

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

MARK BOLES, individually and on)	
behalf of all others similarly situated, <i>et al.</i>)	
)	
)	
Plaintiffs,)	Case No.: 2122-CC00713
)	
v.)	Division
)	
CITY OF ST. LOUIS, MISSOURI, <i>et al.</i>)	
)	
Defendants.)	

**PLAINTIFFS’ MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION,
AND FOR IMMEDIATE DECLARATORY JUDGMENT,
ALL WITH NOTICE TO DEFENDANTS**

Plaintiffs Mark Boles, Nicholas Oar, Kos Semonski and Christian Edward Stein III, individually, through undersigned counsel and pursuant to Rules 92 and 87, state as their Motion for Temporary Restraining Order and Preliminary Injunction, and for Immediate Declaratory Judgment, all with Notice to Defendants, as follows:

This case relates to the 1% earnings tax imposed on nonresidents of the city of St. Louis, Missouri (“the City”). Historically, employers based in the City and/or with locations in the City have withheld the 1% earnings tax from the total wages paid to nonresidents assigned to work locations in the City. Then each tax season, nonresidents who spent time working outside the City during the prior tax year applied for and received a refund for a pro-rated amount of their withholdings based on the number of days they worked outside the City. Through its custom and practice of issuing these refunds, the City in prior years has followed the plain language of the earnings tax ordinance, which only allows the City to impose the earnings tax on nonresidents for days spent working physically in the City. See City Code § 5.22.020(B).

Now for tax year 2020, without any change to the law, Defendants changed their policy to eliminate earnings tax refunds for nonresidents who spent days teleworking, defined as days working from a location outside the City for a city-based employer, but not while traveling for that employer for a business purpose. Defendants did this by changing their forms such that employees and employers are directed not to certify teleworking days, even though the plain language of the earnings tax ordinance is clear that nonresidents do not owe the earnings tax for days worked outside the City. Defendants have then sent rejection letters to those who apply for refunds including those days anyway. Some nonresidents have not filed for refunds for teleworking days precisely because the forms direct them and their employers not to. Plaintiffs assert that Defendants' changes to their policy and forms are unlawful.

This motion seeks immediate declaratory relief asking the Court to declare the new policy and forms unlawful under the Hancock Amendment because the City has imposed a new tax or expanded the tax base without a vote of the people. This motion further seeks preliminary injunctive relief asking the Court to order the City and the City's Collector of Revenue to revert to the refund forms as they existed prior to tax year 2020. Plaintiffs assert they will succeed on the merits because there is a statute allowing taxpayers to seek refunds in cases such as this, and if the Court finds the statute inapplicable due to lack of a protest, then Plaintiffs are entitled to relief under 42 U.S.C. § 1983 for civil rights violations. Plaintiffs can show irreparable harm because time is running on the City's stated deadline of May 17, 2021 to file for refunds (to which Plaintiffs do not accede). Moreover, the public is confused about whether they are entitled to refunds for teleworking days and some members of the public are submitting forms without teleworking days, depriving them of funds they are entitled to by law.

Plaintiffs are not now seeking an order for the City to issue refunds or return the disputed funds because that goes to the merits.

Plaintiffs pray for a minimal bond of \$100.00 should the court grant injunctive relief.

Plaintiffs are also submitting their Suggestions in Support of this Motion, which Plaintiffs incorporate herein.

PRAYER

WHEREFORE, Plaintiffs pray the Court find that there are no facts in dispute regarding Plaintiffs' Hancock Amendment claims and declare the new forms for tax year 2020 unlawful under that Amendment.

WHEREFORE, Plaintiffs move for a Temporary Restraining Order against Defendants, the City of St. Louis and the City's Collector of Revenue, Gregory F.X. Daly, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, preventing them from directly or indirectly:

- A. Publicizing information through any means, including the providing of sample forms such as Defendant Collector's 2020 E-1R and E-1RV (as they exist now), stating in any manner that nonresidents may not apply for refunds of earnings tax for days in which the taxpayer was teleworking or otherwise not physically present in the City for such days, regardless of the reason.
- B. Requiring the submission of the 2020 version of Form E-1R and new Form E-1RV (as they exist now), as a precondition for nonresidents to seek a refund of earnings taxes withheld from their pay for days they spent working outside the City.

Plaintiffs further move for affirmative preliminary injunctive relief ordering Defendants, the City of St. Louis and the City's Collector of Revenue, to:

- C. Immediately promulgate a new Form E-1R for tax year 2020 matching in substance and language the Forms E-1R promulgated by the Collector for tax years 2015-2019, and

- D. Immediately publicize on the collector's website instructions consistent therewith.

Plaintiffs further pray that the Court order no bond or minimal bond such as \$100.00.

Respectfully Submitted,

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 23, 2021, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all attorneys of record.

/s/ Mark C. Milton