

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,)	Board of Tax Appeals Case No. 2011-4027
CLEVELAND TAX ADMINISTRATOR)	
)	
Appellees.)	

**MEMORANDUM OF APPELLANTS JEFFREY B. SATURDAY
AND KAREN R. SATURDAY IN OPPOSITION TO APPELLEES' MOTION FOR
RECONSIDERATION OF DECISION ON THE MERITS**

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FILED

MAY 21 2015

CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN OPPOSITION

Appellees the City of Cleveland Board of Review and Nassim Lynch (together, the “Tax Administrator”) have moved this Court to reconsider its unanimous decision issued on April 30, 2015, holding that the City of Cleveland lacked authority under its own ordinance to tax the wages of a nonresident who performed no work or services within the City of Cleveland during the tax year. The Tax Administrator’s motion raises a single argument in support of reconsideration – namely, that the Court purportedly failed to consider the entirety of the relevant provision of the Cleveland Codified Ordinances. There was no error in this Court’s decision, and the motion to reconsider should be denied.

As an initial matter, the Tax Administrator’s motion should be denied because it is nothing more than an improper reargument of her case. Supreme Court Practice Rule 18.02 cautions that “[a] motion for reconsideration shall not constitute a reargument of the case” Here, the sole argument presented in the Tax Administrator’s motion for reconsideration – that Cleveland has authority to tax Mr. Saturday’s wages under the third clause of Cleveland Codified Ordinances 191.0501(b)(1) – is simply a reargument of a point made in the Tax Administrator’s initial brief on the merits. *See* Appellees’ Br. at 27–28. This Court has thus already considered and rejected that argument, and the motion for reconsideration should be denied on that basis alone.

Section 191.0501 of the Cleveland Codified Ordinances governs Cleveland’s authority to tax non-residents. That section provides that Cleveland may impose a 2% income tax on nonresidents as follows:

On all qualifying wages, earned and/or received on or 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[.]

Cleveland Codified Ordinances 191.0501(b)(1) (emphasis added). This Court held that Cleveland lacked authority to tax Mr. Saturday's wages under this provision because none of Mr. Saturday's work during the tax year was performed in Cleveland, nor could it be attributed to Cleveland "since the evidence shows that Saturday was in Indianapolis on game day, engaging in physical rehabilitation in preparation for future games." *Saturday v. Cleveland Bd. of Rev.*, Slip Opinion No. 2015-Ohio-1625, ¶ 14.

In moving for reconsideration, the Tax Administrator argues that this Court erred in failing to consider whether Mr. Saturday's wages were subject to tax under the third clause of Section 191.0501(b)(1). That clause is irrelevant, however, because the sole issue in this case was Cleveland's authority to tax Mr. Saturday's wages. *See, e.g.*, Appellees' Br. 4 (arguing that Saturday's income at issue in this case is "clearly" qualifying wages). The first clause of Section 191.0501(b)(1) is the clause that governs Cleveland's authority to tax the "qualifying wages" of a nonresident. The third clause, by contrast, governs only Cleveland's authority to tax "*other taxable income* earned and/or received by nonresident derived from or attributable to sources, events or transactions within the City." Cleveland Codified Ordinances 191.0501(b)(1) (emphasis added). Because Mr. Saturday's "qualifying wages" were the only form of income at issue in this case, Cleveland's reliance on the third clause of Section 191.0501(b)(1) is misplaced.

Moreover, even if the third clause of Section 191.0501(b)(1) did apply here (which it does not), Mr. Saturday's income was no more "attributable" to Cleveland under the third clause than under the first. As this Court recognized in its decision, Mr. Saturday performed no work or

services in Cleveland, and in fact performed services for his employer in Indianapolis on the day when the Indianapolis Colts played a game in Cleveland.

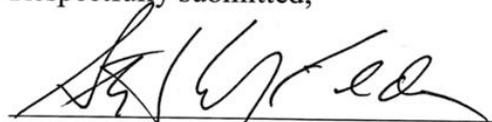
Construing the third clause of Section 191.0501(b)(1) to allow Cleveland to tax Mr. Saturday would also run counter to the two canons of construction that this Court relied on its decision. First, as this Court has repeatedly recognized, “a statute that imposes a tax requires strict construction against the state, with any doubt resolved in favor of the taxpayer.” *Columbia Gas Transmission. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, 882 N.E.2d 400, ¶ 34; *Bowsher v. Euclid Income Tax Bd. of Rev.*, 99 Ohio St.3d 330, 2003-Ohio-3886, 792 N.E.2d 181, ¶ 14. More importantly, construing the Cleveland Codified Ordinances to allow Cleveland to tax the wages of a nonresident who performs no work or services within Cleveland would violate the “implied condition of all statutes relating to taxation that they have no extraterritorial effect.” *Schneiter v. Laffoon*, 4 Ohio St.2d 89, 96, 212 N.E.2d 801 (1965).

CONCLUSION

For the reasons set forth above, the Court should deny Appellees’ motion for reconsideration of the decision on the merits.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Merit Brief of Appellants Jeffrey B. Saturday and Karen R. Saturday 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 *21st* day of May, 2015.


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