotely from outside the City plus interest pursuant to Sections 32.068 and 32.069. Defendants shall process such refunds as requested.

SO ORDERED:



Jason Sengheiser, Judge

Dated: January 19, 2023