

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

DOUGLAS P. LABORDE, ET AL.,	:	
	:	Case No. 12-CV-8517
Plaintiffs,	:	
	:	JUDGE COCROFT
v.	:	
	:	
THE CITY OF GAHANNA, ET AL.,	:	
	:	
Defendants.	:	

I. FINDINGS OF FACT

1. This dispute concerns the amount owed to the 17,648 taxpayers (“Plaintiffs”) who overpaid taxes to Defendants, Regional Income Tax Agency (“RITA”) and the City of Gahanna (“Gahanna”), from tax years 2008 to 2014, due to the misapplication of Gahanna City Code § 161.18(a).

2. RITA is the tax administrator for Gahanna.

3. Gahanna is a municipality that collects income taxes pursuant to Gahanna City Code.

4. Plaintiffs are the 17,648 taxpayers who overpaid taxes to Gahanna, collected through RITA on behalf of Gahanna, from tax years 2008 to 2014, due to the misapplication of Gahanna City Code § 161.18(a).

5. Plaintiffs retained expert Rebekah Smith to determine the amounts owed to them as a result of the misapplication of Gahanna City Code § 161.18(a).

6. RITA and Gahanna retained expert Mary Jo Dolson (“Dolson”) to verify Smith’s calculations and to determine if Smith properly calculated the amounts owed to Plaintiffs.

7. After review of the qualifications of Smith and Dolson, this Court deemed both experts qualified to testify regarding the amount owed to Plaintiffs.

8. Both Smith and Dolson provided initial and supplemental reports.

9. Upon review of Smith's initial February 13, 2017 Report, and in assessing Smith's calculations, Dolson took issue with four areas, as reflected in Dolson's initial May 5, 2017 Report. The four areas of concern involved: 1) Smith's calculations regarding negative non-wage income; 2) Dolson's discovery of a discrepancy in the withholding information utilized in Smith's calculations; 3) Smith's computation of the tax credit for residents with income earned in multiple cities; and 4) Smith's computations concerning penalties, interest, and legal fees.

10. Upon review of Dolson's initial May 5, 2017 Report, Smith issued a supplemental report and agreed with Dolson's positions regarding negative non-wage income and the discrepancy in the withholding information. Thus, the only two issues remaining before this Court concern the correct computation of credit for residents with income in multiple cities and the correct computation of penalties, interest, and legal fees.

A. Computation of Credit for Residents with Income in Multiple Cities

11. When calculating the tax credit owed under Gahanna City Code § 161.18(a), Smith included both income earned inside and outside Gahanna, and calculated the tax credit based upon all income, regardless of where the income was earned.

12. Further, Smith's calculations refund taxes that were withheld for Gahanna, effectively allowing some residents of Gahanna to pay no income tax to Gahanna.

13. Dolson disagrees with Smith's computation of the tax credit under Gahanna City Code § 161.18(a) owed to residents with income earned in multiple cities, and opines that Smith has overstated this amount by \$2.4 million.

14. Dolson concludes that it is illogical that Gahanna would receive no income tax on income earned in Gahanna.

15. Dolson further opines that Smith's reliance on Gahanna City Code §§ 161.02(a)(52), 161.05(b), and 161.05(d)(1) when calculating the tax credit under Gahanna City Code § 161.18(a) is incorrect because those provisions have nothing to do with calculating the tax credit.

16. In contrast to Smith's reliance on several Gahanna City Code provisions to calculate the tax credit, Dolson relies only on the language of Gahanna City Code § 161.18(a).

17. Pursuant to Gahanna City Code § 161.18(a), Dolson calculated the tax credit owed to residents with income earned in multiple cities based upon the income earned outside Gahanna that had taxes withheld on behalf of Gahanna.

18. Dolson came to this conclusion based upon her interpretation of the language of Gahanna City Code § 161.18(a), which is that the 83 1/3% is based on the wages earned and the taxes withheld on Gahanna's behalf in other municipalities.

19. Dolson also interprets the language of Gahanna City Code § 161.18(a) as prohibiting any tax credit granted under § 161.18(a) to be larger than or greater than the tax due on that income for Gahanna. Such an interpretation prevents a situation where a taxpayer is receiving a tax credit but is not actually paying any tax to Gahanna.

20. Utilizing Dolson's application, Dolson calculated the amount owed to residents with income earned in multiple cities under Gahanna City Code § 161.18(a) to be \$10,835,435.03. Because Dolson never received the list of opt-out class members, Dolson acknowledges that this amount includes damage calculations for the opt-out class members.

21. To verify that her calculations of the tax credit owed under Gahanna City Code § 161.18(a) to these residents was correct, Dolson relied upon the language of Gahanna City Code § 161.18(a), and her experience as a state and local tax expert for over thirty years.

22. Dolson's application regarding the amount of tax credit owed to Plaintiffs does not change based upon the taxpayer's filing status as an individual or joint filer.

B. Computation of Penalties, Interest and Legal Fees ("PILF")

23. In August 2016, RITA provided information that was relevant to Plaintiffs. RITA, however, did not parse out the information that it believed was relevant to damages only.

24. The data RITA provided to Smith and Dolson contained information about the various penalties, interest, and legal fees that it charged. The data was labeled by type: "P" for penalty, "I" for interest, and "L" for legal fees.

25. Despite being provided this information, Smith does not believe the data RITA provided to her contained information that allowed her to identify whether the penalties, interest, and the legal fees were associated with the misapplication of the tax credit under Gahanna City Code § 161.18(a).

26. As a result, if a taxpayer was due a refund and the taxpayer was charged penalties, interest, or legal fees, regardless of whether they were associated with the misapplication of the tax credit under Gahanna City Code § 161.18(a), Smith took the position that all of the penalties, interest, and legal fees reflected on the files related directly to the tax credits at issue. Thus, she gave all of the penalties, interest, and legal fees back Plaintiffs as damages. This resulted in Smith's calculation of penalties, interest, and legal fees being overstated, as it included damages for penalties, interest, and legal fees for certain individuals who were not entitled to them.

27. In contrast, after Dolson performed her own calculations utilizing the same data, she determined that \$654,059.85 in damages for penalties, interest, and legal fees is owed Plaintiffs as a result of the misapplication of the tax credit under Gahanna City Code § 161.18(a).

1. Penalties

28. The data that RITA provided categorized the penalties into different types.

29. A late charge penalty, assessed for untimely filing of a return, is a set amount of \$25.00.

30. Dolson determined that this late charge penalty did not relate to the misapplication of the tax credit issue. Rather, the \$25.00 charge was assessed because the taxpayer simply filed the return late. Because the late charge penalty had nothing to do with misapplication of the tax credit, Dolson did not include any amounts for late charge penalties in her damages calculation.

31. Another penalty assessed concerned the underpayment of estimated taxes.

32. Where a taxpayer underpaid the amount of estimated taxes owed, penalties and interest associated with the underpayment of estimated taxes was assessed. This was based on a percentage, per Gahanna City Code.

33. Because Dolson felt that some of these penalties could relate to the tax credit issue, she performed calculations in order to account for this sum.

34. To account for the sum of penalties and interest that could relate back to the misapplication of the tax credit, Dolson: 1) looked at the taxpayer to determine the amount of taxes they paid; 2) determined what the potential refund owed was due to the tax credit issue; and 3) determined a percentage of what the refund related to the tax credit issue in order to assess how much of the penalties and interest should be returned to the taxpayer.

35. Based on Dolson's calculations, she determined that \$449,160.71 in penalties are owed to Plaintiffs for underpayment of estimated taxes.

36. Dolson also determined that \$204,899.14 in interest is owed to Plaintiffs for underpayment of estimated taxes.

37. In sum, Dolson opined that the total amount owed to Plaintiffs for penalties and interest for underpayment of estimated taxes, as a result of the misapplication of the tax credit under Gahanna City Code § 161.18(a), is \$654,059.85.

2. Interest

38. Because Gahanna City Code § 161.12(f) provides for interest on the amount of overpayment of tax refunds, in addition to this being common practice, Dolson included interest on the amount of overpayment of tax refunds in her amount of damages owed to Plaintiffs.

39. Dolson calculated this interest through February 28, 2018, to be \$1,780,163.81, and agrees that additional interest on the amount of overpayment of tax refunds will be due until the date of resolution.

40. However, because interest on penalties, interest, and legal fees is not provided for by statute, Dolson did not provide for interest on the penalties and interest amount of \$654,059.85.

41. Dolson opined that it is a common practice and well-recognized accounting principle in state and local tax not to provide interest on penalties, interest, and legal fees.

42. Conversely, Smith did include interest on the penalties and interest for the underpayment of estimated taxes, despite the absence of any statute providing for such interest.

3. Legal Fees

43. Legal costs are paid upfront when filing the claims with the court, and are then charged back to the taxpayer. These costs are associated or made part of the judgments that Gahanna or RITA, on behalf of Gahanna, received against the taxpayer.

44. Legal costs are assessed against a taxpayer anytime Gahanna or RITA, on behalf of Gahanna, would file a legal claim for a lien against a taxpayer for failure to pay the amount due on a tax return or, if an assessment was issued, a failure to pay that assessment.

45. RITA provided data to both Smith and Dolson that outlined legal costs associated with this matter.

46. Dolson believes the legal costs are reduced to a court judgment.

47. Dolson determined that, because the legal costs dealt with liens and judgments and had nothing to do with the misapplication of the tax credit, zero legal fees should be included in the amount owed to Plaintiffs.

48. Dolson holds all of her opinions to a reasonable degree of accounting certainty.

II. CONCLUSIONS OF LAW

A. Computation of Credit for Residents with Income in Multiple Cities

49. Ohio courts have a duty to construe statutes and ordinances to avoid unreasonable or absurd results. *State ex rel. Webb v. Bliss*, 99 Ohio St.3d 166, 2003-Ohio-3049, 789 N.E.2d 1102, ¶ 22; *State ex rel. Miles v. McSweeney*, 96 Ohio St.3d 352, 2002-Ohio-4455, 775 N.E.2d 468, ¶ 24.

50. This Court's September 11, 2014 Decision and Entry governs the interpretation of Gahanna City Code §161.18(a) in this case.

51. Gahanna City Code § 161.18(a) provides a tax credit to taxpayers who reside in Gahanna, but earn income outside of Gahanna, and pay a municipal income tax in another municipality.

52. Gahanna City Code § 161.18(a) states, in pertinent part:

Every individual taxpayer who resides in the City, but who received net profits, salaries, wages, commissions, distributions from associations, or other compensation for work done or services performed or rendered outside the City, if it is made to appear that he has paid a municipal income tax or excise tax based on income, or such net profits, salaries, wages, commissions, distributions from associations, or other compensation in another municipality, shall be allowed a credit of eighty-three and one-third percent (83-1/3%) of the amount so paid by him or in his behalf in such other municipality to the extent of the tax assessed by this chapter, by reason of such net profits, salaries, wages, commissions or other compensation **earned in such other municipality where such tax is paid.** In no instance shall the allowable credit for tax paid another municipality exceed the amount of tax imposed by this chapter.

(Emphasis added.)

53. This Court finds that, based on the language of Gahanna City Code § 161.18(a) and this Court's September 11, 2014 Decision and Entry, the determining factor in calculating the tax credit owed to residents with income in multiple cities under Gahanna City Code § 161.18(a) is where the residents earned the income.

54. This Court further finds that, based on the language of Gahanna City Code § 161.18(a) and this Court's September 11, 2014 Decision and Entry, where a taxpayer earned income from both inside and outside Gahanna, only the amount of income earned outside Gahanna shall be utilized when calculating the tax credit owed to Plaintiffs.

55. Gahanna City Code § 161.02(a)(52) states, "The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates."

56. This Court finds that Gahanna City Code § 161.02(a)(52) does not concern the computation of credit for residents with income in multiple cities.

57. Gahanna City Code § 161.05(b) provides: "[i]f a joint City return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several."

58. This Court finds that Gahanna City Code § 161.05(b) allows for spouses to file either separate returns or a joint return for municipal purposes, and does not concern the computation of credit for residents with income in multiple cities.

59. Gahanna City Code § 161.05(d)(1) states that a tax return shall set forth "[t]he aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable,

and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax.”

60. This Court finds that Gahanna City Code § 161.05(d)(1) sets forth the information that must be included on a tax return, and does not concern the computation of credit for residents with income in multiple cities.

61. This Court further finds that, based on the language of Gahanna City Code § 161.18(a), this Court’s September 11, 2014 Decision and Entry, and Ohio case law, where a taxpayer earned income from both inside and outside the City of Gahanna, only the amount of income earned outside of Gahanna shall be utilized when calculating the tax credit owed to Plaintiffs under Gahanna City Code § 161.18(a).

62. To include all income earned both inside and outside Gahanna in this calculation would create the unreasonable and absurd result of some taxpayers not paying an income tax to Gahanna for income earned in Gahanna. Thus, some income would not be subject to any municipal income tax.

63. Accordingly, this Court finds the amount owed to Plaintiffs for the overpayment of taxes as a result of the misapplication of Gahanna City Code § 161.18(a) is \$10,835,435.03.

B. Computation of Penalties, Interest, and Legal Fees

64. Gahanna City Code § 161.11(b)(3) imposes a late charge penalty of \$25.00 where a taxpayer fails to file a return by the due date or by the date resulting from extension.

65. This Court finds that, because the late charge penalty of \$25.00 is imposed where a taxpayer files a return late, and is not related to the misapplication of the tax credit under Gahanna City Code § 161.18(a), no late charge penalties shall be included in the calculation of damages owed to Plaintiffs.

66. Gahanna City Code § 161.11(b)(4) provides for the imposition of a percentage-based penalty for the underpayment of estimated taxes.

67. Gahanna City Code § 161.11(a) provides that any amount remaining unpaid after it becomes due shall bear interest at a rate of one and one-half percent per month or fraction thereof.

68. This Court finds that, because the information regarding penalties and interest assessed for the underpayment of estimated taxes is readily available in the data RITA provided and is based on a percentage, the amount owed to Plaintiffs for the overpayment of penalties and interest assessed for the underpayment of estimated taxes as a result of the misapplication of Gahanna City Code § 161.18(a) shall also be based on a percentage.

1. Interest

69. Gahanna City Code § 161.12(f) provides that interest shall be paid on any overpayment by a taxpayer of any municipal income tax obligation, and further provides that the “interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.”

70. Gahanna City Code § 161.12(f) does not provide for the payment of interest on any penalties and interest, nor is this Court aware of any such statute.

71. This Court finds that, pursuant to Gahanna City Code § 161.12(f), interest on the amount owed to Plaintiffs for overpayment of any income tax obligations shall be included in the calculation of damages owed to Plaintiffs.

72. This Court further finds that, because no statute provides for the payment of interest on penalties and interest as a result of the misapplication of Gahanna City Code § 161.18(a), such amount shall not be included in the calculation of damages owed to Plaintiffs.

2. Legal Fees

73. This Court finds that, because the legal fees assessed relate to court costs that were required to be paid when filing liens, and are not a result of the misapplication of the tax credit, no legal fees shall be included in the calculation of Plaintiffs' damages.

III. CONCLUSION

Based upon the above Finding of Fact and Conclusions of Law, this Court finds that Plaintiffs are entitled to a tax refund in the amounts of: 1) \$10,835,435.03 relating to misapplication of the tax credit; 2) \$654,059.85 relating to improperly charged penalties, interest and legal fees; and 3) \$1,780,163.81 in interest.

IT IS SO ORDERED.

Copies to all parties.

Franklin County Court of Common Pleas

Date: 10-31-2018

Case Title: DOUGLAS P LABORDE -VS- GAHANNA CITY
ET AL

Case Number: 12CV008517

Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a circular blue seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 12CV008517

Case Style: DOUGLAS P LABORDE -VS- GAHANNA CITY
ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes