

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

MARK BOLES, individually and on )  
 behalf of all others similarly situated, )  
 )  
 NICHOLAS OAR, individually and on )  
 behalf of all others similarly situated, )  
 )  
 KOS SEMONSKI, individually and on )  
 behalf of all others similarly situated, )  
 )  
 ROSS HENRY, individually and on )  
 behalf of all others similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 CITY OF ST. LOUIS, MISSOURI, )  
 )  
**HOLD FOR SERVICE** )  
 )  
 and )  
 )  
 GREGORY F.X. DALY, )  
 in his official capacity only, )  
 )  
**HOLD FOR SERVICE** )  
 )  
 Defendants. )

Case No.:

Division

**PLAINTIFFS DEMAND  
JURY TRIAL  
ON ALL ISSUES OF FACT  
(NOT ON RSMo. § 139.031  
ISSUES)**

**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 FOR TWO CLASSES, AND FOR  
DECLARATORY RELIEF UNDER HANCOCK AMENDMENT**

Plaintiffs Mark Boles, Nicholas Oar, Kos Semonski, and Ross Henry, 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 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 outside 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 they worked outside the City. Using the “Non-Residency Deduction,” nonresidents could deduct from their earnings (subject to the earnings tax) a pro-rated amount based on the number of days they worked outside the City (using a standard work year of 260 days). Defendants never before required nonresidents or their employers to specify whether the days were spent teleworking or traveling for that employer for a business purpose.
7. 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.

8. Now, Defendants refuse to pay refunds for teleworking. In doing so, Defendants are brazenly and unlawfully keeping Plaintiffs' money.
9. 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 teleworking only.
10. Many other persons have submitted refund request forms seeking refunds for days worked outside the City while teleworking and for days while traveling for a business purpose.
11. The City has informed all such persons that the City will not pay refunds for time spent teleworking.
12. In public statements and on a new refund form promulgated for tax year 2020 the Collector has instructed city-based employers not to certify as days worked outside the City any days the employee spent teleworking.
13. This unlawful interpretation is designed to intimidate employers and thwart nonresidents from seeking refunds of money they do not owe to the City.
14. There are 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.
15. Those persons are short their lawful refunds of time spent both teleworking and traveling.
16. There are many persons who have submitted no refund form for tax year 2020 at all because they believe the instruction to be unlawful.
17. Those persons are short their entire lawful refunds.
18. In the alternative, Plaintiffs are entitled to refunds pursuant to RSMo. § 139.031. Although that statute requires a protest when paying assessed taxes prior to seeking a

refund, in this case, there was nothing to protest when the taxes were paid because there had not been any tax assessed and the City had not yet refused to pay.

19. To require a protest under these circumstances would be absurd and nonsensical.
20. In the alternative, if a protest is required in these circumstances under RSMo. § 139.031, then there is not available an “adequate and complete remedy at law” under that statute. Therefore, Plaintiffs are entitled to relief under 42 U.S.C. 1983.<sup>1</sup>
21. Defendants’ conduct in denying nonresidents refunds for all 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.
22. The conduct further violates such person’s Fourth Amendment right to be free of unreasonable seizures.
23. 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.
24. Plaintiffs seek injunctive relief, including a Temporary Restraining Order and a Preliminary Injunction, directing the Collector to change his refund form to allow employers to certify teleworking days as days worked outside the City and not subject to the earnings tax.
25. Plaintiffs seek further injunctive relief, including a Temporary Restraining Order and a Preliminary Injunction, directing the Collector to extend by a reasonable amount of time

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<sup>1</sup> *Stufflebaum v. Panethiere*, 691 S.W.2d 271, 272 (Mo. 1985).

the deadline for submitting refund claims, to allow employers to certify teleworking days as days worked outside the City and not subject to the earnings tax, and to allow class members who have previously submitted refund claim forms not including teleworking days to resubmit and/or amend their forms to include teleworking days.

26. 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.
27. For their damages claims, Plaintiffs seek Class action status to help all those harmed by Defendants' conduct, particularly, two classes: 1 and 2, to include respectively for Class 1 those who have already submitted claim forms including teleworking days, and for Class 2 those who have not yet submitted claim forms including teleworking days.
28. Defendants' conduct enacts a new tax or expands the tax base. Therefore, Plaintiffs seek a declaration that Defendants' conduct violates the Hancock Amendment.
29. 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**

30. Plaintiff Mark Boles is an individual residing in St. Louis County, Missouri.
31. Plaintiff Nicholas Oar is an individual residing in St. Charles County, Missouri.
32. Plaintiff Kos Semonski is an individual residing in St. Charles County, Missouri.
33. Plaintiff Ross Henry is an individual residing in St. Louis County, Missouri.
34. Plaintiffs Boles, Oar and Semonski seek to be class representatives for Class 1.
35. Plaintiff Henry seeks to be class representative for Class 2.
36. For the Hancock claims, Plaintiffs seek relief as individual taxpayers.

37. Each Plaintiff has, at all relevant times, had earnings taxes withheld in the amount of 1% by their employers, with those amounts then paid over to the Collector.
38. The City of St. Louis (“the City”) is a Constitutional Charter City of the State of Missouri.
39. 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.*
40. The Collector is responsible for collecting all earnings tax due to the City of St. Louis.
41. The Collector, as an elected official, is a policy maker for the City.
42. 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.<sup>2</sup>

### **Jurisdiction and Venue**

43. This court, as a court of general jurisdiction, has jurisdiction to hear Plaintiffs’ state law claims for refunds (based on RSMo. § 139.031).
44. 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 claims brought under 42 U.S.C. § 1983.<sup>3</sup>
45. Injunctive relief is authorized by Rule 92 and declaratory relief is authorized by Rule 87.

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<sup>2</sup> *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978).

<sup>3</sup> *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).

46. 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.
47. Mo. Const. Art. X § 23 states that the taxpayer “shall have standing to bring suit in a circuit court of proper venue.”
48. 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**

49. At all relevant times Defendant City and Defendant Collector have acted under color of state law. Particularly, 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.

**Jury Demand**

50. Plaintiffs demand jury trial on factual issues, including the damages claims, but do not include jury demand for relief requested under RSMo. § 139.031.

## Facts

51. The City imposes the earnings tax pursuant to RSMo. § 92.111. According to this 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).
52. The City’s earnings tax Ordinance mirrors the language of the authorizing Missouri 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).
53. This language is plain and unambiguous.
54. If there is any ambiguity the Ordinance must be construed in favor of the taxpayer.<sup>4</sup>
55. 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.
56. 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**.<sup>5</sup>

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<sup>4</sup> “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)).

<sup>5</sup> “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->



57. The collection of earnings tax from persons who live in the City is not in dispute in this case.
58. 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 about 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.
59. Only a portion of earnings tax dollars collected from nonresidents is from persons working outside the City during the COVID-19 pandemic.<sup>6</sup>
60. Section 5.22.060(A) of the 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

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[mo.gov/collector/earnings-faq.cfm#whoFiles](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).

<sup>6</sup> *Working from home instead of in the city? Don't expect a break from paying the St. Louis earnings tax, June 12, 2020*, available at [https://www.stltoday.com/business/local/working-from-home-instead-of-in-the-city-don-t-expect-a-break-from-paying/article\\_ddc57bb7-7709-5534-8524-1c414e5f7ef4.html](https://www.stltoday.com/business/local/working-from-home-instead-of-in-the-city-don-t-expect-a-break-from-paying/article_ddc57bb7-7709-5534-8524-1c414e5f7ef4.html).

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 employee from the duty of making a return and paying the tax.

61. At all relevant times, pursuant to that language, Plaintiffs' employers, who are located within or are doing business within the City, have withheld the 1% earnings tax from Plaintiffs' pay and then remitted the earnings tax to the Collector.
62. 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.
63. Claims for refunds are made on a proportionate basis, assuming 260 workdays per year, a number Plaintiffs do not dispute.
64. 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.
65. 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 form remained materially unchanged from at least tax year 2015 through tax year 2019.<sup>7</sup>
66. On inference, the Collector promulgated 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

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<sup>7</sup> 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>.

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.

67. This rule making authority does not allow the making of rules which are arbitrary, capricious, unreasonable, unlawful, or in excess of jurisdiction.<sup>8</sup>
68. 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.
69. 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.
70. 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:

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.

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(emphasis added).

71. 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.
72. 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***.

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<sup>8</sup> *Gott v. Dir. of Revenue*, 615 S.W.3d 52, 55 (Mo. 2020).

73. In response, the Collector issued a statement regarding the future issuance of earnings tax refunds, which read in relevant parts as follows:

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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.

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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.<sup>9</sup>

(Emphasis added)

74. Based on the Collector's statement, most employers continued to withhold earnings taxes for nonresident employees who were and are working remotely due to the COVID-19 pandemic.
75. In December 2020, the Collector promulgated a new E-1R refund request form for tax year 2020 ("2020 E-1R) and a required attachment called the Form E-1RV, which contains a new verification statement requiring 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.

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<sup>9</sup> See *Statement Regarding Employee Remote Work*, available at <https://www.stlouis-mo.gov/collector/docs/Statement-Regarding-Employee-Remote-Work-Final.pdf>.

76. The new 2020 Form 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.

77. 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.
78. 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 discontinuing 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.
79. The Collector's statements and actions to reinterpret and apply the Ordinance, including the new Form E-1RV requirement, shocks the conscience.
80. 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.
81. 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.<sup>10</sup>

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<sup>10</sup> *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 345 (1989), *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

82. The new requirements violate the Equal Protection Clause of the Fourteenth Amendment because they select out taxpayers who worked from home but were not travelling, an arbitrary distinction.
83. The new form and process is discriminatory enforcement of a facially valid law and is therefore unconstitutional under the equal protection clause.<sup>11</sup>
84. The new form and process subject such taxpayer to discriminatory treatment by subjecting him or her to taxes not imposed on others of the same class.
85. 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.
86. The Collector's statements and actions assert, unilaterally and unlawfully, that the City may retain Plaintiffs' 1% wages for days worked outside the City even though the Ordinance does not allow tax on such work.
87. 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.
88. 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.

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<sup>11</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886); *Hill v. City of Scranton*, 411 F.3d 118, 125 (3d Cir. 2005).

89. 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.
90. 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.
91. Their employers duly withheld the 1% earnings tax for all workdays of the year.
92. For such years, Plaintiffs Boles, Semonski and Oar 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.
93. The City then always paid Plaintiffs their refunds on a routine basis.

#### **Plaintiff Boles**

94. On or about January 22, 2021, as he had done in previous years, Plaintiff Boles submitted the 2020 Form E-1R to the Collector.
95. 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.
96. 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.
97. Thereafter, Plaintiff Boles submitted the completed Form E-1RV to the Collector.
98. 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 now [sic] longer be allowed as a deduction for refund claims. Please review our website [www.stlouiscollector.com](http://www.stlouiscollector.com) for further information regarding this change.

99. 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.

100. 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**

101. 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.

102. 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.

103. 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.

104. 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**

105. 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.
106. 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's based on days he worked remotely outside the City.
107. 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.
108. 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-1RV.
109. 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.
110. On March 29, 2021, the Collector denied Plaintiff Semonski's refund request.

**Plaintiff Henry**

111. Plaintiff Henry resides in St. Louis County, Missouri, but is employed by the Federal Reserve Bank of St. Louis in downtown St. Louis (in the City).
112. For tax years 2018 and 2019, Plaintiff Henry received earnings tax refunds based on the number of days he teleworked from his home in Maplewood, Missouri, located outside the City. Each year, his employer's human resources department provided him with the signed Form E-1R certifying the number of days he worked remotely from his home outside the City. Plaintiff Henry would then complete the remaining fields on the form to

calculate the amount of his refunds based on his salary and withholdings. Plaintiff Henry's prior refund requests, which were granted, never included any travel days but only days he spent teleworking from his home outside the City.

113. In February of 2021, Plaintiff Henry's employer advised him that the City had revised its earnings tax refund requirements to allow refunds only for days spent traveling outside the City but not teleworking from home. Because of this, Plaintiff Henry's employer would not complete and/or certify the Form E-1R for him based on the number of days he worked from home in 2020.
114. For tax year 2020, Plaintiff Henry worked remotely from his home in St. Louis County every workday from March 16, 2020, through December 31, 2020. As such, Plaintiff Henry is entitled to a refund based on the number of days he worked outside the City. Yet, because of Defendants' new form, Plaintiff Henry's employer is unable and/or unwilling to provide the required certification allowing him to seek a refund of earnings tax withheld from his pay but not owed.

#### **Continuing Refusal to Pay Refunds**

115. As of this filing, the City continues to refuse to refund Plaintiffs' earnings taxes withheld from their pay for periods when they performed or rendered services outside the City.
116. 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**

117. 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.”
118. RSMo. § 139.031 states in relevant part regarding the protest requirement:
- 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.
- [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.
119. In this case the tax was arguably paid when the Employer withheld the 1% and paid it over to the City. At the time of the payments there was nothing to protest because the taxpayer had not yet filed for his refund and been denied.
120. The protest requirement of RSMo. § 139.031 in these circumstances is therefore absurd and non-sensical and should not be required in these circumstances.
121. 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.”)
122. 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.

123. 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 paid.
124. 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 members of the class.<sup>12</sup>
125. 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 remote work, satisfies the protest requirement of RSMo. § 139.031.
126. 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. Reliance on this statute now would be disingenuous and only serve to bar Plaintiffs from seeking a refund of earnings tax withholdings they do not owe by law. Such reliance would violate the customs and practice of the City.
127. Because of the previously existing custom and practice of employers withholding the 1% all year and employees then applying for and being granted refunds, this case represents a wholly new factual scenario, not contemplated by RSMo. § 139.031's protest requirement. Thus, any protest requirement should be waived in this case.

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<sup>12</sup> *Lett v. City of St. Louis*, 948 S.W.2d 614, 620–21 (Mo. Ct. App. 1996).

**In the Alternative:  
Refunds and Damages Pursuant to 42 U.S.C. § 1983  
If Protest Requirement Applicable**

128. In the alternative, if this court concludes that the protest requirement of RSMo. § 139.031 applies in this matter, 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.
129. 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."
130. The implication is that where relief is not available under RSMo. § 139.031 or any other remedy, relief is available under 42 U.S.C. § 1983.

**Substantive Due Process**

131. 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."
132. 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.<sup>13</sup>
133. Plaintiffs have a constitutionally protected property interest in their wages.<sup>14</sup>

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<sup>13</sup> *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

<sup>14</sup> *Snaidach v. Family Fin. Corp. of Bay View*, 395 U.S. 337 342 (1969).

134. 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.<sup>15</sup>
135. 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.
136. In the alternative, Defendants' conduct demonstrates deliberate indifference to the property rights of Plaintiffs in their wages.

#### **Fourth Amendment Seizure**

137. 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 suspect during arrests. In both cases the person (in this case the Defendants) have unlawfully kept for themselves property belonging to another.
138. 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**

139. The Collector is an elected official and thus a policy maker for the City of St. Louis.<sup>16</sup>
140. His liability makes the City liable for any judgment for damages based on 42 U.S.C. § 1983 rendered in this case.<sup>17</sup>

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<sup>15</sup> *County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

<sup>16</sup> *Pembaur v. City of Cincinnati*, 475 U.S. 469, 500 (1986).

<sup>17</sup> *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978).

### **No Eleventh Amendment Immunity**

141. 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.”<sup>18</sup>
142. 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**

143. 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**

144. 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. 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,

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<sup>18</sup> “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).

although erroneously paid, albeit under an unconstitutional statute, cannot be refunded.<sup>19</sup>

145. 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.
146. 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.
147. 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**

148. The Missouri Constitution, Art X, § 22(a), in what is commonly known as the Hancock Amendment, states in relevant part:

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 reduced to yield the same estimated gross revenue as on the prior base.

149. By refusing to pay refunds and thereby requiring nonresidents of the City to pay earnings tax for work or services performed or rendered outside the City, Defendants have imposed a new tax, license or fee, and/or have increased the tax base.

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<sup>19</sup> See also, *Lett v. City of St. Louis*, 948 S.W.2d 614, 620 (1996).



150. The requirement is a new tax because before the change in policy work performed or services rendered outside the city by non-city residents was not taxed.
151. The tax base is being increased because whereas in the past the tax base did not include days worked by non-city residents outside the City, through its change in policy, Defendants are taxing such days.
152. The voters of the City have never voted to approve the imposition of tax on such days.
153. Taxes were not proportionately reduced to compensate for taxation of such days.
154. Defendants' taxing of days worked outside the city by non-city residents violates the Hancock Amendment.
155. 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.<sup>20</sup>

### **The Classes**

156. Plaintiffs bring this action, on behalf of themselves and all others similarly situated.
157. Plaintiffs Boles, Oar, 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 have submitted an earnings tax refund request form for days worked outside the City during the class period,
- (3) either inclusive of days spent only teleworking, defined as "working outside the City but not while traveling for a business

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<sup>20</sup> 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).

purpose” or inclusive of days teleworking and days traveling for a business purpose, and

- (4) 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 work days during the class period.

158. Plaintiff Henry seeks to represent the following class, to be known as Class 2:

All non-residents 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 have either not yet submitted an earnings tax refund request form at all for tax year 2020 or who have submitted a refund form for tax year 2020 which has not sought a refund for days teleworking during that tax year, 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 work days during the class period.

159. For Class 2, Plaintiffs will seek an order allowing class members to submit a request for refund for tax year 2020, either new or amended, to include total work days for work done or performed outside the City, including days while teleworking and/or days traveling for a business purpose.

160. The proposed classes satisfy each of the class-certification requirements set forth in Rule 52.08

161. First, each of the proposed classes numbers in the thousands, and each is therefore so numerous that joinder of all such members would be impracticable, Rule 52.08(a).

162. Second, Plaintiffs and the proposed class members 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).
163. Third, Plaintiffs' claims are typical of the proposed class members' claims, 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).
164. Some members of Class 2 may have submitted claims pursuant to a refund form which includes all days worked outside the City and others may have submitted claims which only includes days worked outside the City while traveling, and the latter group should be entitled to submit a new form, within a reasonable time, in which event full typicality will be satisfied.
165. Fourth, Plaintiffs will fairly and adequately protect the interests of the members of the 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.
166. Further, the requirements of Rule 52.08(b) are satisfied because separate actions instituted by members would create a risk of (A) inconsistent or varying adjudication with respect to members of the class, which would establish incompatible standards of conduct for the party opposing the class, or (B) the prosecution of separate actions by members of the class 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.

167. 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.
168. 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.
169. 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 all the information needed to provide relief.

#### **Attorney's Fees**

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

#### **COUNT I IN THE ALTERNATIVE, REFUNDS UNDER RSMO. § 139.031**

171. Plaintiffs incorporate all prior paragraphs.
172. 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.

173. To require a protest would be an absurd and nonsensical result.

**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:

174. Finds that the requirement of a protest under RSMo. § 139.031 would be absurd and nonsensical,

175. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,

176. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,

177. Appoints Plaintiff Henry as class representative of Class 2,

178. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,

179. 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 Plaintiff has applied for a refund but for which the City has not provided a refund,

180. Awards Plaintiffs’ counsel reasonable attorney’s fees and costs, and

181. Makes such other orders as the court finds to be just and reasonable.

WHEREFORE, Pursuant to its equitable power under RSMo. § 139.031 to make such orders “as may be just and equitable,” the court should order Defendants to pay refunds for all such days.

**COUNT II  
IN THE ALTERNATIVE  
SUBSTANTIVE DUE PROCESS  
DAMAGES  
FOURTEENTH AMENDMENT  
REFUSAL TO PAY REFUNDS**

182. Plaintiffs incorporate all prior paragraphs.
183. The following paragraphs apply to both Classes, 1 and 2.
184. *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.
185. *Second*, Defendants’ conduct in refusing to pay refunds is shocking to the contemporary conscience.<sup>21 22 23</sup>
186. *Third*, as a direct result, Plaintiffs were damaged.

**Prayer**

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

187. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
188. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
189. Appoints Plaintiff Henry as class representative of Class 2,
190. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,

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<sup>21</sup> 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.

<sup>22</sup> For elements of verdict director, *see Flowers v. City of Minneapolis, Minn.*, 478 F.3d 869, 873 (8th Cir. 2007)

<sup>23</sup> 8th Cir. Model Jury Instructions 4.40.

191. 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 Plaintiff has applied for a refund but for which the City has not provided a refund,
192. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
193. Makes such other orders as the court finds to be just and reasonable.

**COUNT III  
IN THE ALTERNATIVE,  
SUBSTANTIVE DUE PROCESS  
DAMAGES  
FOURTEENTH AMENDMENT  
INSTRUCTING EMPLOYERS TO VIOLATE THE LAW**

194. Plaintiffs incorporate all prior paragraphs.
195. The following paragraphs apply to both Classes, 1 and 2.
196. *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.
197. *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.<sup>24 25 26</sup>
198. *Third*, as a direct result, Plaintiffs were damaged.

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<sup>24</sup> 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.

<sup>25</sup> For elements of verdict director, *see Flowers v. City of Minneapolis, Minn.*, 478 F.3d 869, 873 (8th Cir. 2007)

<sup>26</sup> 8th Cir. Model Jury Instructions 4.40.

**Prayer**

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

- 199. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
- 200. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
- 201. Appoints Plaintiff Henry as class representative of Class 2,
- 202. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
- 203. 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 Plaintiff has applied for a refund but for which the City has not provided a refund,
- 204. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
- 205. Makes such other orders as the court finds to be just and reasonable.

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

- 206. 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:

- 207. Ordering the Collector to amend the 2020 E-1R 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.



- 208. Ordering Defendants to allow members of Class 2 to resubmit or submit new refund forms for tax year 2020.
- 209. Awarding Plaintiffs' counsel reasonable attorney's fees and costs, and
- 210. Issuing such other orders as the court finds to be just and reasonable.

**COUNT V  
IN THE ALTERNATIVE,  
UNREASONABLE SEIZURE  
FOURTH AMENDMENT**

- 211. Plaintiffs incorporate all prior paragraphs.
- 212. *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
- 213. *Second*, Defendants' retention of the money is not reasonable because the City's Ordinances do not make Plaintiffs' work outside the city taxable, and
- 214. *Third*, as a direct result, Plaintiffs were damaged.<sup>27 28 29</sup>

**Prayer**

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

- 215. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
- 216. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
- 217. Appoints Plaintiff Henry as class representative of Class 2,
- 218. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,

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<sup>27</sup> 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.

<sup>28</sup> For elements of verdict director, *see Hosea v. City of St. Paul*, 867 F.3d 949, 955 (8th Cir. 2017).

<sup>29</sup> 8th Cir. Model Jury Instructions 4.40.

219. 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 Plaintiff has applied for a refund but for which the City has not provided a refund,
220. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
221. Makes such other orders as the court finds to be just and reasonable.

**COUNT VI  
IN THE ALTERNATIVE,  
EQUAL PROTECTION  
DAMAGES  
FOURTEENTH AMENDMENT**

222. Plaintiffs incorporate all prior paragraphs.
223. The following paragraphs apply to both Classes, 1 and 2.
224. *First*, the earnings tax Ordinance makes no distinction between nonresidents working remotely from home and working remotely while traveling,
225. *Second*, Defendants have subjected Plaintiffs to taxes for days working remotely but not while traveling,
226. *Third*, Defendants have thereby subjected Plaintiffs to taxes not imposed on others of the same class, and
227. *Fourth*, as a direct result, Plaintiffs were damaged.<sup>30 31 32</sup>

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<sup>30</sup> 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.

<sup>31</sup> 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).

<sup>32</sup> 8th Cir. Model Jury Instructions 4.40.

### Prayer

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

- 228. Certifies this lawsuit as a class-action with two Classes, 1 and 2, as defined above,
- 229. Appoints Plaintiffs Boles, Oar, Semonski as class representatives of Class 1,
- 230. Appoints Plaintiff Henry as class representative of Class 2,
- 231. Appoints W. Bevis Schock and Milton Law Group as counsel for the classes,
- 232. 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 Plaintiff has applied for a refund but for which the City has not provided a refund,
- 233. Awards Plaintiffs' counsel reasonable attorney's fees and costs, and
- 234. Makes such other orders as the court finds to be just and reasonable.

### COUNT VII IN THE ALTERNATIVE, EQUAL PROTECTION FOURTEENTH AMENDMENT PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

- 235. Plaintiffs incorporate all prior paragraphs.
- 236. The following paragraphs apply to both Classes, 1 and 2.
- 237. *First*, the earnings tax Ordinance makes no distinction between nonresidents working remotely from home and working remotely while traveling,
- 238. *Second*, Defendants have subjected Plaintiffs to taxes for days working remotely but not while traveling, and
- 239. *Third*, Defendants have thereby subjected Plaintiffs to taxes not imposed on others of the same class,

- 240. *Fourth*, Defendants have caused members of Class 2 to submit incomplete refund request forms or no refund request forms at all for tax year 2020, thereby shorting members of Class 2 of the full refund to which they are entitled under law.
- 241. *Fourth*, as a direct result, Plaintiffs were damaged.

**Prayer**

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

- 242. Ordering the Collector to amend the 2020 E-1R 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.

- 243. Ordering Defendants to allow members of Class 2 to resubmit or submit new refund forms for tax year 2020.
- 244. Awarding Plaintiffs' counsel reasonable attorney's fees and costs under 42 U.S.C. 1988, and
- 245. Issuing such other orders as the court finds to be just and reasonable.

**COUNT VIII  
HANCOCK AMENDMENT  
DECLARATORY RELIEF**

- 246. Plaintiffs incorporate all prior paragraphs.
- 247. The following paragraphs apply to both Classes, 1 and 2.
- 248. Plaintiffs proceed on this count as individual taxpayers and not as class representatives.

249. 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.
250. The City has exceeded its authority and violated under RSMo. § 92.111 and Chapter 5.22 of the Code.
251. A controversy exists between the parties as to whether the City may impose the earnings tax on nonresidents for work or services performed or rendered outside the City.
252. This claim is appropriate for entry of a declaratory judgment under RSMo. § 527.010 and Rule 87 of the Missouri Rules of Civil Procedure.
253. The facts averred demonstrate that a justiciable controversy exists between the parties, that Plaintiffs have a legally protectable interest at stake, and the issues brought before the Court are appropriate for declaratory relief.
254. Declaratory relief is necessary and proper to determine the rights and liabilities of the parties.
255. The Collector has advised the public that nonresidents cannot receive and are not entitled to receive a refund for work and services rendered or performed outside the City. These statements have discouraged nonresidents from submitting requests for refunds.

### **Prayer**

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

256. Finds 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,

257. Finds Defendants' refusal to issue refunds to nonresidents who worked remotely from locations outside of the City of St. Louis during 2020 violates the Ordinance (Section 5.22.010).
258. Declares 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.
259. Awards Plaintiffs' counsel reasonable attorney's fees and costs under Missouri Constitution, Art X, § 23, and
260. Makes such other orders as the court finds to be just and reasonable.

Respectfully Submitted,

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