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# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000965-MR

PARADISE TOMATO KITCHENS, INC.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARTIN F. MCDONALD, JUDGE  
ACTION NO. 03-CI-002262

LOUISVILLE-JEFFERSON COUNTY METRO  
REVENUE COMMISSION; LOUISVILLE/JEFFERSON  
METRO GOVERNMENT; TRANSIT AUTHORITY OF  
RIVER CITY; AND BOARD OF EDUCATION OF  
JEFFERSON COUNTY, KENTUCKY

APPELLEES

### OPINION AFFIRMING

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BEFORE: KELLER AND TAYLOR, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

KELLER, JUDGE: Paradise Tomato Kitchens, Inc. (Paradise), substantially overpaid the occupational tax assessed by the Louisville/Metro Government<sup>2</sup> (the Metro Government) on behalf of itself, the Transit Authority of River City (TARC), and the

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky constitution and KRS 21.580.

<sup>2</sup> The time period in question predates the merger of the City of Louisville and Jefferson County. However, since the status of the governmental entity is not at issue, we will refer to the City of Louisville and Jefferson County as the Metro Government.

Board of Education of Jefferson County (the Board). Paradise sought a refund of the entire overpayment from the Louisville-Jefferson County Metro Revenue Commission (the Commission), which administers the tax. However, the Commission refunded only a portion of the overpayment. Therefore, Paradise filed suit seeking a refund of the remainder of the overpayment. The Jefferson Circuit Court entered an opinion and order granting the Appellees' motion for summary judgment and it is from this order and opinion that Paradise appeals. In its appeal, Paradise raises several constitutional, statutory, and common law issues, which we will discuss in detail below. Having reviewed the record and, for the reasons set forth below, we affirm.

### FACTS

The facts are not in dispute. As noted above, the City levies an occupational tax on behalf of itself, TARC, and the Board. Basically, the occupational tax is calculated by determining the portion of the net profits and wages attributable to activities within the City. That portion of net profits and wages attributable to activities outside the City are not to be included for tax purposes.

From 1993 through 2001, Paradise's accounting firm calculated the amount owed for the occupational tax based on 100% of Paradise's net profits, not on the portion of those profits attributable to activities within the City. Paradise filed tax returns based on these incorrect calculations. We note that the portion of the taxes attributable to wages is not at issue. Therefore, when we refer to the occupational tax, we are only referring to the tax attributable to profits.

In early 2003, the accounting firm discovered its mistake and Paradise filed an amended return for the 2001 calendar year, seeking a refund. The Commission approved Paradise's claim and issued a refund in the amount of \$76,113. Paradise also filed amended returns for 1993 through 2000, seeking an additional refund of

\$202,434. The Commission did not approve those claims by Paradise based on City of Louisville, Kentucky, General Codified Ordinances § 112.20 (Ordinance § 112.20) and KRS 160.487. Ordinance § 112.10 was amended during the time period in question; however, the versions state that the Commission cannot authorize any refund unless application is made within either one year of the date payment was due or the date the return was filed. KRS 160.487 is part of a statutory plan to provide funding for school systems in counties with populations of 300,000 or more. That plan provides that counties that meet the population threshold may impose an occupational license fee for the benefit of the counties' school districts. Any license fees imposed under the plan are to be collected and distributed by the county fiscal court or its agent. KRS 160.482 through 160.486. KRS 160.487 provides that a person who has paid such a license fee may seek a refund but must do so within one year after the fee became due.

Following denial of its request for a refund, Paradise filed complaints for declaratory judgment in Jefferson Circuit Court requesting a refund of the amounts it overpaid between 1993 and 2000.<sup>3</sup> After initiating the lawsuit, and because it was raising constitutional challenges to Ordinance § 112.20 and KRS 160.487, Paradise served the Attorney General with notice of the proceedings. In response, the Attorney General filed notice that he “decline[d] to participate in the defense of the City Ordinance and Statute.”

Following discovery, Paradise filed a partial motion for summary judgment, which the circuit court denied. The Appellees then filed a joint motion for summary judgment, which the circuit court granted. It is from the circuit court's opinions and orders denying Paradise's motion and granting the Appellees' motion that Paradise appeals. In its appeal, Paradise raises numerous issues, which distill to the following:

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<sup>3</sup> The first complaint did not name the Board as a party and only sought relief for taxes paid for the 1997 calendar year. The second complaint names the Board and sought relief for taxes paid for the calendar year 1993 through 2000. The circuit court consolidated the two actions.

(1) that it is entitled to a refund under common law; (2) that the “overcollection” of the occupational tax violated the Commerce Clause of the United States Constitution and, therefore, the Commission’s refusal to make a refund was unlawful; (3) that the limitations on obtaining refunds in City Ordinance § 112.10 and KRS 160.487 do not apply to Paradise’s common law claims because they interfere with Paradise’s jural rights; (4) that KRS 160.487 and Ordinance § 112.10 amount to special local legislation, and are unconstitutional; and (5) that Ordinance § 112.10 applies only to the Commission and does not prevent the City, TARC, or the Board from issuing refunds.

#### STANDARD OF REVIEW

Although the appeal is from the circuit court’s rulings on the parties’ motions for summary judgment, the issues presented are not of fact but of law. Therefore, the standard of review is *de novo*. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001); *see also A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc.*, 998 S.W.2d 505, 509 (Ky. App. 1999); *Aubrey v. Office of Attorney General*, 994 S.W.2d 516, 518-19 (Ky. App. 1998) (citing *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450, 458 (Ky. 1964)). With this standard in mind, we will address the issues raised by Paradise below.

## ANALYSIS

At the outset, we note that Paradise argues that the classifications and time limitations created in KRS 160.487 and Ordinance § 112.10 violate the Kentucky Constitution. In order to challenge the constitutionality of a statute or ordinance on appeal, an appellant is required to serve the attorney general with a copy of the prehearing statement. CR 76.03(5) and KRS 418.075(2). If an appellant fails to make the required service on the attorney general, any issues regarding the constitutionality of a statute or ordinance are not properly before this Court and therefore not subject to our review. *Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet*, 133 S.W.3d 456, 466 (Ky. 2004). Paradise did not serve the Attorney General with a copy of the prehearing statement; therefore, its constitutional arguments are not properly before us. However, since Paradise did serve the Attorney General with notice of the underlying action and since the constitutional issues are of significant concern, we will address them.

### 1. Violation of the Commerce Clause

The Commerce Clause of the United States Constitution (Article I § 8) provides that Congress shall have the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]” While the Commerce Clause limits a state’s ability to tax activities that touch on interstate commerce

“[A] state tax is not per se invalid because it burdens interstate commerce since interstate commerce may constitutionally be made to pay its way.” *Maryland v. Louisiana*, 451 U.S. 725, 754, 101 S.Ct. 2114, 2133, 68 L.Ed.2d 576 (1981). The test for whether a state revenue measure offends the Commerce Clause is set forth in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977). A tax withstands Commerce Clause scrutiny if it “is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned,

does not discriminate against interstate commerce, and is fairly related to the services provided by the State.” *Id.*, 430 U.S. at 279, 97 S.Ct. at 1079.

*Carpenter v. Commonwealth*, 831 S.W.2d 188, 191 (Ky. App. 1992).

Paradise argues that “[t]he taxes collected here violate the mandate of fair apportionment. Indeed, there was no apportionment at all.” However, Paradise mischaracterizes what occurred. The Commission did not “collect” and did not fail to apportion what was appropriately due. Paradise failed to apportion and “paid” more than was due. While this may appear to be a pedantic distinction, it is, nonetheless, significant. The Commerce Clause only requires states to apportion taxes so as not to interfere with interstate commerce. It does not require states to protect those engaged in interstate commerce from paying more than they are required to pay. The fact that Paradise misconstrued its obligations under the ordinance and statute does not cause either to be in contravention of the dictates of the Commerce Clause. Therefore, we hold that there is nothing inherent in either the ordinance or the statute that violates the Commerce Clause.

However, Paradise’s real issue is not with the “collection” of the occupational tax but with the retention of the overpayment of that tax. In that regard, Paradise argues that the Commission’s failure to refund the overpayment violates its right to due process. In support of its argument, Paradise cites to *Commonwealth, Revenue Cabinet v. Gossum*, 887 S.W.2d 329 (Ky. 1994). In *Gossum*, the Supreme Court of Kentucky cited to the United States Supreme Court’s holding in *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990), that “the due process clause of the Fourteenth Amendment obligates the state to provide *meaningful* backward-looking relief to rectify any unconstitutional deprivation.” *Gossum*, 887 S.W.2d at 332. (Emphasis in original.)

Unfortunately for Paradise, *Gossum* provides support for the Appellees rather than for Paradise. In *Gossum* the Court noted that a state statute that provided for the collection of income taxes from federal retirees was unconstitutional. When federal retirees sought a refund of the amounts paid pursuant to the statute, the Court held that they were entitled to those refunds, subject to the time limitations provided by statute. Furthermore, the Court held that a “two-year statute of limitations . . . is not violative of constitutional standards.” *Gossum*, 887 S.W.2d at 335.

As noted above, unlike the tax in *Gossum*, there is nothing inherently unconstitutional in the occupational tax ordinance or statute in question herein. Therefore, the holding in *Gossum* has no direct applicability to this case. However, even if *Gossum* is applicable, its only requirement is *meaningful* backward-looking relief. The provisions to recoup overpayment of taxes in Ordinance § 112.10 and KRS 160.487 provide just such meaningful backward-looking relief.

Based on the above, we hold that nothing in the application of Ordinance § 112.10 and KRS 160.487 is violative of the Commerce Clause.

## 2. Ability of the City, TARC, and the Board to Issue Refunds Independently of the Commission

Paradise states that “the license taxes here are levied by the City, JCPS [the Board] and TARC, not the Revenue Commission.” However, we note that the occupational license fee that inures to the benefit of the Board is not levied by the Board but by the fiscal court. KRS 160.485(1) specifically states that “[t]he imposition of license fees authorized hereby shall be by order or resolution of the fiscal court.” Furthermore, KRS 160.486 provides that “[t]he license fees imposed by authority of KRS 160.482 to 160.488 shall be collected by the fiscal court or its agent, and the proceeds thereof shall be promptly divided and distributed to each school district . . . .” The preceding makes it clear that the Board is not entitled to levy, collect, or disperse

license fees. Therefore, the Board is not entitled to independently make any refund of an overpayment of license fees.

Similarly, TARC did not, nor could it, levy a license fee. KRS 96A.320(3) provides that

[p]ublic bodies which have been parties to the creation . . . of transit authorities . . . may . . . submit to either the electorates of such public bodies, or the electorate of the transit area encompassed by any such transit authority . . . one (1) or more proposals for the approval of a mass transportation program to be financed by voted levies of occupational license fees.

In the present case, the city is the public body that, through the electorate, levies the license fee.

Furthermore, KRS 96A.120(1) provides that a transit authority, “may request the public body responsible for its creation and establishment . . . [t]o appropriate and pay over to the authority all or any part of the amount determined to be necessary . . . .” Therefore, like the Board, TARC neither collects nor disperses the funds generated by the license fee.

As to the City, KRS 91.200(2) provides that a city of the first class may impose license fees. Thus, the City does actually levy the license fee from which it benefits. However, KRS 91.200(5) provides that “[l]icense fees or taxes shall be collected by the commissioners of the sinking fund.” The proceeds from the funds go first to defray the expenses associated with the administration of the sinking fund, with the remainder then being transferred to the city. KRS 91.200(5) and (6). Therefore, as with TARC and the Board, the City neither collects nor disperses the funds generated by the license fee and the City does not have the power, independently of the Commission, to make a refund.



For the foregoing reasons, we hold that neither the Board, TARC, nor the City can issue a refund independently from the Commission.

### 3. Common Law Right to a Refund

Paradise's primary argument, and one that is interwoven with its other arguments, is that it has a common law right to a refund that cannot be superseded by the time limitations imposed by Ordinance § 112.10 and KRS 160.487. In support of its position, Paradise cites to numerous cases for the proposition that a common law right to refund exists because it paid the excess amount under a "mistake of fact and/or law" and because its payment of the excess amount was not voluntary.

The general rule is that a common law right to a tax refund exists: "(1) when the taxing statute or regulation is invalid and the tax payments were submitted involuntarily, [or] (2) when the taxing authority has engaged in misrepresentation." *Inland Container v. Mason County*, 6 S.W.3d 374, 377 (Ky. 1999). The cases cited by Paradise deal either with taxes that were determined to be invalid (*City of Covington v. Powell*, 59 Ky. 226, 228 (1859); *Bruner v. Town of Stanton*, 102 Ky. 459, 43 S.W. 411 (1897); *River Excursion Co. v. City of Louisville*, 244 Ky. 811, 51 S.W.2d 470 (1932); *Ziedman & Pollie v. City of Ashland*, 244 Ky. 279, 50 S.W.2d 557 (1932); *Great Atlantic & Pacific Tea Co. v. City of Lexington*, 256 Ky. 595, 76 S.W.2d 894 (1934); *City of Louisville v. Louisville Taxicab & Transfer Co.*, 238 S.W.2d 121 (1951); and *City of Bromley v. Smith*, 149 S.W.3d 403 (Ky. 2004)), or where the taxpayer voluntarily paid the tax (*Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ.*, 806 F.2d 678 (6<sup>th</sup> Cir. 1986)).

Paradise argues at some length that it did not voluntarily pay the amount in question. However, we believe that is "putting the cart before the horse." The Court in *Inland Container* only used two numbers to set forth the criteria that must be met

before the common law right to a refund can apply. However, there are actually three criteria: first, the taxing statute or regulation must be found to be invalid; second, the payment must be involuntary; or third, the taxing authority must have made a misrepresentation to the taxpayer.

In order to meet the first criterion, Paradise must show that the “authority to levy the tax, or to levy it upon the property in question, [is] wholly wanting, or the tax itself wholly unauthorized . . . .” *Spalding v. City of Lebanon*, 156 Ky. 37, 160 S.W. 751, 753 (1913). Paradise cannot meet this burden as the occupational tax is authorized by both statute and ordinance and is not otherwise invalid. Therefore, Paradise cannot meet the first criterion set out in *Spalding*, and it does not have an independent common law right to seek a refund.

Furthermore, we agree with the circuit court that this case is similar to *Martin Marietta*, 806 F.2d 678 (6<sup>th</sup> Cir. 1986). In *Martin Marietta*, the taxpayer was permitted to choose one of two methods for computing the amount of tax owed. After paying the tax under the simpler calculation method, Martin Marietta discovered that using the more complex calculation method would have resulted in a significantly lower tax obligation. The ordinance in question did not provide for a refund; however, the practice by the taxing authority was to provide refunds only to those who used the more complex calculation method. Martin Marietta sought a refund of the “overpayment” arguing, in pertinent part, that it paid the excess tax involuntarily. The United States 6<sup>th</sup> Circuit Court of Appeals held that the excess tax was paid voluntarily. In doing so, the 6<sup>th</sup> Circuit noted that Kentucky law provides that a tax is involuntary if paid under some compulsion. However, the 6<sup>th</sup> Circuit also noted that, while the taxing authority did compel payment of the tax, it “did not assess the excess Tax or threaten to impose sanctions if Martin Marietta failed to pay the excess Tax.” *Martin Marietta*, 806 F.2d at

684. Furthermore, the 6<sup>th</sup> Circuit noted that the taxing authority “would not have exacted a penalty . . . had Martin Marietta failed to pay the excess Tax.” *Id.*

Just as in *Martin Marietta*, Paradise paid more tax than was rightfully due. The Commission could have imposed a penalty if Paradise had paid less than the amount due. However, the Commission could not have imposed a penalty if Paradise failed to pay more than the amount due. Therefore, just as in *Martin Marietta*, because there was no possible penalty related to a failure to make the excess payment of the occupational tax, we hold that Paradise voluntarily paid the amount in dispute.

Because Paradise cannot establish that the Ordinance and Statute are wholly unauthorized or that it involuntarily paid the excess tax, it can have no common law right of action to recover that excess amount.

#### 4. Interference with Jural Rights

Paradise argues that any abrogation of its right to a common law cause of action to recover the overpayment violates its jural rights. However, as noted above, Paradise has no common law right to seek a refund of the occupational tax overpayment. Therefore, neither Ordinance § 112.10 nor KRS 160.487 can violate Paradise’s jural rights.

#### 5. Special Legislation

Paradise argues that Ordinance § 112.10 and KRS 160.487 are unconstitutional because they create arbitrary classifications, violate Sections 2, 3, 59, and 60 of the Kentucky Constitution and the Equal Protection Clause of the United States Constitution, and create statutes of limitations contrary to the limitation scheme set forth in KRS Chapter 413. The gist of Paradise’s argument is that “KRS Chapter 413 provides the comprehensive scheme governing limitations of actions, including this

action” and that Ordinance § 112.10 and KRS 160.487 create special statutes of limitation that apply only to Jefferson County. The Appellees argue that the provisions in Ordinance § 112.10 and KRS 160.487 do not create statutes of limitation but simply set forth the regulations under which a taxpayer can request a refund.

Initially, we note that KRS 160.487 applies to county school districts located in counties with a population of more than 300,000 and applies only to that portion of the occupational tax appropriated for the school district. KRS 160.487 does not apply to that portion of the occupational tax appropriated for the City or TARC and refunds for that portion of the occupational tax are governed by Ordinance § 112.10. That distinction having been made, we do not believe the analysis of the two contested provisions will differ because we agree with the appellees.

As noted by the former Court of Appeals in *Department of Conservation v. Co-De Coal Company*, 388 S.W.2d 614, 615 (Ky. 1964) “the right to a refund of illegally or improperly collected taxes does not derive from common law, but is a matter of legislative grace.” In *Co-De Coal*, the coal company paid taxes based on its auger mining operation. The Court subsequently found that auger mining was not covered by the statute and the company sought a refund of the amounts paid. The statute in question limited a taxpayer’s recovery to taxes paid within two years of the date of payment. The Court noted that,

[a]lthough both appellee and appellants have referred to this provision as a statute of limitations, we think this provision creates a condition precedent to the statutory right of refund. Since there is no right at common law to recover improperly collected taxes, the legislature may make the very existence of the right of recovery dependent upon the refund’s being made within two years from the date the taxes are paid. In other words, whereas a statute of limitations neither creates nor extinguishes any rights, but merely places a limitation upon the remedy (which can be waived or tolled), a limitation such as the one in question is a condition essential to the existence of the right. *Lilly v. O’Brien*, 224 Ky. 474, 6

S.W.2d 715; *Unemployment Comp. Comm. of Kentucky v. Consolidation Coal Co.*, 287 Ky. 330, 152 S.W.2d 971. The distinction was tersely stated in the Lilly case where we discussed a similar limitation and said (page 718 of 6 S.W.2d):

'The bringing of the action within the limited time is a condition to the exercise of the right, and, if the condition is not complied with, there is neither right nor remedy.'

*Id.* at 617. See also *Hurry Up Broadway Co. v. Shannon*, 267 Ky. 302, 102 S.W.2d 30 (1937); and *Commonwealth, Revenue Cabinet v. Gossum*, 887 S.W.2d 329, 334 (1994).

As in *Co-De Coal*, the one year limitation to seek a refund in KRS 160.487 and Ordinance § 112.10 are not statutes of limitation. They simply create a right of recovery and place conditions precedent to seeking that recovery. Therefore, Paradise's argument that KRS 160.487 and Ordinance § 112.10 impermissibly create statutes of limitations is without merit.

We note that, during oral argument, counsel for Paradise asserted that the time for the running of any statutory period should be when it knew or should have known of the error.

In response, counsel for the City argued that such a qualification generally applies only to cases such as malpractice. In those cases, a wrong has been perpetrated by one party on another and that wrong may not be discoverable for a significant period of time. That is not the case here as there is no claim that the City did anything wrong. In fact that fault lies with Paradise and its accountants, not the City, TARC, or the Board.

Furthermore, we note that, even if the standard advocated by Paradise were to apply, it would not afford Paradise any relief. The general rule is that the knowledge of an agent is imputed to the principal. *United Fuel Gas Co. v. Jude*, 355

S.W.2d 664 (Ky. 1962). In this case, Paradise's CPA's were acting as Paradise's agent. There is no evidence that the CPA's could not have known or should not have known how to correctly prepare Paradise's tax returns. Therefore, there is no reason why Paradise could not have known or should not have known how to correctly prepare the tax returns.

Furthermore, we find no merit in Paradise's argument that Ordinance § 112.10 is special legislation violative of the Kentucky or the United States Constitutions. In support of its argument, Paradise cites several sections of the Kentucky Constitution. Section 59 provides, in pertinent part, that the General Assembly cannot pass local or special acts regulating the limitation of civil or criminal cases or authorizing the levying of taxes. As noted above, Ordinance § 112.10 does not create a statute of limitations. Furthermore, the statutory authority under which the Commission collects occupational fees for the City and TARC is not special legislation. KRS 96A.020 provides that a transit authority may be "created and established" by a city or county and does not limit the ability to create or establish a transit authority to any particular city or county. KRS 96A.120 provides for the financing of any transit authorities so created or established and is also not limited to any particular city or county. Therefore, there is nothing in KRS Chapter 96A which would make it a special or local act violative of the Kentucky Constitution, and Paradise's argument that the occupational tax for TARC is somehow special legislation is without merit.

As to the constitutionality of the City's occupational license tax, that issue is well settled. See *City of Louisville v. Seabee*, 308 Ky. 420, 214 S.W.2d 248 (1948). Therefore, Paradise's argument that said tax is violative of the Kentucky Constitution is also without merit.

Furthermore, there is nothing in either KRS Chapter 96A or KRS Chapter 91 or in the Kentucky Constitution which in any way restricts the City from enacting legislation to provide for a refund of taxes collected. We also note that Ordinance § 112.10 applies equally to all persons subject to the City's occupational tax, and it is therefore not violative of Equal Protection guarantees in the United States Constitution.

KRS 160.487 differs from the preceding in that it applies only to counties with a population of more than 300,000. Therefore, on its face, it appears to be special legislation violative of the Kentucky Constitution. This is particularly true because KRS 160.601, *et. seq.*, which provides for the levying of occupational taxes by all school districts, does not have a provision for obtaining a refund. However, we note that classifications based on population are permissible if "the classification has a reasonable relation to the purpose of the Act." *Mannini v. McFarland*, 294 Ky. 837, 172 S.W.2d 631, 632 (1943). Therefore, we must determine if there is a reasonable relationship between the purpose of the Act, providing funding for schools in counties with a population of 300,000, and permitting refunds of taxes if requested within one year.

We can find no such reasonable relationship. However, we note that this does nothing to assist Paradise. As we have set out above, a taxpayer who overpays is entitled to relief in one of two ways – through the common law or through statute. Paradise is not entitled to common law relief because the occupational tax is lawful and the amount in controversy was voluntarily paid. Therefore, Paradise's only avenue of relief is the statute. If KRS 160.487 is found to be unconstitutional, then Paradise has no statutory remedy. Accordingly, we shall end our analysis here.

For the above reasons, we affirm the Jefferson Circuit Court's ruling that Paradise is not entitled to any additional refund of the taxes it voluntarily overpaid.

TAYLOR, JUDGE, CONCURS.

GRAVES, SENIOR JUDGE, CONCURS AND FILES SEPARATE  
OPINION.

GRAVES, SENIOR JUDGE, CONCURRING: I concur, but I write  
separately to address the disparity in the respective positions of the parties.

This case presents a basic inequity in the manner in which the  
government deals with its tax paying citizens. Were the roles of the parties herein  
reversed, that is, had the government mistakenly issued an excessive tax refund, the  
taxpayer would be prosecuted for failure to make required disposition of property if he  
refused to return the overpayment. The government should behave in the same  
manner it mandates its citizens behave.

The government should not be rewarded for expropriating monies to which  
it is not entitled.

BRIEF FOR APPELLANT:

Timothy J. Eifler  
Walter L. Sales  
Kathryn V. Eberle  
Louisville, Kentucky

ORAL ARGUMENT FOR  
APPELLANT:

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BRIEF FOR APPELLEE BOARD OF  
EDUCATION OF JEFFERSON  
COUNTY:

Francis J. Mellen, Jr.  
Jennifer B. Starr  
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT FOR  
APPELLEES LOUISVILLE-JEFFERSON  
COUNTY REVENUE COMMISSION,  
LOUISVILLE-JEFFERSON COUNTY  
METRO GOVERNMENT, AND THE  
TRANSIT AUTHORITY OF RIVER CITY:

Terri A. Geraghty  
Louisville, Kentucky