

IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
STATE OF MISSOURI

MARK BOLES, *et al.*)
individually and on)
behalf of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
CITY OF ST. LOUIS, MISSOURI,)
)
Defendants.)

Case No.: 2122-CC00713
Division: 20

**PLAINTIFFS’ SECOND AMENDED PETITION
FOR DAMAGES AND INJUNCTIVE RELIEF,
FOR REFUND OF TAXES PAID BUT NOT OWED,
IN THE ALTERNATIVE, FOR VIOLATIONS OF CIVIL RIGHTS,
FOR CLASS ACTION STATUS, AND FOR
DECLARATORY RELIEF FOR
INTERPRETATION OF EARNINGS TAX ORDINANCE AND
LAWFULNESS UNDER HANCOCK AMENDMENT**

Plaintiffs Mark Boles, Nicholas Oar, Kos Semonski and Christian Edward Stein, III, who are nonresidents of the City of St. Louis, individually, and on behalf of all others similarly situated, by undersigned counsel, W. Bevis Schock and Mark C. Milton, state as their Second Amended Petition as follows:

Introduction

1. Nonresidents of the City of St. Louis are subject to a 1% earnings tax on salaries, wages, commissions, other compensation and/or net profits “for work done or services performed or rendered *in the City*” (“work done in the city”), the Earnings Tax Law, City Code § 5.22.020 (“the Ordinance”). The City’s authority to impose the earnings tax is found under RSMo. § 92.111. The City’s Ordinance mirrors that state statute.

2. The earnings tax is primarily collected by city-based employers withholding 1% from 100% of their nonresident employees' pay throughout the calendar year.
3. The employers pay the withheld earnings tax to the City's Collector of Revenue, Defendant Gregory F.X. Daly ("the Collector"), on a quarterly basis, with the money due at the end of the month succeeding the month ending the quarter.
4. Some persons pay the earnings tax directly to the Collector.
5. Teleworking is herein defined as working from a location outside the City for a city-based employer, but not while traveling for that employer for a business purpose.
6. Before tax year 2020, Defendants, the City through the Collector, issued refunds to nonresidents for earnings tax withheld but not owed, based on the number of days such taxpayers worked outside the City. Using the "Non-Residency Deduction," nonresidents could apply for a pro-rated refund based on the number of days they worked outside the City, using a standard work year of 260 days.
7. Before 2020, Defendants never required nonresidents or their employers to specify whether the days were spent teleworking or traveling for that employer for a business purpose.
8. Nonresidents would obtain the refund by submitting a refund request form signed by their employer certifying the number of days they worked outside the City.
9. Now, Defendants refuse to pay refunds for teleworking. In doing so, Defendants are brazenly and unlawfully keeping Plaintiffs' money.
10. As of this filing, many persons have submitted refund forms for tax year 2020 requesting refunds of earnings tax for days worked outside the city while either:
 - a. Teleworking on some days and traveling for a business purpose on some days,

- b. Teleworking only, or
 - c. Traveling for a business purpose only.
11. The City has informed all persons seeking refunds for teleworking days that the City will not pay refunds for such days.
 12. Many persons have yet to submit refund requests for teleworking days because they have been told by the Collector not to do so.
 13. In public statements and on new refund forms promulgated for tax year 2020, the Collector has instructed city-based employers not to certify teleworking days as days worked outside the City.
 14. This unlawful interpretation is designed to intimidate employers and thwart nonresidents from seeking refunds of money currently in possession of the City but which they do not owe to the City.
 15. There are also many persons who have submitted refund forms pursuant to this instruction requesting only days worked outside the City traveling for their employer for a business purpose, but not spent teleworking.
 16. Defendants have withheld from those persons their lawful refunds for time spent teleworking outside the City.
 17. There are many persons who have submitted no refund form for tax year 2020 at all because of the Defendant's unlawful instruction.
 18. Defendants have withheld from those persons their entire lawful refunds.
 19. In the alternative, Plaintiffs are entitled to refunds of earnings taxes for teleworking days pursuant to RSMo. § 139.031.1-4, ("the Refund Statute").

20. By its literal terms, section 1 of the Refund Statute requires a taxpayer seeking a refund of taxes to file a protest “at the time of paying such taxes.”
21. This timing requirement is absurd or non-sensical for tax year 2020 because at the time when the employers were withholding the earnings tax for teleworking days and paying it over to the Collector there was nothing to protest because there had not been any tax assessed and the City had not yet refused to pay a refund.
22. In the alternative, taxpayers who submit requests for refunds for days spent teleworking are by such submission fulfilling the requirement of a protest under the refund statute, RSMo. § 139.031.
23. Plaintiffs have created forms for taxpayers to file for refunds for teleworking days and are publishing a website which will allow Plaintiffs to file for a refund of Earnings Tax for teleworking days.
24. Plaintiffs anticipate that many more persons will seek refunds for teleworking days.
25. In the Court’s hearing on Plaintiffs’ Motion for Temporary Restraining Order on May 5, 2021, counsel for the Collector conceded that filing for a refund for teleworking days does constitute a protest:

Judge: Mr. Luce (attorney for the Collector), what would be the process under Section 139.031 typically under someone who protested a withheld amount under this earnings tax?

Mr. Luce: Judge, my understanding is that when you -- when the taxpayer files his tax return at the end of the year, April 15th, that that is the time typically when a taxpayer who thinks he's paid an earnings tax in the prior 12 months that he shouldn't have or she shouldn't have, that's when they file their protest.

So they file -- they pay their taxes under protest. They communicate to the Collector. The statute is pretty clear that it says you shall file with the Collector a written statement setting forth the grounds on which the protest is based. It's not complicated. And then if the collector says we don't agree with you, we're not going to refund the

tax, then the taxpayer has 90 days after that decision to file a lawsuit. But my understanding is a protest can be brought at any time within a year after the payment of taxes.

Pg. 32, lines 5-20, Circuit Court Transcript, TRO Hearing, May 5, 2021.

26. The point of the Refund Statute's requirement of a protest at the time of payment of taxes is presumably to prohibit taxpayers from not paying their taxes while making spurious claims of non-liability for such taxes.
27. Here that purpose is meaningless because the City has long possessed all the taxpayers' money via payroll withholding.
28. To the extent the protest is statutorily required to put the City on notice regarding the taxpayers' claim of non-liability, so that the City does not spend (or plan to spend) money it may ultimately have to refund, that would not apply to nonresidents given that their employers are required to withhold the earnings tax from their pay and nonresidents have always received refunds in the past based on days worked outside the City without requiring a protest contemporaneous with payment.
29. There is dicta in the case law (*Blankenship*, see below) stating that there can be no class action suits under the Refund Statute because section 2 of the Refund Statute includes the sentence: "Every taxpayer protesting the payment of current taxes under subsection 1 of this section shall, within ninety days after filing his protest, commence an action against the collector by filing a petition for the recovery of the amount protested in the circuit court of the county in which the collector maintains his office."
30. Nevertheless, the court in *Blankenship* did not rule out the possibility of a class action suit in a tax refund case, but only stated that the requirements of the Refund Statute must be satisfied.
31. Plaintiffs suggest that requiring individual suits by each taxpayer is either:

- a. An incorrect statement of the law, as it is inconsistent with the Missouri Rules of Civil Procedure regarding class action,
 - b. Should be deemed not to apply in this case, or
 - c. Renders the Refund Statute unworkable in this case in that it cannot be used to obtain a plain, adequate and complete remedy for the redress of Plaintiffs' grievances, and that therefore this case should be adjudicated pursuant to 42 U.S.C. § 1983.
32. In the alternative, if for any reason the Court determines that it is impossible for taxpayers to use the Refund Statute on the facts of this case, then there is not available an adequate and complete remedy at law under that statute.
33. Defendants' conduct in denying nonresidents refunds for time when work was performed or services were rendered outside the City, which they have always received in prior years, shocks the conscience and violates Plaintiffs' Fourteenth Amendment right to substantive due process.
34. That conduct further violates such person's Fourth Amendment right to be free of unreasonable seizures.
35. Further, Defendants' change of policy for tax year 2020 regarding teleworking, without any change to the Earnings Tax Ordinance itself, and with Plaintiffs' money already in their hands, is an arbitrary distinction without rational basis and violates Plaintiffs' Fourteenth Amendment right to equal protection.
36. Plaintiffs have in their prior pleadings sought a Temporary Restraining Order ("TRO") directing the Collector to change his refund forms to allow employers to certify teleworking days as days worked outside the City and not subject to the earnings tax.

37. This Court denied that request for limited relief in its order of May 10, 2021.
38. Plaintiffs do not waive their demand for such relief or their position that a protest is not required under the circumstances. However, considering the Court's ruling on the TRO motion and the Collector's stated position that a protest is required, Plaintiffs' counsel has promulgated a new protest form that taxpayers may use to protest the payment of earnings tax and to seek a refund for teleworking days (referred to herein as the "Protest Form"). The Protest Form is available at www.stlrefund.com.
39. The Protest Form allows all nonresident taxpayers, who have not "protested" already through filing a refund claim or some other form of protest with the City, to protest the City's refusal to issue refunds based on teleworking days.
40. The deadline to file for refunds for teleworking days was previously announced by the Collector to be May 17, 2021.
41. The correct statute of limitation for such filings for tax year 2020, however, is May 17, 2022. See City Code § 5.54.060; see also FAQs from the Collector's Website: "The Statute of Limitations for a refund request is one year from the original date when the return and taxes were due." At the hearing on Plaintiffs' TRO motion on May 5, 2021, the Collector's attorney conceded that a protest could still be brought by nonresident taxpayers within a year after the payment of taxes, presumptively meaning one year from the 2020 tax return filing deadline of May 17, 2021. This would make the deadline for submitting a refund claim and/or protest May 17, 2022.
42. To eliminate any doubt, Plaintiffs herein seek declaratory relief that the deadline for such submissions is May 17, 2022.

43. Plaintiffs herein seek further declaratory relief on the fundamental question of whether the language of the Ordinance requires Defendants to refund taxpayers their earnings tax for teleworking days.
44. In the alternative, Plaintiffs seek equitable relief from the Court in the form of an order directing Defendants to pay refunds to all persons who file for such refunds for teleworking days.
45. In the alternative, Plaintiffs, individually and on behalf others similarly situated, seek damages under 42 U.S.C. § 1983 in the amount of the refunds they would have received but for Defendants' unconstitutional conduct, and injunctive relief to stop Defendants' unlawful conduct.
46. For their damages claims, Plaintiffs seek class action status to help all those harmed by Defendants' conduct.
47. Defendants' conduct enacts a new tax or expands the tax base. Therefore, Plaintiffs seek a declaration that Defendants' conduct violates the Hancock Amendment.
48. Plaintiffs also seek attorneys' fees under (a) the Court's equitable power, (b) 42 U.S.C. § 1988, and/or (c) the Hancock Amendment.

Parties and Relief Sought by Each Plaintiff

49. Plaintiff Mark Boles is an individual residing in St. Louis County, Missouri.
50. Plaintiff Nicholas Oar is an individual residing in St. Charles County, Missouri.
51. Plaintiff Kos Semonski is an individual residing in St. Charles County, Missouri.
52. Plaintiff Christian Edward Stein, III, is an individual residing in St. Louis County, Missouri.

53. Plaintiffs seek to be class representatives for all claims except the Hancock Amendment claim.
54. Plaintiffs Boles, Oar and Semonski seek to be class representatives for Class 1.
55. Plaintiff Stein seeks to be class representative for Class 2.
56. For the Hancock claim, Plaintiffs seek relief as individual taxpayers.
57. Each Plaintiff has, at all relevant times, had earnings taxes withheld for tax years 2020 and 2021 in the amount of 1% by their employers, with those amounts then paid over to the Collector.
58. The City of St. Louis (“the City”) is a Constitutional Charter City of the State of Missouri.
59. Gregory F.X. Daly is the elected Collector of Revenue for the City (“the Collector”), exercising the functions and responsibilities prescribed by, among other provisions of law, RSMo. § 82.599, the City of St. Louis Charter, Art. XV, § 20, and the Revised Code of the City of St. Louis (The City Code”), §§5.08.010, *et seq.*
60. The Collector is responsible for collecting all earnings tax due to the City of St. Louis.
61. The Collector, as an elected official, is a policy maker for the City.
62. Plaintiffs sue the Collector in his official capacity only, creating *Monell* liability for the City for the 42 U.S.C. § 1983 damages claims, should the case proceed to that point.¹

Jurisdiction and Venue

63. This Court, as a court of general jurisdiction, has jurisdiction to hear Plaintiffs’ state law claims.

¹ *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978).

64. Plaintiffs assert federal substantive due process claims and an equal protection claim under the Fourteenth Amendment and an unreasonable seizure claim under the Fourth Amendment. Remedies for those claims are actionable through 42 U.S.C. §§ 1983 and 1988. State courts have concurrent jurisdiction with the federal courts to hear such claims.²
65. Declaratory relief is authorized by Rule 87 and injunctive relief is authorized by Rule 92.
66. Plaintiffs bring their Hancock Amendment claims under the Missouri Constitution, Mo. Const. Art. X §§ 16-23. Plaintiffs have standing to bring such claims, including claims for costs and attorney's fees, under Mo. Const. Art. X § 23, which provides standing to municipal taxpayers to bring actions to enforce the Hancock Amendment.
67. Mo. Const. Art. X § 23 states that the taxpayer "shall have standing to bring suit in a circuit court of proper venue."
68. Venue is proper in this Court, the Circuit Court for the City of St. Louis, because Defendants' relevant conduct occurred in the City of St. Louis and Defendants may be served in the City of St. Louis.

Color of State Law as to 42 U.S.C. § 1983 Claims

69. At all relevant times, Defendant City and Defendant Collector have acted under color of state law. Particularly, in reference to Plaintiffs' claims under 42 U.S.C. § 1983, at all relevant times the City and the Collector have acted under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of Missouri, and its political subdivisions.

² *Duvall v. Lawrence*, 86 S.W.3d 74, 81 (Mo. Ct. App. 2002), *Stafford v. Muster*, 582 S.W.2d 670, 681 (Mo. banc 1979).

Jury Demand

70. Plaintiffs demand jury trial on factual issues, including the damages claims, but do not include jury demand for relief requested under the refund statute, RSMo. § 139.031, for that statute specifically states that claims brought under its umbrella shall be tried by the Court.

Facts

71. Although the City is a charter city, it must comply with state statutes.
72. The City’s authority to impose the earnings tax is subject to state statute, particularly RSMo. § 92.111. According to that statute, the City is not authorized by statute to assess earnings taxes for work unless the work is performed in the city or the services are rendered “*in the [C]ity.*” (emphasis added).
73. The City’s earnings tax Ordinance mirrors the language of that statute and states in relevant part:

A tax for general revenue purposes 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** . . . (Emphasis added).

74. This language is plain and unambiguous.
75. If there is any ambiguity the Ordinance must be construed in favor of the taxpayer.³

³ “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.” *Bachman v. City of St. Louis*, 868 S.W.2d 199, 202 (Mo. Ct. App. 1994) (citing *Adams v. City of St. Louis*, 563 S.W.2d 771, 775 (Mo. banc 1978)).

76. The Ordinance thus creates tax liability for nonresidents only for work done when the taxpayer is physically present in the City, for otherwise, the taxpayer would not be doing the work or performing the service in the City.
77. The Collector of Revenue’s website echoes this language, stating that the one percent earnings tax is collected from all:
- a. City residents regardless of where they work, and
 - b. Non-city residents **who work within city limits**.⁴
78. The collection of the earnings tax from persons who live in the City is not in dispute in this case.
79. The revenue from the earnings tax makes up in a typical year approximately one-third of the City’s revenue. For fiscal year ending June 30, 2020, the earnings tax generated in the range of \$200 million for the City. Some have estimated that as much as 75% of the earnings tax collected each year comes from nonresidents.
80. It is a reasonable supposition that in 2020 many nonresidents, such as grocery and factory workers, continued to work in the City during the pandemic. It is also a reasonable supposition, however, that many, many nonresidents, including many relatively high-income earners, teleworked during the pandemic.

⁴ “Non-residents are required to pay the Earnings Tax on work or services performed within the City of St. Louis.” Earnings Tax FAQs, available at <https://www.stlouis-mo.gov/collector/earnings-faq.cfm#whoFiles>. The City of St. Louis government website also states: “The earning tax is a one percent earnings tax collected from all city residents regardless of where they work, and non-city residents who work **within city limits**.” Available at <https://www.stlouis-mo.gov/government/departments/collector/earnings-tax/index.cfm#:~:text=The%20earning%20tax%20is%20a,who%20work%20within%20city%20limits> (emphasis added).

81. Section 5.22.060(A) of the City Code requires “[e]very employer within or doing business in the City who employs one or more persons” to withhold and pay to the Collector 1% of an employee’s compensation on a quarterly basis, regardless of whether the employee is a resident or nonresident of the City. That section reads:

Every employer within or doing business within the City who employs one or more persons on salary, wage, commission, or other compensation basis, shall deduct at the time when earned irrespective of when paid, the tax of 1% of salaries, wages, commissions, or other compensation due by the employer to the employee and subject to tax, and shall quarterly make his return and pay to the collector, on or before the last day of July, October, January and April of each year, the amount of taxes so deducted for the three calendar months next preceding the month in which the return is required to be filed. Said return shall be on a form or forms obtainable from the collector and shall be subject to the rules and regulations prescribed therefor by the collector. Every such employer shall furnish each employee with a statement of the amount of the tax withheld. The failure of any employer to deduct or withhold at the source the amount of tax due from the employees shall not relieve the employer from the duty of making a return and paying the tax.

82. At all relevant times, pursuant to that language, city-based employers of Plaintiffs and city-based employers of similarly situated persons (whom Plaintiffs seek to represent in this class action), have withheld the 1% earnings tax from Plaintiffs’ (and the similarly situated persons’) pay and then remitted the money to the Collector.

83. Pursuant to custom and policy over many years prior to tax year 2020, nonresidents of the City who have spent a certain number of days working outside the City have been able to file for an earnings tax refund based on the number of days worked outside the City.

84. Claims for refunds are generally made on a proportionate basis, assuming 260 workdays per year.

85. Pursuant to custom and policy over many years prior to tax year 2020, the City has then refunded nonresidents the tax withheld for days worked outside the City.

86. Prior to tax year 2020, such persons have requested their refunds by using Form E-1R. Other than updating the “Calendar Year” at the top of the document, the City left the form materially unchanged from at least tax year 2015 through tax year 2019.⁵
87. On inference, the Collector promulgated that Form E-1R pursuant to his authority under City Code 5.22.100, which states in relevant part:
- The Collector is charged with the enforcement of the provisions of this chapter and is empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns and payments alleged or found to be incorrect or as to which an overpayment or underpayment is claimed or found to have occurred.
88. This rule making authority does not allow the making of rules which are arbitrary, capricious, unreasonable, unlawful, or in excess of jurisdiction.⁶
89. On inference, the procedure for obtaining refunds in place for years prior to tax year 2020 was pursuant to custom and practice as created by the Collector, and not through a formal rule making process.
90. At all relevant times, Form E-1R has contained a section requiring the taxpayer’s employer to sign a part of the form certifying the number of days the taxpayer worked outside the City limits.
91. Prior to tax year 2020, Form E-1R did not require the taxpayer or the employer to provide a reason as to why the taxpayer worked the stated number of days outside the City. The form, in relevant part, required only completing the following:

⁵ The Collector’s website currently has versions of the Form E-1R dating back to tax year 2015, which remained consistent until tax year 2020, available at <https://www.stlouis-mo.gov/government/departments/collector/documents/e-1r-form.cfm>.

⁶ *Gott v. Dir. of Revenue*, 615 S.W.3d 52, 55 (Mo. 2020).

This is to certify the below mentioned employee, a non-resident of the City of St. Louis, worked *outside the City of St. Louis* a total of _____ whole days

Address of work location must be provided for days worked *outside the City of St. Louis*. Please provide address on the line below.

(emphasis added).

- 92. In March 2020, due to the COVID-19 pandemic, and in accordance with local health orders, many City employers either required or allowed their employees to work remotely, which in many cases was from their residence outside the City.
- 93. This created a looming revenue problem for the City because if it continued following the law and issuing refunds to taxpayers who did not actually work in the City, it would lose earnings tax revenue from those nonresidents no longer working *in the City*.
- 94. In response, on a date unknown to Plaintiffs, the Collector issued a statement on his website regarding the future issuance of earnings tax refunds, which reads in relevant parts as follows:

If you live outside of the city limits and your employer continues to operate within the city limits, you will be required to pay the earnings tax even if your employer permits you to work virtually.

As we have allowed in the past, if your place of employment is in the city and you are required to travel for business outside of the city to meet customers, clients, etc., those days can be deducted from your earnings tax calculation with the E1-R form with proper documentation. However, if your place of employment remains in the City while you are working virtually, you will be required to pay the tax.⁷

⁷ See *Statement Regarding Employee Remote Work*, available at <https://www.stlouis-mo.gov/collector/docs/Statement-Regarding-Employee-Remote-Work-Final.pdf>.

(Emphasis added)

95. In December 2020, the Collector promulgated a new E-1R refund request form for tax year 2020 (“2020 E-1R) which states in the instructions section:
- Employees who work remotely from home should be treated as working at their original principal place of work. These days may not be included in the Non-Residency Deduction formula on Form E-1R when claiming a refund.
96. The 2020 E-1R contains a new provision that requires taxpayers to provide the following:
- Address of work location along with substantiating documentation (travel and mileage logs, airline or train tickets, hotel receipts, etc.) must be provided for days worked outside the City of St. Louis. Please complete Form E-1RV and submit with this return.
97. Form E-1RV is a newly promulgated form which contains a new verification statement. That form required employees and employers to attest to the following statement:
- I understand that a regular workday does not include holidays, vacation, working remotely from home or other work absences (attach a separate sheet if additional space is needed).
- Substantiating documentation such as travel and mileage logs, airline or train tickets, lodging receipts, etc., must be included when filing this form.
98. The 2020 Form E-1RV also states that days worked outside of the City due to a temporary reassignment caused by COVID-19 may not be included in the non-residency deduction formula on Form E-1R when claiming a refund for tax year 2020.
99. The Collector’s public statements, along with the new 2020 E-1R and E-1RV, was and is designed to intimidate city-based employers from certifying the withholding of the earnings tax from nonresidents’ pay who were and/or are working remotely from outside the City and/or from filling out the form in a manner consistent with the Ordinance.
100. The Collector’s statements and actions to reinterpret and apply the Ordinance, including the new E-1R and E-1RV requirement, shocks the conscience.

101. The Collector's statements and actions violate the Equal Protection Clause of the Fourteenth Amendment because they are discriminatory against nonresidents who worked remotely from home but were not travelling while working remotely.
102. The Collector's statements and actions subject such nonresidents to discriminatory treatment by subjecting them to taxes not imposed on others of the same class, as that class is defined in the Ordinance.⁸
103. The new requirements violate the Equal Protection Clause of the Fourteenth Amendment because they exclude taxpayers who worked from home but were not travelling, an arbitrary distinction.
104. The new forms and process is discriminatory enforcement of a facially valid law and is therefore unconstitutional under the Equal Protection Clause.⁹
105. The new forms and process subject such taxpayers to discriminatory treatment by subjecting him or her to taxes not imposed on others of the same class.
106. There is no rational basis for treating nonresident teleworkers any differently than nonresident business travelers, yet the City is still purportedly issuing refunds based on days spent outside the City traveling, but not working remotely from home.
107. The Collector's statements and actions assert, unilaterally and unlawfully, that the City may retain Plaintiffs' (and other similarly situated taxpayers') 1% wages for days worked outside the City even though the Ordinance does not allow tax on such work.

⁸ *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 345 (1989), *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

⁹ *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886); *Hill v. City of Scranton*, 411 F.3d 118, 125 (3d Cir. 2005).

108. The Collector 's statement and actions insinuate that refunds have historically been limited to days taxpayers spent traveling outside of the City for business. That limitation is found neither in the Ordinance nor in the pre-2020 Form E-1R, and this has not been the historical application.
109. Before tax year 2020 the City did not impose tax on nonresidents for days spent *working* outside the City, regardless of reason, presumably because the law does not allow imposition of the tax for such workdays.
110. The Collector's statement and actions appear to be designed to intimidate not just employers, as stated above, but also nonresidents from seeking refunds they are otherwise lawfully entitled to receive.
111. For years before the COVID-19 pandemic, that is, before tax year 2020, Plaintiffs worked many days of the year remotely from non-City of St. Louis locations. This included days spent teleworking from home.
112. Their employers duly withheld the 1% earnings tax for all workdays of the year.
113. For such years, Plaintiffs Boles, Semonski, Oar, and Stein then applied for refunds on Form E-1R, with Employer certification of the exact number of days worked outside the City, including days spent teleworking.
114. The City then always paid Plaintiffs their refunds on a routine basis.
115. Plaintiffs Boles, Oar and Semonski only learned of the change in policy in early 2021 when their claims for refunds for teleworking days were rejected.

Plaintiff Boles

116. On or about January 22, 2021, as he had done in previous years, Plaintiff Boles submitted the 2020 Form E-1R to the Collector.

117. On February 9, 2021, the Collector's office advised Plaintiff Boles it had received his completed Form E-1R and that it was submitted to the refund department.
118. On or about February 17, 2021, the Collector's office advised Plaintiff Boles that he needed to submit a new form, Form E-1RV, an attachment to Form E-1R.
119. Thereafter, Plaintiff Boles submitted the completed Form E-1RV to the Collector.
120. On February 23, 2021, a representative from the Collector's office e-mailed Plaintiff Boles as follows:

Effective January of 2020 working remotely from home will know [sic] longer be allowed as a deduction for refund claims. Please review our website www.stlouiscollector.com for further information regarding this change.

121. Plaintiff Boles immediately responded to the representative by email stating, "I've been teleworking from home for several years. I expect my City Earnings tax refund as has been refunded in the past." In response, the representative directed Plaintiff Boles to the Assistant Collector for further assistance.
122. On February 23, 2021, in response to Plaintiff Boles's follow-up email, the Assistant Collector stated as follows:

Starting tax year 2020 our refund policy changed. I understand you work from home but your employer location is in the city. I know you are frustrated because you have received refunds in the past years. The E-1VR, completed by your employer, gives the [redacted] address as your working location. I do suggest you go to our website which gives a clear explanation of who qualifies for a refund. I can not approve for you to get a refund.

Plaintiff Oar

123. On or about February 8, 2021, Plaintiff Oar submitted the 2020 Form E-1R and the Form E-1RV to the Collector seeking a refund of earnings taxes withheld from his pay based on the number of days he worked outside the City during 2020.

124. On February 10, 2021, the Collector's office advised Plaintiff Oar it was auditing the claim. The auditor asked for a letter on his company stationery stating that his virtual private network ("VPN"), that is, his business computer network, was in Minneapolis, Minnesota and where his permanent work assignment was located.
125. On that same February 10, 2021, Plaintiff Oar's employer's human resources department emailed the Collector's Office confirming that Plaintiff Oar's VPN was in Minneapolis, Minnesota, and providing the address for his permanent work assignment in the City of St. Louis.
126. On February 11, 2021, the Collector's office denied Plaintiff Oar's refund claim stating that regardless of his VPN location, Plaintiff's refund request would be denied.

Plaintiff Semonski

127. On or about February 5, 2019, Plaintiff Semonski submitted the 2018 Form E-1R to the Collector. Collector honored request and refunded 2018 taxes for time worked outside of the City of St. Louis.
128. On or about March 10, 2020, Plaintiff Semonski submitted the 2019 Form E-1R to the Collector. The Collector honored the request and refunded 2019 taxes withheld from Plaintiff Semonski based on days he worked remotely outside the City.
129. On or about February 18, 2021, as he had done at least the two prior years, Plaintiff Semonski submitted the Form E-1R to the Collector.
130. On or about March 3, 2021, Plaintiff Semonski received a written request from the Collector to submit additional information contained in the Form E-1RV, stating that the refund request could not be processed with the Form E-1R.

131. On or about March 22, 2021, Plaintiff Semonski submitted a new Form E-1R with the Form E-1RV attached, along with all requested documentation.

132. On March 29, 2021, the Collector denied Plaintiff Semonski’s refund request.

Plaintiff Stein

133. Plaintiff Stein works as a Senior Vice President for a bank with his primary office location in downtown St. Louis.

134. At all relevant times, Plaintiff Stein has resided (and continues to reside) in Crestwood, Missouri, outside the City.

135. During 2021 he teleworked from his home many days throughout the year, including many days even before the COVID-19 pandemic.

136. Since at least tax year 2015 and through tax year 2019, using the pre-2020 Form E-1R, Plaintiff Stein requested and received earnings tax refunds based on the number of days he worked outside the City. These days included both teleworking days and days spent traveling out of town for business. Plaintiff Stein was never required to specify the number of days he spent teleworking as opposed to traveling for business.

137. For these prior years, Plaintiff Stein received refunds as follows:

- a. 2015 - \$883
- b. 2016 - \$915
- c. 2017 - \$550
- d. 2018 - \$457
- e. 2019 - \$1,733

138. For tax year 2020, Plaintiff Stein worked:

42 days in the City

4 days traveling for a business purpose; and
214 days teleworking

Based on a standard work year of 260 days (per the Collector's form), Plaintiff Stein worked outside the City 83.85% of the days.

139. In approximately February of 2021, Plaintiff Stein began working on the paperwork to obtain his 2020 earnings tax refund and he learned the Collector had changed the Form E-1R, limiting days worked outside the City to only days spent traveling for business.
140. Plaintiff Stein concluded it would be improper for him to submit a form seeking his 214 teleworking days, and thus he chose to join this suit to litigate the issue, and before the litigation he did not submit such a form.
141. Before the filing of this litigation Plaintiff Stein also did not submit a form for his 4 days spent traveling for a business purpose.
142. During the litigation, and before the filing of Plaintiffs' Motion for Leave to file this Second Amended Petition, Plaintiff Stein has filed separate forms to obtain refunds for tax year 2020 for his 4 travel days and also for his 214 teleworking days. For the latter he has submitted a protest form.
143. During tax year 2020 the City withheld earnings taxes from Stein's pay in the amount of \$2,849.
144. Plaintiff Stein is entitled to a refund of:
 - a. 1.54% of his Earnings Tax withheld for his days spent traveling for a business purpose, that is \$43, which presumably the City will pay without quibble.

- b. 82.31% of his Earnings Tax withheld for his days spent teleworking from locations outside the City, excluding days spent traveling for a business purpose, that is \$2,345.

Continuing Refusal to Pay Refunds

- 145. As of this filing, the City continues to refuse to refund Plaintiffs Boles’, Oar’s and Semonski’s earnings taxes withheld from their pay for periods when they performed or rendered services outside the City.
- 146. On inference, the City will reject Plaintiff Stein’s request for refund for teleworking days.
- 147. For tax year 2020, the City continues to require submission of the 2020 E-1R and E-1RV, which unlawfully limit earnings tax refunds to only nonresidents who travel for work but not those who telework from locations outside the City.

**In the Alternative:
Refunds Pursuant to RSMo. § 139.031
Protest Requirement Absurd and Nonsensical**

- 148. RSMo. § 139.031.4 states, in relevant part, “the court shall make such orders as may be just and equitable to refund to the taxpayer all or any part of the current taxes paid under protest.”
- 149. RSMo. § 139.031 states in relevant part regarding the protest requirement:

In § 1:

Any taxpayer may protest all or any part of any current taxes assessed against the taxpayer....

Any such taxpayer desiring to pay any current taxes under protest shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which the protest is based.

In § 2:

[E]very taxpayer protesting the payment of current taxes shall, within ninety days after filing his protest, commence an action against the collector by filing a

petition for the recovery of the amount protested in the circuit court of the county in which the collector maintains his office.

150. In *Lane v. Lensmeyer*, 158 S.W.3d 218, 223 (Mo. 2005), the court explained the purpose of the requirement of the protest:

Payment under protest is required before seeking relief under subsections 1 to 4 so that “the taxpayer can make it known that [he or she] is paying involuntarily and can alert the taxing authority to the amount of the refund claimed so that the challenged tax can be segregated and held until resolution of the dispute.” *Quaker Oats Co. v. Stanton*, 96 S.W.3d 133, 138 (Mo.App.2003). A payment made under protest also warns the collector that the tax is claimed to be illegal, serves as notice to the government of the dissatisfaction of the taxpayer, and defines the grounds on which the taxpayer stands. *Id.* Without this warning, the collector might collect taxes for several years and disburse them, in reliance upon their apparent validity, and then suffer financial hardship if ordered to make later refunds

151. In the alternative, from the taxpayer’s perspective, in this case the tax was paid when the Employer withheld the 1% and paid it over to the City. However, at the time taxes were paid there was nothing to protest because the taxpayer had not yet filed for his refund and been denied, which is how the system had worked pursuant to the custom, practice and policy of Defendants as established in prior years.
152. Although before the end of 2020, Defendants made public statements indicating they planned to change their policies regarding teleworking, there was no assurance the City would actually go through with it until the City began sending notices of denials of refunds in 2021.
153. The only formal notice issued by the City was an indication to employers (not Plaintiffs) that they (the employers) should continue to withhold the 1% earnings tax, which thus was not a change at all, but was an indication to continue the status quo.

154. Taxpayers had no reason to know of the City's change in policy and therefore they had no knowledge that they had to protest each quarter when their employers paid their withheld Earnings Tax over to the city.
155. Requiring a protest would create the sort of due process concern discussed in *Crest Commc'ns v. Kuehle*, 754 S.W.2d 563, 565 (Mo. 1988), where in a personal property tax case brought under RSMo. § 139.031.5 (which addresses disputes over personal property and real property taxes and so is inapplicable here) the Collector gave no notice of an increased assessment:
- [W]e would be confronted with a serious due process claim in cases such as the instant one, where the taxpayer, having been deprived of the statutory notice of the increased assessed valuation and thereby totally deprived of a hearing before the board of equalization and all of his administrative remedies, would have to pay a very substantial sum in order to even question the legality of the assessment.
- See also: *Lane v. Lensmeyer*, 158 S.W.3d 218, 223, n 7 (Mo. 2005).
156. Requiring Plaintiffs to have protested at any point in 2020 pursuant to RSMo. § 139.031 would be absurd and non-sensical, and would create a due process claim, and thus should not be required in these circumstances.
157. In the alternative, from the Defendants' perspective, when the taxes were paid the Collector knew well that the collection of the taxes was in direct contradiction of the Earnings Tax Ordinance and there would almost certainly be legal challenges to the Collector's actions. Plaintiffs suggest it would be disingenuous for the Collector to now claim to be "shocked" by the lack of warning over taxpayers seeking a refund of the tax withheld for teleworking days.
158. A statutory outcome is absurd if it defies rationality. *Landstar Exp. Am., Inc. v. Fed. Mar. Comm'n*, 569 F.3d 493, 498–99 (D.C. Cir. 2009), citing *Corley v. United States*, 556 U.S.

- 303, 317 (2009) (“these are some of the absurdities of literalism that show that Congress could not have been writing in a literalistic frame of mind.”)
159. In *Elrod v. Treasurer of Missouri as Custodian of Second Inj. Fund*, 138 S.W.3d 714, 716 (Mo. 2004) the court said, “[W]e will not construe the statute so as to work unreasonable, oppressive, or absurd results.” *Kincade v. Treasurer of the State of Mo.*, 92 S.W.3d 310, 311 (Mo.App.2002) (cited favorably in *Ritchie v. Gordon*, 615 S.W.3d 103, 108 (Mo. Ct. App. 2020)).
160. In the alternative, the “assessment” of the tax due occurred for each member of the class when the Collector informed such taxpayer that it would not pay refunds for work done remotely, for only then did the Collector determine the amount of tax due.
161. Once more, however, the amounts withheld from Plaintiffs’ pay had by then long been paid and thus it was too late to protest when the tax was withheld.
162. In the alternative, as stated above, Plaintiff Boles filed a protest at the time his Employer paid his 1% due for the first quarter of 2021, and that is an effective protest for taxes assessed starting on January 1, 2021, on behalf of himself and all other taxpayers who are teleworking in tax year 2021.¹⁰
163. In the alternative, Plaintiffs’ filing of their predecessor federal suit on March 29, 2021 (Case No. 4:21-CV-378, EDMO), within 90 days of getting their notice from the City that a refund would not be paid for teleworking, satisfies the protest requirement of RSMo. § 139.031 at least as of that date.¹¹

¹⁰ *Lett v. City of St. Louis*, 948 S.W.2d 614, 620–21 (Mo. Ct. App. 1996).

¹¹ *Id.*

164. Moreover, the City has never in the past required a protest under RSMo. § 139.031 prior to issuing nonresidents refunds based on the number of days they worked outside the City. Defendants' reliance on a literal interpretation of the protest requirement in the Refund Statute now would be disingenuous and only serve to bar Plaintiffs from seeking a refund of earnings tax withholdings they do not owe under the Ordinance. Such reliance would also violate the customs and practice of the City which establish policy for purposes of liability under the civil rights laws.
165. Because of the previously existing custom and practice of employers withholding the 1% during the year and employees then applying for and being granted refunds, this case represents a wholly new factual scenario not contemplated by the Refund Statute's protest requirement. Thus, any protest requirement should be waived in this case, and surely the requirement of protest at the time of payment should be waived.
166. In the alternative, any demand for or claim for a refund for teleworking days up until May 17, 2022, constitutes a protest which satisfies the protest requirement of the refund statute, as conceded by Collector's Counsel during oral argument on May 5, 2021.

**In the Alternative:
Refunds and Damages Pursuant to 42 U.S.C. § 1983
Individual Lawsuits Should Not Be Required by Each Taxpayer**

167. In the alternative, there is no requirement that every taxpayer seeking a refund pursuant to the Refund Statute file an individual suit, and a class action is indeed allowed by law because statements in the case law disallowing class status for tax refunds are an incorrect statement of the law, and/or should be deemed not to apply in this case.
168. In the alternative, in *Lane v. Lensmeyer*, 158 S.W.3d 218, 223, n. 7 (Mo. 2005), the court wrote: "Additionally, nothing in section 139.031 authorizes class refunds." That case,

however, related to personal property tax assessment and related to a refund claim under RSMo. § 139.031.5, a different section of that statute than the scheme of RSMo. § 139.031.1-4, the portion of that statute under which Plaintiffs proceed here, and thus the statement is dicta.

See also: *Blankenship v. Franklin Cty. Collector*, 619 S.W.3d 491, 512 (Mo. Ct. App. 2021):

The Missouri Supreme Court has noted “nothing in section 139.031 authorizes class refunds.” *Lane v. Lensmeyer*, 158 S.W.3d 218, 222 n.7 (Mo. banc 2005). Instead, sections 139.031.1 and 139.031.2 mandate “any taxpayer” must pay the challenged taxes under protest and submit a written statement setting forth the grounds for such protest and “every taxpayer” must sue the collector within ninety days of paying such taxes under protest. Section 139.031 “must be meticulously followed.” *Adcor Realty v. State Tax Comm’n*, 627 S.W.2d 604, 606 (Mo. banc 1982); *State ex rel. Nat. Inv. Corp. v. Leachman*, 613 S.W.2d 634, 635 (Mo. banc 1981) (holding “explicitly stated” statutory requirements, such as those included in section 139.031.1, “are to be strictly construed and enforced”); *Ford Motor Co. v. City of Hazelwood*, 155 S.W.3d 795, 798 (Mo. App. E.D. 2005) (“Section 139.031 must be strictly construed and enforced”). Section 139.031, construed strictly, does not authorize class refunds but only refunds for individual taxpayers who follow its procedures.

169. In the alternative, nothing in the Refund Statute prohibits class action suits and thus the concern that the refund statute does not explicitly allow class action suits is irrelevant, particularly because Rule 52.08 specifically allow class action suits when its requirements are met, as is explained elsewhere herein. See *Ritchie v. Gordon*, 615 S.W.3d 103, 108 (Mo. Ct. App. 2020) (when “authorized by the Missouri constitution and statutes, Missouri Supreme Court Rules are to be given the same effect as statutes so long as they are not in conflict with other law”).
170. It would create an unreasonable, oppressive, or absurd result to require literally tens of thousands of claimants to file individual refund lawsuits seeking refunds of earnings tax unlawfully collected, and our courts do not construe statutes “so as to work

unreasonable, oppressive, or absurd results.” *Elrod v. Treasurer of Missouri as Custodian of Second Inj. Fund*, 138 S.W.3d 714, 716 (Mo. 2004), *Kincade v. Treasurer of the State of Mo.*, 92 S.W.3d 310, 311 (Mo.App.2002), *Ritchie v. Gordon*, 615 S.W.3d 103, 108 (Mo. Ct. App. 2020).

**In the Alternative:
If the Lack of Protest and/or Simultaneity, and/or Individual Lawsuits
Lead Refund Statute Requirements to be Deemed Not Met,
Refunds and Damages Available Pursuant to 42 U.S.C. § 1983**

171. In the alternative, if this Court concludes that either: (a) the protest requirement of RSMo. § 139.031 alone, (b) the simultaneous payment and protest requirement, (c) the individual suit requirement, or (d) some other issue, bar a refund pursuant to class action in this case, then a plain, adequate and complete remedy for the redress of Plaintiffs’ grievances is not available under that statute, and relief is then available under 42 U.S.C. § 1983.
172. Particularly, the court in *Stufflebaum v. Panethiere*, 691 S.W.2d 271, 272 (Mo. 1985), stated that “the teaching of *Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100, 102 (1981) is that, given a plain, adequate and complete remedy at law (§ 139.031, *supra*), taxpayers may not seek relief under § 1983.”
173. The implication is that where relief is not available under RSMo. § 139.031, relief must be available under 42 U.S.C. § 1983.

Substantive Due Process

174. The Fourteenth Amendment states, in relevant part:
- “[N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
175. Property interests are not created by the Constitution. Rather, they are created, and their dimensions are defined by existing rules or understandings that stem from an independent

source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.¹²

176. Plaintiffs have a constitutionally protected property interest in their wages.¹³
177. The conduct of Defendants in refusing to pay earnings tax refunds:
- a. Is an abuse of executive power,
 - b. Is an arbitrary action of government, and
 - c. Shocks the conscience.¹⁴
178. Defendants had ample time to deliberate on their change in policy to tax days worked or services rendered by non-city residents outside the City.
179. In the alternative, Defendants’ conduct demonstrates deliberate indifference to the property rights of Plaintiffs in their wages.

Fourth Amendment Seizure

180. Defendants’ retention of earnings tax withholdings even after Plaintiffs and others have filed a proper application for a refund is no different than police officers pocketing money from suspects during arrests. In both cases the person (in this case the Defendants) have unlawfully kept for themselves property belonging to another.
181. It is unreasonable for Defendants to have retained Plaintiffs’ earnings tax for those days for which Plaintiffs have not worked in the City.

Policy, *Monell* Liability

182. The Collector is an elected official and thus a policy maker for the City of St. Louis.¹⁵

¹² *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

¹³ *Snaidach v. Family Fin. Corp. of Bay View*, 395 U.S. 337 342 (1969).

¹⁴ *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

¹⁵ *Pembaur v. City of Cincinnati*, 475 U.S. 469, 500 (1986).

183. His liability makes the City liable for any judgment for damages based on 42 U.S.C. § 1983 rendered in this case.¹⁶

Damages for Violation of Constitutional Rights

169. Plaintiffs are entitled to damages for violation of their constitutional rights.

No Eleventh Amendment Immunity

184. The Eleventh Amendment does not “extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State.”¹⁷
185. The second important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities. The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State.” *Alden v. Maine*, 527 U.S. 706, 756 (1999).

No Sovereign Immunity in Refund Context

186. There is no sovereign immunity in the context of a federal due process claim related to tax refunds:

Plaintiffs here allege that their tax refunds have been withheld in violation of their Fourteenth Amendment due process rights. Thus, this exception to the doctrine of sovereign immunity applies. Sovereign immunity cannot serve as a defense in this case. *Nelson v. Regan*, 560 F. Supp. 1101, 1104 (D. Conn. 1983).

Refund as an Effective Remedy

187. The law disfavors courts ordering refunds:

A suit for the refund of taxes paid in error or collected illegally is looked upon with disfavor for public policy reasons. *Community Fed. Sav. & Loan Ass'n v.*

¹⁶ *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978).

¹⁷ “The second important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities. The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State.” *Alden v. Maine*, 527 U.S. 706, 756 (1999).

Director of Revenue, 752 S.W.2d 794, 797 (Mo. banc 1988). In *Community Federal*, the court explains the reasoning behind this policy, stating:

Governments are entitled to presume that statutes are constitutional. Governmental budgets are prepared on an annual cash basis.... Therefore, in the absence of a statutory limitation on the time in which a taxpayer may file suit to declare a tax unconstitutional, governments would be subject to substantial liabilities from refunds of those unconstitutional taxes. Accordingly, in the absence of statutory authority, taxes voluntarily, although erroneously paid, albeit under an unconstitutional statute, cannot be refunded.¹⁸

188. Nevertheless, this case is *sui generis*. Here the City changed the rules after the tax had been collected. The City's retention of the tax is not just unconstitutional; it shocks the conscience.
189. What Plaintiffs seek in damages, which equals the amount of refund they are entitled to receive under the Ordinance, is nothing more than a return procedurally to the status quo and return of Plaintiffs' property.
190. The conduct of Defendants is not merely a matter of interpretation of tax laws, for which refunds are not available; the conduct of Defendants shocks the conscience, and therefore is appropriate for judicial action under the civil rights laws.

Specific Hancock Allegations

191. The Missouri Constitution, Art X, § 22(a), in what is commonly known as 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**

¹⁸ See also, *Lett v. City of St. Louis*, 948 S.W.2d 614, 620 (1996).

reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value. (Emphasis added).

192. A “tax” was defined in *City of Bridgeton v. Nw. Chrysler-Plymouth, Inc.*, 37 S.W.3d 867, 871 (Mo. Ct. App. 2001) as follows:

The term ‘tax’ has been defined variously, but the appropriate definition for us is found in *Leggett v. Missouri State Life Ins. Co.*, 342 S.W.2d 833, 875 (Mo. banc 1960) in which we stated: “Taxes are proportional contributions imposed by the state upon individuals for the support of government and for all public needs.”

193. Plaintiffs suggest that the earnings tax squarely meets this definition because it is proportional, that is, it is assessed on 1% of earnings for work performed or services rendered in the City, and it is imposed on individuals, that is, persons who work, and it is for the support of the government and public needs.

194. A “levy” was defined *State ex rel. Indus. Servs. Contractors, Inc. v. Cty. Comm'n of Johnson Cty.*, 918 S.W.2d 252, 256 (Mo. 1996) (with the definition cited favorably in *Nw. Chrysler-Plymouth* on the same page on which taxation was defined as follows:

In its proper sense ... it 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.

84 C.J.S. *Taxation* § 349 (1954). 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.**” *Black's Law Dictionary* 907 (6th ed. 1990). (Emphasis added).

195. In *Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223, 233 (Mo. 2013) the court said:

The definition of “levy” ...is as follows: “*to impose* or collect (as a tax or tribute) *by legal process or by authority.*” Webster's Third New International Dictionary 1301 (Unabr. ed.1961) (emphasis added). When used in this sense, a levy “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.” *State ex rel. Indus. Servs. Contractors, Inc. v. Cnty. Comm’n of Johnson Cnty.*, 918 S.W.2d 252, 256 (Mo. banc 1996) (quotation marks omitted) (quoting 84 C.J.S. Taxation § 349 (1954)). In other words, the verbs “levy” and “levying” are used in section 22(a) to refer to actions that create an obligation to pay that is not contingent upon each payer's actual use of the political subdivision’s service.

196. Plaintiffs suggest that here the “levy” is not the amount of gross revenue received from a tax, but is instead the “amount, purpose and subject of the exaction,” and/or a government action stating “a tax of a certain amount.” Relevant here, the Collector has “levied” a tax on teleworking days.
197. Defendants’ refusal to pay refunds violates Section 22 of the Hancock Amendment in two ways.
198. First, by refusing to pay refunds for teleworking days, Defendants have increased the current levy of earnings tax beyond what is authorized by law, as the Ordinance only allows for taxing nonresidents for work performed or for services rendered in the City.
199. Second, by refusing to pay refunds for teleworking days, Defendants have changed **the definition of the base of an existing tax** and thereby broadened the base of the earnings tax without reduction to yield the same estimated gross revenue as on the prior base.
200. Defendants have broadened the base of the earnings tax without reduction to yield the same estimated gross revenue as on the prior base because they now tax teleworking days without a corresponding reduction, such as by reducing the earnings tax to .05%, so as to result in the same estimated gross revenue as on the prior base.

201. More particularly, Defendants have broadened the definition of the base of the earnings taxes by including in the days taxed a new type of work not previously taxed. See *Tannenbaum v. City of Richmond Heights*, 704 S.W.2d 227, 229 (Mo. 1986).
202. Plaintiffs have standing to bring a Hancock Amendment challenge, for they are taxpayers.
203. Plaintiffs have followed the proper procedure for bringing a Hancock Amendment challenge for they have paid the tax, filed a protest, filed suit, and otherwise complied with the refund statute, see *Blankenship v. Franklin Cty. Collector*, 619 S.W.3d 491, 511 (Mo. Ct. App. 2021) citing *Metts v. City of Pine Lawn*, 84 S.W.3d 106, 109 (Mo. App. S.D. 2002).
204. The voters of the City have never voted to approve the imposition of tax on nonresidents for teleworking days.
205. Taxes have never been proportionately reduced to compensate for taxation of such days.
206. Although in this case the misconduct has been undertaken by the Collector, a member of the City's Executive Branch, Plaintiffs suggest that an increase in taxation is not sanitized because it was undertaken by a member of the executive branch instead of by formal action of the legislative branch, for as the court said in *Henry v. Manzella*, 201 S.W.2d 457, 459 (1947), "levying taxes and providing the means of enforcement are within the unquestioned power of the legislature".
207. Defendants' taxing of teleworking days therefore violates the Hancock Amendment.

208. The Hancock Amendment is a future oriented law, such that, in general, the taxpayer bringing suit may only seek declaratory relief in regard to future taxes.¹⁹

The Classes

209. Plaintiffs bring this action on behalf of themselves and all others similarly situated.
210. Plaintiffs Boles, Oar, and Semonski seek to represent the following class, to be known as Class 1:

All nonresidents of the City of St. Louis whose work was done or whose services were performed outside the City of St. Louis (“worked outside the City”), during the period January 1, 2020 until class certification:

- (1) Either whose employers withheld earnings tax and paid it to the City of St. Louis Collector of Revenue, or who paid earnings tax themselves to the City of St. Louis Collector of Revenue, and
- (2) who submitted an earnings tax refund request using the Collector’s 2020 Forms E-1R and/or E-1RV seeking a refund for teleworking days worked outside the City during the class period, and
- (3) for whom the City has not yet refunded to such persons an amount equal to the proportion of days worked outside the city to the year’s total workdays during the class period.

211. Plaintiff Stein seeks to represent the following class, to be known as Class 2:

All nonresidents of the City of St. Louis whose work was done or whose services were performed outside the City of St. Louis (“worked outside the city”), during the period January 1, 2020 until class certification:

- (1) Either whose employers withheld earnings tax and paid it to the City of St. Louis Collector of Revenue, or who paid earnings tax themselves to the City of St. Louis Collector of Revenue, and
- (2) who submitted a protest and/or an earnings tax refund request using a form of protest other than the City’s own generated forms, seeking a refund for teleworking days worked outside the City during the class period, and

¹⁹ The Court may, under article X, section 23, declare a statute constitutional or unconstitutional. The limited nature of the declaratory, or interpretive, remedy does not authorize a court to enter a judgment for damages or injunctive relief. *Taylor v. State*, 247 S.W.3d 546, 548 (Mo. 2008).

- (3) for whom the City has not yet refunded to such persons an amount equal to the proportion of days worked outside the city to the year's total workdays during the class period.
212. Each of the proposed classes satisfies or will satisfy each of the class-certification requirements set forth in Rule 52.08.
213. First, each of the proposed classes is or will be numbered in the thousands, and each is therefore so numerous that joinder of all such members would be impracticable, Rule 52.08(a).
214. Second, Plaintiffs and the proposed class members, for each class, share common questions of law and fact because each of them has had earnings tax withheld from their pay for work or services performed or rendered outside the City. A question common to all members of both classes is whether the City may refuse to pay refunds to such people under RSMo. § 139.031 and/or whether that refusal violates the U.S. Constitution. Rule 52.08(a).
215. Third, Plaintiffs' claims are typical of the proposed class members' claims for the two classes. In fact, they are identical, because Plaintiffs and the proposed class members are entitled to, among other things, an adjudication of their entitlement to a refund of earnings tax for work or services performed or rendered outside the City. Rule 52.08(a).
216. Fourth, Plaintiffs will fairly and adequately protect the interests of the members of the respective proposed classes. Plaintiffs have no interests that conflict with the proposed class members. Rule 52.08(a). Moreover, Plaintiffs have retained W. Bevis Schock and Mark Milton of Milton Law Group, and their associates, to serve as class counsel. The lawyers are experienced and knowledgeable concerning Class action litigation, taxation and civil rights, and will fairly and adequately represent the interests of the proposed class.

217. Further, the requirements of Rule 52.08(b)(1) are satisfied because separate actions instituted by members would create a risk of (A) inconsistent or varying adjudication with respect to members of the classes, which would establish incompatible standards of conduct for the party opposing the classes, or (B) the prosecution of separate actions by members of the classes would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
218. Further, the requirements of Rule 52.08(b)(2) are satisfied because Defendants have acted or have refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the classes as a whole.
219. Further, the requirements of Rule 52.08(b)(3) are satisfied because questions of law or fact common to members of the classes predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of the controversy.
220. Further, the requirements of Rule 52.08 are satisfied because Plaintiffs' claims, and the claims of all similarly situated persons, are all based on tax forms that have been or will be submitted to the City. Therefore, a determination of the amount owed by Defendants to each class member may be easily accomplished. In short, Defendants have or will have conveniently available to them all the information needed to provide relief.

Attorney's Fees

221. In pursuing this case, Plaintiffs and all others similarly situated are incurring reasonable attorney's fees and costs.

**COUNT I
INTERPRETATION OF EARNINGS TAX LAW,
CITY CODE § 5.22.020 (“THE ORDINANCE”)
DECLARATORY RELIEF**

- 222. Plaintiffs incorporate all prior paragraphs.
- 223. A controversy exists between the parties as to whether City Code § 5.22.020 (“The Ordinance”) allows imposition of earnings tax on nonresidents for teleworking days, with Defendants asserting the Code does and Plaintiffs asserting it does not.
- 224. The facts averred demonstrate that a justiciable controversy exists between the parties, that Plaintiffs have a legally protectable interest at stake.
- 225. This controversy is appropriate for entry of a declaratory judgment under Rule 87 of the Missouri Rules of Civil Procedure because declaratory relief is necessary and proper to determine the rights and liabilities of the parties.

Prayer

WHEREFORE, Plaintiffs pray the Court to issue declaratory relief as follows:

- 226. Finding and determining whether under the Ordinance the City may tax nonresidents and/or refuse to pay refunds for days spent teleworking.
- 227. Award Plaintiffs costs, and under the court’s equitable powers award attorney fees, and make such other orders as the court finds to be just and reasonable.

**COUNT II
DEADLINE FOR SUBMISSION OF EARNINGS TAX REFUND APPLICATIONS
DECLARATORY RELIEF**

- 228. Plaintiffs incorporate all prior paragraphs.
- 229. Plaintiffs and others similarly situated are filing applications for refunds for teleworking but there is ambiguity as to the deadline for such applications because the Collector has

previously stated that the applications are due May 17, 2021, but the relevant statute of limitations for submitting such claims is May 17, 2022.

230. A controversy exists between the parties as to the deadline for submission of applications for refunds of earnings taxes.
231. This ambiguity must be resolved for the complete resolution of the issues in this case, but without this relief at this stage of the case, there will be duplicative litigation.
232. The facts averred demonstrate that a justiciable controversy exists between the parties, that Plaintiffs have a legally protectable interest at stake.
233. This controversy is appropriate for entry of a declaratory judgment under Rule 87 of the Missouri Rules of Civil Procedure because declaratory relief is necessary and proper to determine the rights and liabilities of the parties.

Prayer

WHEREFORE, Plaintiffs pray the Court to issue declaratory relief as follows:

234. Finding and determining the final date for submission of applications for refunds of earnings tax paid on behalf of nonresidents for teleworking days,
235. Award Plaintiffs costs, and under the court's equitable powers award attorney fees, and make such other orders as the court finds to be just and reasonable.

COUNT III IN THE ALTERNATIVE, REFUNDS PURSUANT TO RSMO. § 139.031, ALL STATUTORY REQUIREMENTS ARE SATISFIED

236. Plaintiffs incorporate all prior paragraphs.
237. Employers of non-resident City employees have withheld earnings tax on those Employees' wages for tax years 2020 and 2021.
238. Many such non-resident employees have teleworked for many days during those years.

239. The Ordinance does not allow assessment of earnings tax against nonresidents for teleworking days.
240. Before tax year 2020, the City routinely paid refunds of earnings tax withheld from nonresidents' pay for business travel days and teleworking days.
241. Taxpayers in Class 1 are those who have already submitted refund requests for days spent teleworking using the Collector's forms, and taxpayers in Class 2 are those who have submitted protests and refund requests for days spent teleworking.
242. The City is refusing to pay refunds for teleworking days to persons in both Classes.
243. RSMo. § 139.031.2 allows taxpayers who have paid their tax and protested to sue for refunds and RSMo. § 139.031.4 allows the court to order payment of such refunds.
244. Applications for refunds of earnings tax for teleworking days constitutes a protest under RSMo. § 139.031.1
245. The requirement of RSMo. § 139.031.1 that the taxpayer file his or her protest "at the time of paying such taxes" should be deemed fulfilled, because the tax has already been paid and the Defendants have thus long had the money, and because when the taxes were paid there had been no notice to the taxpayers that Defendants were going to withhold and refuse to issue their refunds for days worked outside the City.
246. This class action suit fulfills the requirement for filing suit for all persons who have filed or who will make timely filing for a refund and/or protest.
247. Individual suits should not be required for "every taxpayer," because statements in the law requiring such suits are incorrect statements of the law or because a requirement of individual suits would be oppressive.
248. The court should order Defendants to pay refunds to taxpayers in Classes 1 and 2.

Prayer

- WHEREFORE, Plaintiffs pray the Court, pursuant to its equitable power under RSMo. § 139.031 to make such orders “as may be just and equitable,” to enter a judgment which:
- 249. Finds that the requirements of RSMo. § 139.031 are satisfied,
 - 250. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
 - 251. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
 - 252. Appoints Plaintiff Stein as class representative of Class 2,
 - 253. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
 - 254. Orders Defendants to pay to Plaintiffs and the class members refunds consisting of all earnings tax paid for work or services rendered or performed outside the City of St. Louis during the class period for which Plaintiffs have applied for a refund but for which the City has not provided a refund,
 - 255. Awards Plaintiffs’ counsel reasonable attorney’s fees and costs, and
 - 256. Makes such other orders as the Court finds to be just and reasonable.

**COUNT IV
IN THE ALTERNATIVE
STATUTORY REQUIREMENTS OF RSMO. § 139.031 NOT SATISFIED
RELIEF UNDER 42 U.S.C. § 1983:
SUBSTANTIVE DUE PROCESS, DAMAGES, FOURTEENTH AMENDMENT
REFUSAL TO PAY REFUNDS IN DIRECT VIOLATION OF THE ORDINANCE**

- 257. Plaintiffs incorporate all prior paragraphs.
- 258. The statutory requirements of the refund statute, RSMO. § 139.031, cannot be satisfied in this case so as to provide justice for at least one of the following reasons (or for some other reason): taxpayers did not file their protests at the same time their taxes were paid, a class action, or each individual taxpayer must file an individual case in Circuit Court.

259. The refund statute therefore does not provide a plain, adequate and complete remedy at law.
260. Relief is therefore available to Plaintiffs under 42 U.S.C. § 1983.
261. The following paragraphs apply to both Classes, 1 and 2.
262. *First*, Defendants have retained Plaintiffs' property by refusing Plaintiffs' demands to pay refunds of earnings tax withheld from their pay for days in 2020 in which Plaintiffs did not perform work or render services in the City, even though under the Earnings Tax Ordinance, Plaintiffs do not owe earnings tax for such days.
263. *Second*, Defendants' conduct in refusing to pay refunds is shocking to the contemporary conscience.^{20 21 22}
264. *Third*, as a direct result, Plaintiffs have been and are being damaged.

Prayer

WHEREFORE, Plaintiff requests that the Court enter a judgment that:

265. Certifies this lawsuit as a class action with two Classes, 1 and 2, as defined above,
266. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
267. Appoints Plaintiff Stein as class representative of Class 2,
268. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
269. Awards damages to Plaintiffs against Defendants for all earnings tax paid for work or services rendered or performed outside the City of St. Louis during the class period for

²⁰ Undersigned counsel make their claim for refunds, admittedly disfavored and generally not ordered, under the umbrella of Rule 4-3.1, asserting that their arguments are in good faith and seek an extension, modification or reversal of existing law.

²¹ For elements of verdict director, *see Flowers v. City of Minneapolis, Minn.*, 478 F.3d 869, 873 (8th Cir. 2007)

²² 8th Cir. Model Jury Instructions 4.40.

which Plaintiffs have applied for a refund but for which the City has not provided a refund, excluding days spent traveling for a business purpose, and for other damages including for Plaintiffs' constitutional insult.

- 270. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
- 271. Makes such other orders as the Court finds to be just and reasonable.

**COUNT V
IN THE ALTERNATIVE,
STATUTORY REQUIREMENTS OF RSMO. § 139.031 NOT SATISFIED
RELIEF UNDER 42 U.S.C. § 1983:
SUBSTANTIVE DUE PROCESS, DAMAGES, FOURTEENTH AMENDMENT
INSTRUCTING EMPLOYERS TO VIOLATE THE LAW**

- 272. Plaintiffs incorporate all prior paragraphs.
- 273. The statutory requirements of the refund statute, RSMO. § 139.031, cannot be satisfied in this case so as to provide justice for at least one of the following reasons (or for some other reason): taxpayers did not file their protests at the same time their taxes were paid, a class action, or each individual taxpayer must file an individual case in Circuit Court.
- 274. The refund statute therefore does not provide a plain, adequate and complete remedy at law.
- 275. Relief is therefore available to Plaintiffs under 42 U.S.C. § 1983.
- 276. Defendants' refund forms unlawfully instruct employers not to certify for refunds days spent teleworking.
- 277. The following paragraphs apply to both Classes, 1 and 2.
- 278. *First*, on the 2020 Form E-1R and Form E-1RV for tax year 2020, Defendants have instructed Employers not to count days worked remotely even though under the Ordinance, Plaintiffs do not owe earnings tax for such days.

279. *Second*, Defendants' conduct in instructing employers to refuse to give credit to Employees for days for which they owe no tax is shocking to the contemporary conscience.^{23 24 25}

280. *Third*, as a direct result, Plaintiffs have been and are being damaged.

Prayer

WHEREFORE, Plaintiff requests that the Court enter a judgment that:

281. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
282. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
283. Appoints Plaintiff Stein as class representative of Class 2,
284. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
285. Awards damages to Plaintiffs against Defendants for all earnings tax paid for work or services rendered or performed outside the City of St. Louis during the class period for which Plaintiffs have applied for a refund but for which the City has not provided a refund, excluding days spent traveling for a business purpose, and for other damages including for Plaintiffs' constitutional insult.
286. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
287. Makes such other orders as the Court finds to be just and reasonable.

**COUNT VI
IN THE ALTERNATIVE,
STATUTORY REQUIREMENTS OF RSMO. § 139.031 NOT SATISFIED
RELIEF UNDER 42 U.S.C. § 1983:**

²³ Undersigned counsel make their claim for refunds, admittedly disfavored and generally not ordered, under the civil rights law under the umbrella of Rule 4-3.1, asserting that their argument is in good faith and seeks an extension, modification or reversal of existing law.

²⁴ For elements of verdict director, *see Flowers v. City of Minneapolis, Minn.*, 478 F.3d 869, 873 (8th Cir. 2007)

²⁵ 8th Cir. Model Jury Instructions 4.40.

UNCONSTITUTIONAL SEIZURE, DAMAGES, FOURTH AMENDMENT

288. Plaintiffs incorporate all prior paragraphs.
289. The statutory requirements of the refund statute, RSMO. § 139.031, cannot be satisfied in this case so as to provide justice for at least one of the following reasons (or for some other reason): taxpayers did not file their protests at the same time their taxes were paid, a class action, or each individual taxpayer must file an individual case in Circuit Court.
290. The refund statute therefore does not provide a plain, adequate and complete remedy at law.
291. Relief is therefore available to Plaintiffs under 42 U.S.C. § 1983.
292. Defendants have unlawfully and unconstitutionally seized Plaintiffs' property.
293. The following paragraphs apply to both Classes, 1 and 2.
294. *First*, Defendants have taken possession of Plaintiffs' earnings tax money pursuant to payroll withholding, and have not returned Plaintiffs' money even though the money belongs to Plaintiffs and Plaintiffs have filed proper requests for refunds, and
295. *Second*, Defendants' retention of the money is not reasonable because the City's Ordinances do not make Plaintiffs' work outside the city taxable, and
296. *Third*, as a direct result, Plaintiffs have been and are being damaged.^{26 27 28}

Prayer

WHEREFORE, Plaintiff requests that the Court enter a judgment that:

²⁶ Undersigned counsel make their claim for refunds, admittedly disfavored and generally not ordered, under the civil rights law under the umbrella of Rule 4-3.1, asserting that their argument is in good faith and seeks an extension, modification or reversal of existing law.

²⁷ For elements of verdict director, *see Hosea v. City of St. Paul*, 867 F.3d 949, 955 (8th Cir. 2017).

²⁸ 8th Cir. Model Jury Instructions 4.40.

297. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
298. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
299. Appoints Plaintiff Stein as class representative of Class 2,
300. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
301. Awards damages to Plaintiffs against Defendants for all earnings tax paid for work or services rendered or performed outside the City of St. Louis during the class period for which Plaintiffs have applied for a refund but for which the City has not provided a refund, excluding days spent traveling for a business purpose, and for other damages including for Plaintiffs' constitutional insult.
302. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
303. Makes such other orders as the Court finds to be just and reasonable.

**COUNT VII
IN THE ALTERNATIVE,
STATUTORY REQUIREMENTS OF RSMO. § 139.031 NOT SATISFIED
RELIEF UNDER 42 U.S.C. § 1983:
EQUAL PROTECTION, DAMAGES, FOURTEENTH AMENDMENT**

304. Plaintiffs incorporate all prior paragraphs. The statutory requirements of the refund statute, RSMO. § 139.031, cannot be satisfied in this case.
305. The statutory requirements of the refund statute, RSMO. § 139.031, cannot be satisfied in this case so as to provide justice for at least one of the following reasons (or for some other reason): taxpayers did not file their protests at the same time their taxes were paid, a class action, or each individual taxpayer must file an individual case in Circuit Court.
306. Relief is therefore available to Plaintiffs under 42 U.S.C. § 1983.
307. The following paragraphs apply to both Classes, 1 and 2.

308. *First*, the earnings tax Ordinance makes no distinction between nonresidents working remotely from home and working remotely while traveling,
309. *Second*, Defendants have subjected Plaintiffs to taxes for days working remotely but not while traveling,
310. *Third*, Defendants have thereby subjected Plaintiffs to taxes not imposed on others of the same class, and
311. *Fourth*, as a direct result, Plaintiffs were damaged.^{29 30 31}

Prayer

WHEREFORE, Plaintiff requests that the Court order adjudge and decree that:

312. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
313. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
314. Appoints Plaintiff Stein as class representative of Class 2,
315. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
316. Orders Defendants to pay to Plaintiffs and the class members refunds consisting of all earnings tax paid for work or services rendered or performed outside the City of St. Louis during the class period for which Plaintiffs have applied for a refund but for which the City has not provided a refund, excluding days spent traveling for a business purpose, and for other damages including for Plaintiffs' constitutional insult.

²⁹ Undersigned counsel make their claim for refunds, admittedly disfavored and generally not ordered, under the civil rights law under the umbrella of Rule 4-3.1, asserting that their argument is in good faith and seeks an extension, modification or reversal of existing law.

³⁰ For elements of verdict director, *see Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 345 (1989) and *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

³¹ 8th Cir. Model Jury Instructions 4.40.

317. Award Plaintiffs reasonable attorney’s fees and costs, and make such other orders as the court finds to be just and reasonable.

**COUNT VIII
IN THE ALTERNATIVE,
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
REQUIRE DEFENDANTS TO STOP INSTRUCTING EMPLOYERS
TO VIOLATE THE LAW**

318. Plaintiffs incorporate all prior paragraphs.

Prayer

WHEREFORE, Plaintiff requests that the Court issue preliminary and permanent injunctive relief in favor of Plaintiffs and the Class:

319. Ordering the Collector to amend the 2020 E-1R and future E-1Rs to match the substantive language of the 2019 E-1R, including eliminating the requirement for submitting the Form E-1RV and removing the language that reads as follows:

Employees who work remotely from home should be treated as working at their original place of work. These days may not be included in the Non-Residency Deduction form on Form E-1R when claiming a refund.

320. Awarding Plaintiffs reasonable attorney’s fees and costs and make such other orders as the court finds to be just and reasonable.

**COUNT IX
HANCOCK AMENDMENT
DECLARATORY RELIEF**

321. Plaintiffs incorporate all prior paragraphs.

322. Plaintiffs proceed on this count as individual taxpayers and not as class representatives.

323. Plaintiffs have fulfilled the requirements to bring a Hancock Amendment claim in that that have paid the disputed tax, filed a protest, and initiated suit, as required by RSMo. § 139.031.

324. By requiring nonresidents of the City to pay earnings tax for work or services performed or rendered outside the City, the City has imposed a new tax or expanded the tax base without a vote of the people.
325. The City has exceeded its authority and violated under RSMo. § 92.111 and Chapter 5.22 of the City Code by refusing to pay the refunds and by using forms which instruct employers and taxpayers not to certify teleworking days.
326. The facts averred demonstrate that a justiciable controversy exists between the parties, that Plaintiffs have a legally protectable interest at stake.
327. This controversy is appropriate for entry of a declaratory judgment under Rule 87 of the Missouri Rules of Civil Procedure because declaratory relief is necessary and proper to determine the rights and liabilities of the parties.

Prayer

WHEREFORE, Plaintiffs pray the Court to issue declaratory relief as follows:

328. Find Defendants' refusal to issue refunds to nonresidents who worked remotely from locations outside of the City of St. Louis during 2020 violates the Hancock Amendment,
329. Declare unlawful Defendant Collector's practice of including an instruction to Employers on the refund form (the 2020 Form E-1R) that remote work should not count as days worked outside the city and not subject to tax.
330. Award Plaintiffs' counsel reasonable attorney's fees and costs under Missouri Constitution, Art X, § 23, and make such other orders as the Court finds to be just and reasonable.

Respectfully Submitted,

Attorneys for Plaintiffs

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/s/ W. Bevis Schock

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 17, 2021 he served this document on:
All counsel of record by electronic filing, and Messrs. Michael Garvin and Robert Dierker by
email. (The latter two have agreed to accept service but have not yet entered their appearance).
Their email address are:

dierkerr@stlouis-mogov
garvinm@stlouis-mo.gov

/s/ W. Bevis Schock