

IN THE SUPREME COURT OF OHIO

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|-------------------------|---|---------------------------|
| JEFFREY B. SATURDAY |) | Case No: 2014-0292 |
| |) | |
| and |) | |
| |) | On Appeal from the |
| KAREN R. SATURDAY |) | Ohio Board of Tax Appeals |
| |) | |
| Plaintiff-Appellant, |) | |
| |) | Ohio Board of Tax Appeals |
| vs. |) | Case No. 2011-4027 |
| |) | |
| CITY OF CLEVELAND BOARD |) | |
| OF REVIEW, |) | |
| |) | |
| and |) | |
| |) | |
| NASSIM M. LYNCH |) | |
| |) | |
| Defendants-Appellees. |) | |

APPELLEES' MOTION FOR RECONSIDERATION OF DECISION ON THE MERITS

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CITY OF CLEVELAND BOARD OF REVIEW
AND NASSIM M. LYNCH

MEMORANDUM IN SUPPORT

Pursuant to S.Ct.Prac.R. 18.02(B)(4), Appellees, Cleveland Board of Review and Nassim M. Lynch, urgently request the Court to reconsider its decision finding that under its income tax ordinance and city regulations, Cleveland lacked authority to tax the wages earned by Appellant, Jeffrey B. Saturday for the Cleveland game since he did not travel with his team to Cleveland for that game. Opinion at ¶¶12-13. From the opinion, it is clear that in reaching its decision, the Court failed to consider Cleveland's income tax ordinance in its entirety.

The Court's opinion notes that "Cleveland imposes a tax on 'all qualifying wages, earned and/or received on and after January 1, 1967, by nonresidents of the City for work done or services performed or rendered within the City or attributable to the City.'" Opinion at ¶14. But *in addition* to the two-prongs of the ordinance that the Court relied on, a third-prong exist as well that the Court clearly failed to consider.

In its entirety, with regard to nonresidents, Section 191.0501(b)(1) of Cleveland's Income Tax Ordinance provides that city tax shall be imposed:

On all qualifying wages, earned and/or received on and after January 1, 1967, by nonresidents of the City for work done or services performed or rendered within the City or attributable to the City; on all net profits earned and/or received by a nonresident from the operation or conduct of any business or profession within the City; and on all other taxable income earned and/or received by a nonresident derived from or attributable to sources, events or transactions within the City.

(Emphasis added.) Under this provision, Cleveland taxes all qualifying wages "earned and/or received" for "work done or services performed or rendered within the City." Cleveland also taxes qualifying wages "earned and/or received" that is "attributable to the City." But further,

Cleveland taxes “all other taxable income” “earned and/or received” by a nonresident “from or attributable to sources, events or transactions within the City.”

As this Court noted in *Hillenmeyer v. Cleve. Bd. of Rev.*, __ Ohio St.3d __, 2015-Ohio-1623, __ N.E.3d __, ¶19, “Cleveland Codified Ordinances 191.0318 defines ‘taxable income’ as ‘all qualifying wages, net profits and all other income from whatever source derived set forth in Section 191.0501, and the Rules and Regulations as taxable.’” Cleveland tax was properly imposed on a *portion* of the Taxpayer’s income because it arose from an event or transaction that occurred in the City—the Cleveland game. This cannot be ignored. There is absolutely no authority that a state (or municipality) cannot impose a tax under these circumstances.

When looking at an income tax, the proper focus is on the income being taxed not the *location* of the person receiving that income. Taxpayer earned wages for the Cleveland game even though he may not have participated in that game. Taxpayer therefore should not be allowed to escape city tax but rather should be required to pay tax on such wages as did the other players.

CONCLUSION

For the reasons discussed herein, the Court should reconsider its decision finding that under its income tax ordinance and city regulations, Cleveland lacked authority to tax the wages earned by the Taxpayer.

Respectfully submitted,
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Director of Law

By: /s/ Linda L. Bickerstaff
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CERTIFICATE OF SERVICE

A copy of the foregoing Appellees' Motion for Reconsideration of Decision on the Merits was served by regular U.S. mail on Appellants' counsel, Stephen W. Kidder, Esq., Hemenway & Barnes LLP, 60 State Street, Boston, MA 02109-1899 and Richard C. Farrin, Esq., Zaino Hall & Farrin LLC, 41 South High Street – Suite 3600, Columbus, Ohio 43215 on this 11th day of May 2015.

/s/ Linda L. Bickerstaff
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