ORIGINAL

IN THE SUPREME COURT OF OHIO

JEFFREY B. SATURDAY and KAREN R. SATURDAY	)	CASE NO. 14-0292
Appellants,	)	
v.	)	On Appeal from the Ohio Board of Tax Appeals
CITY OF CLEVELAND BOARD OF REVIEW and NASSIM LYNCH, CLEVELAND TAX ADMINISTRATOR	)	Board of Tax Appeals Case No. 2011-4027
Appellees.	)	

MEMORANDUM OF APPELLANTS JEFFREY B. SATURDAY AND KAREN R. SATURDAY IN OPPOSITION TO APPELLEES' MOTION TO STRIKE

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The Appellees (hereinafter, the "Tax Administrator") seek to have a portion of the Saturdays' Reply Brief stricken on the grounds that it purportedly raises a "new issue." The portion of the Reply Brief that the Tax Administrator seeks to strike is a single paragraph on page 17 that explains how Cleveland's use of the games-played method discriminates against out-of-state interests. Specifically, that paragraph discusses Cleveland's agreement with Berea, Ohio – where the Cleveland Browns practice but do not play in any games – which allows Berea to tax at least 50% of the income of Browns players and, therefore, sets a different method of taxation for Cleveland Browns players than for all visiting players.

As noted in its motion, the Tax Administrator raised this very same objection in the parallel litigation involving Hunter T. Hillenmeyer, Supreme Court Case No. 2014-235. For the same reasons as in the *Hillenmeyer* litigation, the motion should be denied.

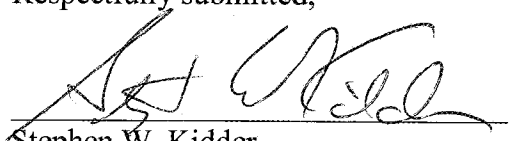
The Saturdays' Reply brief raises no new issues. The Saturdays highlighted Cleveland's agreement with Berea in their opening brief in arguing that the games-played method discriminates against interstate commerce. *See* Appellants' Br. 44–46 and n.9. The "new issue" that the Tax Administrator claims the Saturdays have raised in their Reply brief is the argument that "'Cleveland [] discriminates against out-of-state interests by *not applying* the games-played method to employees of the Cleveland Browns.'" *See* Mot. to Strike 2 (quoting Reply Br. 17). Yet the Saturdays made this very same argument in almost identical language in their opening brief: "Cleveland's decision to exclude members of the Browns from the games-played method that it applies to members of all out-of-state Clubs is further evidence of impermissible discrimination against out-of-state business." Appellants' Br. 46 n.9. The Tax Administrator's claim that this is a "new issue" is thus bewildering.

Nor is there any inconsistency between the as-applied language in the Saturdays' opening brief and the Reply brief. Both briefs argue that Cleveland is applying its rule regarding the taxation of professional athletes one way to the athletes employed by the home team, the Cleveland Browns, and in a different, and discriminatory, way to the athletes employed by non-Cleveland teams. Neither brief argues that application of such differing tax schemes is mandated by the Cleveland Codified Ordinances or the City's rules.

The Tax Administrator's Motion to Strike also argues, in a footnote, that the Saturdays have raised a new and unsupported argument by noting that they received a full refund of all Ohio taxes paid in 2008. It is the Tax Administrator's argument, however, that is unsupported by the record evidence. Specifically, the Tax Administrator argued in its opening brief that Saturday "[p]aid Ohio [t]ax for [the] Cleveland [g]ame." Appellees' Br. 30. But the only record evidence relied on in support of that assertion is Jeffrey Saturday's W-2 reflecting that his employer *withheld* Ohio taxes in 2008. (*See* Supp. 74.) An employer's withholding of taxes is not the same thing as an employee's payment of taxes. The Tax Administrator nevertheless asserts, without *any* evidence, that the Saturdays *paid* Ohio taxes in 2008. The Saturdays simply pointed out in their Reply brief that, not only is there no evidence that they paid Ohio taxes in 2008, but in fact they requested and received a full refund.

In sum, the Tax Administrator's Motion to Strike is without merit and should be denied.

Respectfully submitted,



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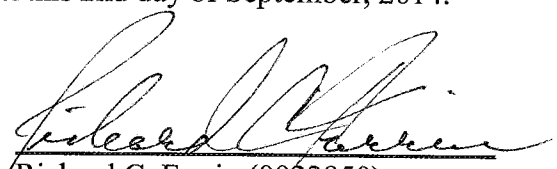
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum of Appellants Jeffrey B. Saturday and Karen R. Saturday in Opposition to Appellees' Motion to Strike was served on Linda L. Bickerstaff, Assistant Director of Law, City of Cleveland Department of Law, 205 West St. Clair Avenue, Cleveland, Ohio 41133, Counsel of Record for Appellees, by regular U.S. Mail, postage prepaid, on this 2nd day of September, 2014.



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