Form 1. Notice of Appeal Tax, Civil, Family Court - (Except Juvenile Cases), and Probate

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
NOTICE OF APPEAL (_____CROSS APPEAL)
TAX, CIVIL, FAMILY COURT - (EXCEPT JUVENILE CASES), AND PROBATE

Superior Court Case Caption: American Philosophical Association v. District of Columbia

Superior Court Case No.: 2019-CVT-000003; transfered from Civil Division No. 2017-CA-004057-B

A. Notice is given that (person appealing) the District of Columbia is appealing an order/judgment from the:

☑ Tax Division ☐ Civil Division ☐ Family Court ☐ Probate Division

1. Date of entry of judgment or order appealed from (if more than one judgment or order appealed, list all):
   12/19/2025 Final Judgment (and all orders merged therein); Orders of 1/29/2019, 5/30/2019, 2/19/2025, 11/4/2025
2. Filing date of any post-judgment motion: N/a
3. Date of entry of post-judgment order: N/a
4. Superior Court Judge: Judges Anthony C. Epstein, Johnathan H. Pittman, John McCabe, Kimberley S. Knowles, Erik Christian
5. Is the order final (*i.e.*, disposes of all claims and has been entered by a Superior Court Judge, not a Magistrate Judge)? ☑ YES ☐ NO

   If no, state the basis for jurisdiction: _____

   Has there been any other notice of appeal filed in this case: ☐ YES ☑ NO

   If so, list the other appeal numbers: _____
6. If this case was consolidated with another case in this court, list the parties' names and the Superior Court case number: _____

B. Type of Case: ☐ Civil I ☑ Civil II ☐ Landlord and Tenant ☐ Neglect

☐ Termination of Parental Rights ☐ Adoption ☐ Guardianship ☐ Mental Health

☐ Probate ☐ Intervention ☐ Domestic Relations ☐ Mental Retardation

☐ Paternity & Child Support ☐ Other: _____

C. Indicate Status of Case: ☑ Paid ☐ In Forma Pauperis ☐ CCAN

Was counsel appointed in the trial court? ☐ YES ☑ NO

(COMPLETE REVERSE SIDE)

D. Provide the names, addresses, and telephone numbers of all parties to be served. For persons represented by counsel, identify counsel and whom the counsel represents. For each person, state whether the person was a plaintiff or defendant in the Superior Court. *Attach additional pages if necessary.

Name	Address	Party Status (Plaintiff, Defendant)	Telephone No.
SEE ATTACHED			

E. Identify the portions of the transcript needed for appeal, including the date of the proceeding, the name of the Court Reporter (or state that the matter was recorded on tape if no Court Reporter was present), the courtroom number where the proceeding was held, and the date the transcript was ordered, or a motion was filed for preparation of the transcript. *Attach additional pages if needed.

Date of Proceeding/Portion	Reporter/Courtroom No.	Date ordered
SEE ATTACHED		

☐ **Check this box if no transcript is needed for this appeal.**

F. Person filing appeal:

☐ Plaintiff Pro Se ☐ Defendant Pro Se

☐ Third Party/Intervenor ☐ Counsel for Plaintiff

☑ Counsel for Defendant

ATTACH A COPY OF THE ORDER, JUDGMENT OR DOCKET ENTRY FROM WHICH THIS APPEAL IS TAKEN

Brendan Heath	Brendan Heath	1619960
Print Name of Appellant/Attorney	Signature	Bar No.

400 Sixth St., NW, Washington, DC 20001	(202) 442-9880
Address	Telephone Number

*Appellant is responsible for ordering and paying the fee for transcript(s) in the Court Reporting and Recording Division, Room 5500. If appellant has been granted In Forma Pauperis status, or had an attorney appointed by the Family Court, *and* transcript is needed for this appeal, appellant must file a Motion for Transcript in Court Reporting and Recording Division, Room 5500. That office number is (202) 879-1009. If that motion is granted, transcript will be prepared at no cost to appellant.

D. Parties to be served with Notice of Appeal

Name	Address	Party Status	Telephone No.
Jeffrey A. Klafter Seth R. Lesser	Klafter Lesser LLP 2 International Drive, Suite 350 Rye Brook, New York 10573	Plaintiff	(914) 934-9200
Silvija A. Strikis E. Perot Bissell	Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, D.C. 20036	Plaintiff	(202) 326-7900

E. Transcripts

Date of Proceeding/Portion	Reporter/Courtroom No.	Date Ordered
12/1/2017	Courtroom 214	Completed
2/3/2025	Courtroom A-50	1/16/2026
9/3/2025	Courtroom A-50	10/6/2025
9/4/2025	Courtroom A-50	10/6/2025
10/1/2025	Courtroom A-50	10/15/2025
10/2/2025	Courtroom A-50	10/15/2025

DISTRICT OF COLUMBIA COURT OF APPEALS
MEDIATION SCREENING STATEMENT
(Civil, Family & Probate appeals)

Appeal No._____ Superior Ct. No. 2019-CVT-000003

1. Case caption: American Philosophical Association v. District of Columbia
2. Case type: Tax
3. Brief description of the facts that gave rise to the initial dispute: Plaintiffs American Philosophical Association and American Anthropological Association sued the District asserting that D.C. Code § 47-2005(3), which requires semipublic institutions to be located in the District to be eligible for a sales tax exemption, violates the dormant Commerce Clause of the Constitution. Plaintiffs alleged that they were otherwise eligible nonprofit organizations located outside the District that were charged sales tax at meetings and conferences they held at District hotels. Plaintiffs sought class certification and a refund of the tax payments.
4. Nature of disposition below: The District's motion to dismiss was denied on Jan. 29, 2019, and its motion for reconsideration was denied on May 30, 2019. Plaintiffs' motion for summary judgment on liability was granted on Feb. 13, 2024. The Superior Court held evidentiary hearings on relief on Sept. 3-4, 2025 and Oct. 1-2, 2025, issued a post-hearing order on Nov. 4, 2025, and issued a final judgment on Dec. 19, 2025.
5. State concisely the principal issue(s) in this appeal and the standard of review governing each: The principal issues on appeal are (1) whether the Superior Court erred in holding that Plaintiffs and the class members were not required to exhaust their claims by filing an administrative refund claim with the Office of Tax and Revenue before filing suit, and (2) whether the Superior Court erred in ordering that the District pay pre-judgment interest under D.C. Code § 47-3310(c) to the class members calculated as of the date of the filing of the motion for class certification, or, for claims accruing after that date, as of the date the claim accrued. Both issues are questions of law reviewed *de novo*.
6. If this appeal presents a new question of law, state the issue: This appeal presents questions related to the correct application of administrative exhaustion to sales tax refund claims and of prejudgment interest to class action tax refund claims.
7. Factors weighing in favor of or against mediation: Mediation is not warranted because this appeal presents several important questions of law that require the Court of Appeals' resolution.

8. Describe any attempts to negotiate a resolution of this dispute since the decision being appealed was entered by the trial court: None.
9. Name and phone number of opposing counsel: Jeffrey A. Klafter, Seth R. Lesser; Klafter Lesser LLP; (914) 934-9200
   Silvija A. Strikis, E. Perot Bissell; Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.; (202) 326-7900

   I certify that the above information is accurate to the best of my knowledge, and a copy of this document was ( ) mailed ( ) faxed and mailed (X) e-mailed ( ) hand-delivered to the person(s) listed below on January 16, 2026.

   Name: Jeffery A. Klafter
   Address: 2 International Drive, Suite 350
   City, State, Zip: Rye Brook, New York, 10573
   Fax Number: (914) 934-9220
   Designated E-mail Address(es): JAK@klafterlesser.com

/s/ Brendan Heath	Brendan Heath
Signature	Name
1619960	400 6th St. NW, Washington, DC 20001
Bar No.	Address
(202) 442-9880	brendan.heath@dc.gov
Telephone Number	Email Address

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

AMERICAN PHILOSOPHICAL ASSOCIATION, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	Case No. 2019 CVT 000003 Judge Kimberley S. Knowles

FINAL JUDGMENT

In furtherance of this Court's Order of November 4, 2025, and the entire record in this action, it is this 19th day of December 2025 hereby:

ORDERED and ADJUDGED that:

1. D.C. Code § 47-2005(3) violates the Commerce Clause of the United States Constitution for the reasons set forth in this Court's Order of February 12, 2024.

2. Defendant District of Columbia ("District") is directed to pay as damages for this violation of the United States Constitution through June 6, 2025 plus pre-judgment interest as set forth in this Court's November 4, 2025 Order, the sum of $8,481,988.21 into a "Qualified Settlement Fund" that RG/2 Claims Administration LLC ("RG/2") shall establish pursuant to 26 C.F.R. § 1.468B-1(a) and (c)(1),[1] to satisfy the tax refund Claims submitted in this action as agreed to by the parties or approved by the Court, which are set forth in Exhibit A hereto upon

[1] Even though no settlement has been reached in this action, 26 C.F.R. § 1.468B-1 is not limited to settlements as it includes a fund established to satisfy a contested claim that has resulted from an event that has occurred and that has given rise to at least one claim asserting liability arising out of a violation of law.

entry of this Judgment (the "Judgment Amount"). Such funds, while held in the Qualified Settlement Fund, shall be considered to be subject to the continuing jurisdiction of this Court.

3. The District is also directed to pay RG/2 the sum of $72,907.00, which are RG/2's costs and fees in connection with providing Notice and Proof of Claim forms to potential Class members ("RG/2 Notice Cost Amount").

4. The District shall wire these funds pursuant to wiring instructions to be provided by RG/2. Defendant shall also pay post-judgment interest on the Judgment Amount at the annual rate of 4% from the date of entry of this Judgment on such amount(s) until the date of the payments by the District directed herein.

5. Within one business day of receipt of the Judgment Amount plus any post-judgment interest and such funds becoming available, RG/2 is hereby directed to promptly pay from such funds 32% of the Judgment Amount plus any post-judgment interest in attorneys' fees and $91,402.19 for reimbursement of expenses incurred by Class Counsel in prosecuting this action, to Class Counsel (the "Attorney Fee and Expense Award"), as they shall jointly direct RG/2.

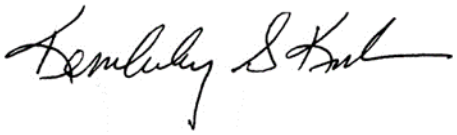
6. A $10,000 Service Award to the Class Representative, American Anthropological Association, is approved and shall be paid by Class Counsel from the Attorney Fee and Expense Award as soon as is practicable following Class Counsel's receipt of the Attorney Fee and Expense Award.

7. The Judgment Amount plus any post-judgment interest and less the Attorney Fee and Expense Award shall be, as soon as is practicable, distributed by RG/2 by wire transfer, if wire transfer instructions have been provided by a Claimant, and, if not, by overnight mail, to all Claimants listed in Exhibit A in proportion to the amount of each of their respective tax refund

Claims, which amounts are also indicated in Exhibit A, at the addresses for such Claimants set forth on their Claim forms.

8. The Clerk of this Court is directed to promptly enter this Judgment.

IT IS SO ORDERED.



Kimberley S. Knowles
Associate Judge

Copies e-served to:
Jeffrey Klafter, Esq.
Silvija Strikis, Esq.
Seth R. Lesser, Esq.
Elliston Perot Bissell, Esq.
Brendan Health, Esq.
Matthew R. Blecher, Esq.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

AMERICAN PHILOSOPHICAL FOUNDATION, et al,	:	
	:	Case No. 2019 CVT 000003
v.	:	Judge Kimberley S. Knowles
DISTRICT OF COLUMBIA	:	

ORDER

On September 3-4 and October 1-2, 2025, the Court held hearings to resolve any issues concerning the validity of submitted Proof of Claims forms (collectively "the hearing"). Present at the hearings were Jeffrey Klafter, counsel for Petitioner; Silvija Strikis, counsel for Petitioner; E. Perot Bissell, counsel for Petitioner; Brendan Heath, counsel for Respondent; Bazil Facchina, D.C. Office of Tax Revenue ("OTR"); Elissa Borges, D.C. Office of the Attorney General; and Adam Tuetken, D.C. Office of the Attorney General.

Pending in this matter are the disputed proof of claims forms; any other issues appropriately raised in parties' post-hearing briefs; Plaintiff's Motion to Require the District to Pay for the Costs of Providing Notice and Proof of Claim Forms to Potential Class Members, filed December 27, 2024 ("Motion to Pay Costs"); Plaintiffs' Motion for Award of Attorneys' Fees and Expenses, and a Service Award, Filed October 17, 2025 ("Motion for Attorneys' Fees"); and Respondent's Opposed Motion to Vacate, filed October 17, 2025. This Order will not rule on the Opposed Motion to Vacate, as that addresses the Honorable John F. McCabe's February 13, 2024, Order and is not before this Court.[1]

I. Background

This matter was initiated in the Civil Division of the Superior Court of the District of Columbia in Case No. 2017-CA-004057-B. On February 1, 2019, this matter was transferred to the Tax Division of the Superior Court of the District of Columbia. On April 30, 2021, Judge Pittman issued an Order certifying the class as all "semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below…." after

[1] The Honorable John F. McCabe will address this motion.

finding that class action is a superior method of resolution in this matter as the inverse would permit re-litigation of this issue on cases brought by similarly situated plaintiffs. On February 13, 2024, Judge McCabe issued Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment, finding that D.C. Code Section 47-2005(3) facially discriminates against interstate commerce and granted summary judgment on the subject of liability in favor of Petitioners.

II. Disputed Proof of Claims Forms

The class definition, as amended by Order issued March 12, 2025, is:

> All semipublic institutions that do not have offices within the District and which have been classified as exempt from federal taxation pursuant to IRC 501(c)(3), that paid a sales or hotel tax to any of the hotels listed below in connection with any meetings held at any such hotels for the purpose for which the institution was organized or for honoring the institution or its members from December 12, 2016, and continuing until there is a final determination that the requirement under D.C. Code § 47-2005(3)(C) that a semipublic institution must reside in the District in order to obtain an exemption from sales and hotel taxes violates the Commerce Clause of the United States Constitution (the "Class Period"):
>
> The Washington Hilton, the Marriott Marquis, the Renaissance Washington, the Omni Shoreham Hotel, the Grand Hyatt Hotel, the Mayflower Hotel, the Hyatt Regency, the JW Marriot, the Capital Hilton, the Willard Intercontinental, the Marriott Wardman Park Hotel, the Fairmont, the Mandarin Oriental, the Watergate Hotel, the Hilton D.C. National Mall Hotel, the Marriott Georgetown, the Washington Marriott at Metrocenter, and the Westin Washington City Center.

The District's objections to claimants are divided into seven categories: the organization is not a 501(c)(3); the meeting was not held at a class hotel; the claimant had a D.C. location at the time of the meeting; the claimant had an active D.C. tax exemption that they did not use; the claimant provided insufficient proof of payment; the claimant's meeting does not go towards its purpose or honoring its members; and the meeting was outside the class period. The District submitted an updated list of their objections in Exhibit A, filed October 17, 2025 with their post-hearing brief. As some of the District's objections are partial, only relating to some of the claimant's meetings, the Court's findings, as detailed below, are narrowed similarly.

A. On Being a 501(c)(3)

The outstanding objections in this category are DCT00000177 – Pacific Northwest Waterways Association and DCT00001195 – John Carroll Society. The Court will sustain the

Pacific Northwest Waterways Association objection as the party did not appear to testify, nor did Petitioners provide the Court with any additional evidence to consider.

On the John Carroll Society ("JCS"), the District argues that JCS derives its IRS nonprofit status by virtue of its membership within the Catholic Church, and under a parent organization, the United States Conference of Catholic Bishops ("USCCB"). The District argues that JCS' indicated Tax Identification Number ("TIN") does not correspond to any IRS-recognized 501(c)(3) organization. Petitioners argue that JCS is a wholly separate organization from USCCB and has its own TIN.

At the hearing, Petitioners admitted into evidence Exhibit F, a letter from the IRS' Director of Exempt Organizations, which states that the USCCB's subordinate organizations are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Exhibit F states that these subordinate organizations are not listed in the Tax Exempt Organization Search on the IRS website, but are verified through the Official Catholic Directory. Exhibit F contains a copy of the Official Catholic Directory for 2024 which lists JCS as a subordinate organization.

The Court finds that the John Carroll Society is a 501(c)(3) organization, as verified through information supplied by the IRS. Therefore, the Court denies this objection.

B. On Not Being a Class Hotel

The outstanding objections in this category are DCT00001081 – Greater Philadelphia Health Action; DCT00001082 – Institute of American Indian & Alaska Native Culture; DCT00001142 – Concerned Women for America; and DCT00001168 – Association for Talent Development. At this time, the Court will reject Petitioner's oral request, made at the hearing, to expand the list of hotels detailed in the class definition, and will sustain all objections.

C. On Having a DC Location

The outstanding objections in this category are DCT00001136 – Cherry Blossom Inc. and DCT0001195 – John Carroll Society. On Cherry Blossom Inc., the District argues that Cherry Blossom Inc. obtained a Certificate of Exemption, which, pursuant to DC Code § 47-2005(3)(c), requires the organization to be located in the District of Columbia. The District argues that allowing Cherry Blossom Inc. to claim that they both do and don't have a location in the District of Columbia would be contradictory. Petitioners offered Robert Wolfe, treasurer, as a witness. Mr. Wolfe testified that his organization has never had an office in the District of Columbia and the address listed on the Certificate of Exemption is their former lawyer's address, which he was

not aware was used on the Certificate of Exemption.

The Court credits Mr. Wolfe's testimony that Cherry Blossom Inc. has never had an office in the District of Columbia. To address the District's argument that the claimant is trying to "have it both ways," Cherry Blossom Inc., as it relates to the meetings claimed, never used their tax exemption, so the Court rejects the argument that it is encouraging gaming the system. Therefore, the Court will deny this objection.

On the John Carroll Society, the District argues that it would be inequitable for JCS to avail itself of a tax-free nonprofit status it enjoys by virtue of its identity with a D.C. organization, USCCB, while claiming it is legally distinct from that same organization and hence ineligible for in-District favorable treatment. Petitioners argue that the fact that JCS' tax status is derivative of the exemption obtained by USCCB is not related to whether JCS can be considered to be located in the District of Columbia.

In considering Exhibit F, the IRS' Director of Exempt Organizations refers to the organizations listed in the Official Catholic Directory for 2024 as "institutions operated by the Roman Catholic Church in the United States." It seems inappropriate to impart on all agencies and instrumentalities of the Roman Catholic Church operating in the United States the address of USCCB, especially when the Official Catholic Directory lists JCS as being in Glen Echo, Maryland. Therefore, the Court will deny this objection.

D. On Not Using Tax Exemption

The outstanding objections in this category are DCT00000174 – American Anthropological Association; DCT00000187 – Congressional Fire Services; DCT00001010 – Shakespeare Association of America; DCT00001054 – College and University Professional Association; DCT00001067 – International Society for Technology in Education; DCT00001111 – National Association of Corporate Directors; DCT00001116 – American Bankruptcy Institute; DCT00001121 – American Epilepsy Society; DCT00001136 – Cherry Blossom Inc.; DCT00001138 – American Thyroid Association Inc.; DCT00001142 – Concerned Women for America; DCT00001160 – Women's Zionist Organization of America Inc.; DCT00001162 – Marine Corps Scholarship Foundation; DCT00001172 – The Nature Conservancy; and DCT00001202 – National School Boards Association Inc. Parties have asked the Court to rule on these objections collectively, and the Court agrees that that is appropriate.

The District's argument against these claimants is that they all possessed valid,

nonexpired District tax exemption certificates which could have been presented to avoid paying the sales tax. The District argues that the requirement that an organization have a location in the District of Columbia, which is needed to receive the certificate, is not applied on a continual basis, and claimants who move outside the District of Columbia are allowed to continue using that certificate. Petitioners offered Denise Cappuccio, Chief Financial Officer for claimant Concerned Women for America, as a witness. Ms. Cappuccio testified that she called OTR on two separate occasions to inquire whether her organization was allowed to continue using the certificate after relocating to Virginia. Ms. Cappuccio testified that an OTR representative, on both occasions, told her Concerned Women for America were no longer able to use their tax exemption as they had moved out of the District of Columbia. The District argues that does not prove she could not use the exemption, only that she was advised not to.

Cherry Blossom Inc.'s Certificate of Exemption form, introduced as Exhibit I, does not address whether relocation affects an organization's use of the exemption, only that it "is valid from the effective to the expiration date stated. See Sales and Use Tax Exemption under DC Code § 47-2005(3)." DC Code § 47-2005(3)(c) states that sales to semipublic institutions shall not be exempt unless "such institution *is* located in the District" (emphasis added). The DC Code does not state, as the District argues, that a plain reading of this statute indicates that the organization need only be located in DC at the time of their application, but uses a present tense, which indicates that the organization need be located in DC at the time they use the exemption.

The Court credits Ms. Cappuccio's testimony. As the Certificate of Exemption form does not explain whether the tax exemption may continue to be used, it is reasonable to expect organizations to contact OTR and to rely on the information given to them by OTR employees.

Additionally, the Court recognizes that there is no language in the Class Definition indicating that the failure to use a tax exemption precludes a claimant from joining the class. Therefore, the Court will deny all objections in this category.

E. On Providing Insufficient Proof of Payment

The outstanding objections in this category are DCT00000177 – Pacific Northwest Waterways Association; DCT00001089 – Association for Jewish Studies; and DCT00001198 – Association of Public Health Laboratories. The Court will sustain the Pacific Northwest Waterways Association and Association of Public Health Laboratories objections as the parties did not appear to testify, nor did Petitioners provide the Court with any additional evidence to

consider.

On the Association for Jewish Studies, the District argues that claimant provided insufficient proof of payment as the meeting in question is scheduled for December 12, 2025, and has yet to occur. Petitioners argue that the class period has not ended. While the Court will reserve its full analysis on future claims for the discussion below, the Court will sustain this objection.

F. On the Purpose of the Meeting

The outstanding objections in this category are DCT00000105 – Pinellas Education Organization; DCT0000117 – Drama Club Inc.; DCT00000148 – Connecticut Association of Boards of; DCT00000154 – Global Concepts Charter School; DCT00000158 – Wingate University; DCT00000166 – Stowers Resource Management Inc.; DCT00000171 – Stowers Institute for Medical Research; DCT00000172 – Sexual Violence Center; DCT00000183 – Rose Villa Inc.; DCT00001095 – Neomed Center Inc.; DCT00001126 – Museum Associates; DCT00001144 – Benedictine College; DCT00001146 – Cornelia de Lange Syndrome Foundation Inc.; DCT00001151 – Friendship Community Care Inc.; and DCT00001152 – Illinois Arts Alliance. The Court will sustain all objections as the parties neither appeared to testify, nor did Petitioners provide the Court with any additional evidence to consider.

G. On Being Outside the Class Period

The outstanding objections in this category are DCT00001087 – Varep; DCT00001095 – Neomed Center Inc.; DCT00001126 – Museum Associates; and DCT00001168 – Association for Talent Development. At the hearing, Petitioners stated that they did not challenge these objections. Therefore, the Court will sustain these objections.

III. Other Issues Raised in Post-Hearing Briefs

A. On Interest

The parties agree that, pursuant to D.C. Code Section 47-3310(c), claimants are entitled to a 6% pre-judgment interest on the amount of tax overpaid. Parties disagree on what date that interest should start.

D.C. Code Section 47-3310(c) states that "interest shall be allowed and paid only from the date of filing a claim for refund or a petition to the Superior Court, as the case may be, on that part of any overpayment that was not assessed and then paid as a deficiency or as additional tax." The District argues that the original named plaintiffs are entitled to interest on the amounts of tax

incurred in the meeting described in their initial Complaint filed June 12, 2017, but other class members are only entitled to interest calculated as of the date the claims period closed, June 6, 2025. Petitioner argues that interest should run from the filing of the initial Complaint on June 12, 2017, as the Proof of Claims forms were never filed with this Court and can therefore not be what the statute is indicating. Petitioner does concede that for meetings that occurred after June 12, 2017, interest should begin on the date that tax was paid.

The Court could not find any instructional case law on this issue, nor did parties offer any, so the Court will rely on a plain reading of the statute. D.C. Code Section 47-3310(c) states that interest shall be allowed and paid from the date of petition to the Superior Court. Therefore, the Court finds that for the original plaintiffs, interest shall be paid from the date the original complaint was filed, June 12, 2017. As D.C. Code Section 47-3310(c)(1) also states that interest shall be allowed and paid from the date of filing "as the case may be", the Court finds, in this case, it would be appropriate to consider that, for other claimants, not the original plaintiffs, the filing date of the first motion for class certification, March 29, 2019, would be the correct date for interest to begin. Finally, for all meetings that occurred after March 29, 2019, the Court finds it appropriate to begin interest from the date of overpayment.

D.C. Code Section 28-3302(b) states that interest on judgments against the District of Columbia is at the rate not exceeding 4% per annum. Therefore, post-judgment interest will accrue at an annual rate of 4%.

B. On the Continuance of the Case

Petitioner argues that the District is continuing to enforce D.C. Code Section 47-2005(3) in violation of the Dormant Commerce Clause, as found by the Honorable John F. McCabe in his Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment, issued February 13, 2024, and the Court should retain jurisdiction over this case to continue to enforce its judgment that D.C. Code Section 47-2005(3) is unconstitutional. Petitioners requested the Court allow an additional claims process, which would cover the period from June 7, 2025 to the date a final judgment is issued in this matter.

The District argues that Petitioners are asking the Court to step beyond the bounds of this case and turn itself into a roving ombudsman on behalf of different, future, or hypothetical entities. The District argues that the class will definitively close at the time of the final determination of the constitutionality of D.C. Code Section 47-2005(3), and any new claimants

would be completely disconnected from the governing class definition and the Complaint.

The Court acknowledges that, from the day the class closed, on June 6, 2025, until the day the final judgment will be rendered, there are potential claimants who are overpaying tax pursuant to D.C. Code Section 47-2005(3) and who would fulfill every non-time related requirement in the amended class definition. The Court agrees with the District that it would be inappropriate to continue this case past the issuing of the final judgment, but agrees with the Petitioner that there must be some recourse for these organizations. The Court will decline to open a second claims period but finds that these organizations will, after the final judgment is issued, be able to appeal to OTR or open a case with the D.C. Superior Court, as appropriate, for overpayment of tax.

IV. Plaintiffs' Motion to Pay Costs

Petitioners argue that, pursuant to Rule 23(d) of the District of Columbia Superior Court Rules of Civil Procedure, the District should be required to pay for the costs of providing notices and proof of claims forms to all potential Class members. The District, in its post-hearing brief, states it "does not object to paying the administrative fees incurred by the claims administrator as part of the final judgment." Petitioner, in its response to the District's post-hearing brief, stated the final amount of these costs is $72,907.00. The Court finds it appropriate to require the District to pay this cost, that it has agreed to, and will include this amount in the judgment.

V. Petitioners' Motion for Attorneys' Fees

Petitioners' Motion for Attorneys' Fees argues that, pursuant to District of Columbia Superior Court Rules of Civil Procedure 54(d)(2) and 23(h), Petitioners are entitled to an award of attorneys' fees and nontaxable costs incurred for litigating this action, and for a Service Award to Class Representative American Anthropological Association. Petitioners are requesting the fee and expense awards are authorized by the common-fund doctrine, which provides that, when the efforts of a litigant create a common fund, all who benefit from that fund must contribute proportionately to the costs. Petitioners request a percentage-of-the-fund approach, at a rate of 32%.

The District, in its Response filed November 3, 2025, did not object to Petitioners' request for attorneys' fees to be awarded on a common fund basis, nor for them to be paid from the total judgment, to the award being calculated at 32% of the judgment, or to the Service Award to the Class Representative. The District reserved its right to object to any future award impact by a

potential appeal.

Rule 23(h) of the District of Columbia Rules of Civil Procedure states that "in a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by parties' agreement." "In most situations, a reasonable fee is computed by first determining the so-called lodestar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate . . . ." *James G. Davis Constr. Corp. v. HRGM Corp.*, 147 A.3d 332, 346 (D.C. 2016) (citing *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 530 (D.C. 2003)). However, the Court agrees with the Petitioners that in this class-action matter, the common-fund doctrine and percentage-of-the-fund approach are more appropriate than the lodestar method. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (finding a litigant or lawyer who recovers from a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole) (citing *Mills v. Electric Auto-Lite Co*., 396 U.S. 375 (1970); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); cf. *Hall v. Cole*, 412 U.S. 1 (1973)); *see also Passtou, Inc. v. Spring Valley Center*, 501 A.2d 8, 11 (D.C. 1985) (finding that the common fund or benefit exception to the American Rule is fully recognized in the District of Columbia) (citing *District of Columbia v. Green*, 381 A.2d 578, 580 (D.C. 1977)).

The D.C. Circuit Court, which is not mandatory authority but can be persuasive, has found that fee awards in common fund cases may range from 15% to 45%. *See Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 230 (D.D.C. 2015) (citing *Advocate Health Care v. Mylan Labs. Inc. (In re Lorazepam & Clorazepate Antitrust Litig.)*, 2003 U.S. Dist. LEXIS 12344*, 2003 WL 22037741, at 8 (D.D.C. 2003). In evaluating these fee requests, a court may consider (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *Id.*

Petitioners stated that each Proof of Claim form advised each recipient that counsel will seek legal fees, potentially from the total amount of approved claims and not exceeding a one third percentage. The Court has not seen any objections from any claimants. The Court has no reason to question the skill and efficiency of counsel, nor the amount of time devoted to the case. The

Court finds the percentage amount of 32% reasonable in light of the range of percentages recognized by the District Court and the notice to claimants.

Petitioners also request expenses in the amount of $91,047.19 to $91,402.19 for expenses already incurred and projected fees and costs associated with distributing refunds to all approved claimants. The Court finds that Petitioners are entitled to a refund and finds this to be a reasonable amount for expenses incurred. *See Advocate Health Care*, 2003 U.S. Dist. LEXIS 12344 at 33 (The Court concurs with Class Counsel's submission that "the fact that petitioners were willing to expend their own money, as an investment whose reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary.").

Finally, on the Service Award, Petitioners seek a $10,000 incentive award to the class representative. The Court finds that this award is reasonable. *See Advocate Health Care*, 2003 U.S. Dist. LEXIS 12344 at 34 ("incentive awards to named plaintiffs are not uncommon in class action litigation, particularly where a common fund has been created for the benefit of the entire class."); *see also Shaffer v George Wash. Univ.*, 2024 U.S. Dist. LEXIS 118116 (D.D.C. 2024) (Courts routinely approve service awards to compensate named plaintiffs for their efforts during the course of class action litigation, and an award of $10,000 is in line with other awards that have been provided by courts in this Circuit.").

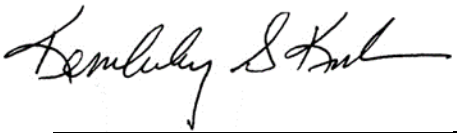
VI. Conclusion

Accordingly, it is this 4th day of November, 2025, hereby

ORDERED that Plaintiff's Motion to Require the District to Pay for the Costs of Providing Notice and Proof of Claim Forms to Potential Class Members, filed December 27, 2024, is **GRANTED**. It is further

ORDERED that Plaintiffs' Motion for Award of Attorneys' Fees and Expenses, and a Service Award, Filed October 17, 2025, is **GRANTED.** It is further

ORDERED that parties shall submit a joint proposed final judgment to this Court, and send a courtesy copy to judgeknowleschambers@dcsc.gov, in accordance with all findings made above **on or before December 1, 2025.** It is further



Kimberley S. Knowles
Associate Judge

Copies to:

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Jeffrey Klafter, Esq.
Silvija Strikis, Esq.
Counsel for Petitioner

Brendan Health, Esq.
Counsel for Respondent

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

AMERICAN PHILOSOPHICAL ASSOCIATION ET AL.,	:	
	:	
	:	
	:	Case No. 2019 CVT 000003
v.	:	Judge Kimberley S. Knowles
	:	
DISTRICT OF COLUMBIA	:	

ORDER

On February 3, 2025, the Court held a hearing and heard arguments on Defendant's Motion to Dismiss, filed January 16, 2025 ("MTD"), and Defendant's Motion to Decertify the Class, filed January 16, 2025 ("MTDC"). Present at the hearing were Jeffrey Klafter and Silvia Strikis, counsel for Petitioner, and Brendan Heath, counsel for Respondent ("the District").

At the hearing, the Court set two dates: a February 24th deadline for parties to confer and, if possible, submit a joint motion on appropriate procedure moving forward; and hearings July 29-30, 2025 to determine class membership, damages, and any other appropriate concerns. Parties were advised that this Court's findings on the Motion to Dismiss and Motion to Decertify the Class could impact those dates.

I. Background

This matter was initiated in the Civil Division of the Superior Court of the District of Columbia in Case No. 2017-CA-004057-B. On August 29, 2017, the District filed Defendant District of Columbia's Motion to Dismiss Complaint, arguing that the Court lacks jurisdiction over petitioner's claims for failure to exhaust the statutory process for obtaining a tax refund. On January 29, 2019, the Honorable Anthony C. Epstein issued an Order finding that exhaustion is not warranted in this matter because the D.C. Office of Tax and Revenue ("OTR") lacks the

institutional competence to resolve matters concerning the Commerce Clause of the U.S. Constitution, and any application to OTR would be futile. The Court found that this matter is distinguishable from the common taxpayer case and denied the District's Motion to Dismiss on this subject.[1]

On February 1, 2019, this matter was transferred to the Tax Division of the Superior Court of the District of Columbia. On March 8, 2019, the District filed Defendant's Motion for Reconsideration of the Court's January 29, 2019 Order ("MTR"), arguing that the Court erred in finding that the relevant tax refund provisions, D.C. Code Sections 47-2021(a) and 47-3303, do not mandate exhaustion of the administrative process. On May 30, 2019, the Honorable Jonathan H. Pittman issued an Order affirming Judge Epstein's conclusions. Judge Pittman affirmed that in the "unique circumstances of this case" the Court need not require administrative exhaustion.

On April 30, 2021, Judge Pittman issued an Order certifying the class as all "semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below…." after finding that class action is a superior method of resolution in this matter as the inverse would permit re-litigation of this issue on cases brought by similarly situation plaintiffs.

On April 8, 2022, Petitioner filed Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability. On March 29, 2023, the District filed Defendant's Combined Opposition to Plaintiffs' Motion for Summary Judgment as to Defendant's Liability and Cross-Motion for Summary Judgment. In their cross-motion, the District argued that only semi-public institutions that are tax exempt under Section 501(c)(3) of the Internal Revenue Code are entitled to exemption.

[1] The Order granted the District's Motion to Dismiss in part on the subject of Petitioners seeking relief other than a refund of taxes paid.

On February 13, 2024, the Honorable John F. McCabe issued Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment. Judge McCabe found that D.C. Code Section 47-2005(3) facially discriminates against interstate commerce and granted summary judgment on the subject of liability in favor of Petitioners. Judge McCabe also found there was no need for the Court to clarify the scope of the class. On November 4, 2024, this Court issued an Order and recognized that, pursuant to Civil Rule 23(c)(1)(C), the certification order could be revisited if the District had a valid basis to challenge the certified class.

II. Motion to Dismiss

a. Pleadings

The MTD argues that "the Court previously rejected certain exhaustion arguments, it did not consider" D.C. Code Section 27-3310(b) which the District "recently recognized" was not raised in their previous filings, and therefore not addressed in prior Court orders. The MTD argues that this Court only has jurisdiction "if a timely refund claim has been filed" and that the Court of Appeals has recognized taxpayers who challenged the U.S. Constitution had first claimed a refund at the administrative level. *See Bishop v. District of Columbia*, 401 A.2d 955, 956 (D.C. 1979). The District also stated dismissal was appropriate for non-501(c)(3) entities for lack of standing.

On January 23, 2025, Petitioners filed Plaintiffs' Opposition to Defendant's Renewed Motion to Dismiss. Petitioners argue that the Court's jurisdiction over this matter is the settled law of the case, as the District's argument for dismissal has been denied twice. Petitioners argue that D.C. Code Section 47-3310(b) is a non-jurisdictional claims-processing rule because it "does not speak to a court's authority, but only to a party's procedural obligations." *See EPA v. EME*

Homer City Generation, L.P., 572 U.S. 489, 512 (2014). Petitioner argues, in footnote, that the effect of the "if" in 47-3310(b) provides authorization to those who have sought refunds to provide suit without opining on the Court's jurisdiction to hear the suits of those who have not sought refunds. Petitioners also argue it's impossible for Plaintiffs or Class Members to comply with OTR's refund requirements as class members neither directly paid sales and hotel taxes to the District nor paid sales and use taxes for a particular tax period.

b. February 3, 2025, Hearing

At the hearing, the District argued that it is appropriate for the Court to consider a second motion to dismiss as their argument concerns jurisdiction and jurisdiction cannot be waived. The District recognized that this argument could have been raised in their initial motion to dismiss, but it was overlooked.

Petitioners reiterated their argument that the District's MTD was an improper re-litigation of settled matters. Additionally, Petitioners argued that the D.C. Council uses language intentionally in the D.C. Code and the decision to use "if" instead of "only if," as it does in other sections, cannot be read to mean "must."

c. Analysis

i. On the Propriety of the Motion

While this Court does not encourage re-litigation of settled law, the D.C. Court of Appeals ("DCCA") has affirmed a procedurally similar matter and thus this Court will address the MTD on its merits. *See Charlton v. Mond*, 987 A.2d 436 (D.C. 2010) (affirming grant of motion to dismiss for lack of personal jurisdiction where movant's previous motion to dismiss and motion for reconsideration were denied). This Court does not intend this finding to be an invitation to re-litigate other matters of settled law.

However, the Court does find that the MTD is so substantively similar to the District's previous motion to dismiss, and related motion for reconsideration, that Judge Epstein and Judge Pittman's orders denying are both relevant and instructive.

ii. On the Merits

As the Court has not found any cases on point, and parties have not offered any, the Court will consider the plain text of the statute. The text of D.C. Code Section 47-3310(b) states: In any proceeding under this title the Superior Court has jurisdiction to determine whether there has been any overpayment of tax and to order that any overpayment be credited or refunded to the taxpayer, *if* a timely refund claim has been filed (emphasis added).

In *Peoples Drug Stores, Inc. v. District of Columbia*, DCCA held that a court should "look beyond the ordinary meaning of the words of a statute only where there are "persuasive reasons" for doing so. *See Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751 (D.C. 1983) (citing *Tuten v. United States*, 440 A.2d 1008, 1013 (D.C. 1982), *aff'd* 460 U.S. 660, 103 S. Ct. 1412, 75 L. Ed. 2d 359 (1983)). DCCA recognized four exceptions to the plain meaning rule: (1) where legislative history or consideration of alternative constructions reveals ambiguities; (2) where the literal meaning produces absurd results; (3) to avoid obvious injustice; and (4) to effectuate the legislative purpose. *See id.*

A plain reading of 47-3310(b) indicates that the Superior Court has jurisdiction over claims where a timely refund has been filed, but the statute lacks a qualifier to indicate the Superior Court *only* has jurisdiction where a timely refund has been filed. A plain reading of the statute indicates to this Court that where a timely refund claim has been filed, jurisdictional challenges are moot. Considering the listed exceptions above, the Court finds the only relevant exception to consider is if "legislative history or consideration of alternative constructions reveals

ambiguities" as the District's reading of the statute is that "In any proceeding under this title... if" creates a jurisdictional requirement. *See id.* at 754.

On legislative history, parties have not offered, nor has the Court found, anything specific to 47-3310(b). However, Petitioners argued that D.C. Council's amendment of D.C. Code Section 47-2413, the relevant statute in case *American Security & Trust Co. v. District of Columbia* cited by both parties, from stating "provided, that" to the weaker "if" indicates an intentional use of the word if to not create a subject-matter jurisdiction bar to bringing suit in Superior Court. Additionally, the Court, in looking at Title 47 Chapter 33 of the D.C. Code, found multiple uses of the words "must," "only," and one use of "provided, that" in D.C. Code Section 3303, the meaning of which was analyzed by Judge Epstein in his order denying. Judge Epstein found that the "plain language" of 47-3303 "does not require OTR review before the taxpayer files suit in Superior Court."

Additionally, on considerations of alternative constructions, this appears distinct from *Sanker v. United States*, cited in *Peoples Drug Stores*, which found ambiguity in the phrase "any court having jurisdiction to try offenses against the United States" as overly broad and encompassing three proper categories of courts. *See Sanker v. United States*, 374 A.2d 304, 307-08 (D.C. 1977). Here, the statute does not contain any words or phrases with multiple meanings.

Therefore, the Court does not find that there is an appropriate exception requiring the Court to look beyond the plain meaning of the statute. The Court finds that the plain meaning of the statute decrees that while the Court has jurisdiction if a timely refund claim has been denied, it does not state that that is required for jurisdiction. The Court finds that it does have jurisdiction over this matter.

III. Motion to Decertify the Class

a. Pleadings

The MTDC argues that common questions of law and face do not predominate in this action, and therefore, a class action proceeding is not the superior way of adjudicating this matter. The MTDC also argues that the Order Denying Summary Judgment, issued February 13, 2024, included organizations that have designations other than IRC Section 501(c)(3), which vitiates the class's commonality, predominance, and typicality. The MTDC requests the Court decertify the class.

The Opposition, filed January 23, 2025, argues that the District's first argument is identical to the argument they made previously to Judge Pittman, and accuses the District of "Judge shopping." The Opposition also argues that the District's second argument is identical to the argument they made previously to Judge McCabe, and again accuses the District of "Judge shopping."

b. February 3, 2025, Hearing

At the hearing, Petitioners stated that they examined the non-501(c)(3) entities in their class list and have concluded that they are not class members. Petitioners stated that they, without conceding any of the District's arguments would agree to modify the class definition. Petitioners provided a hard copy to the Court and the District. The District stated that they could not agree to the modified class definition, as they had not been given time to review the proposal.

c. Analysis

In his Order certifying the class action, Judge Pittman considered whether Petitioners met all the requirements of Civil Rule 23(a) and at least one subdivision of Civil Rule 23(b), which would make class certification appropriate. Judge Pittman concluded that due to the numerosity,

commonality, typicality, adequacy, and predominate issues, a class action is superior to any other method of resolution.

This Court, in its Order issued November 4, 2024, stated that the District could challenge the certification order if the District had a valid basis to challenge the certified class. The Court does not find any basis to challenge Judge Pittman's order has been presented. Additionally, the Court finds that the District's argument in favor of excluding non-501(c)(3) members from the class list is moot following the Petitioner's statements that their current class list only includes 501(c)(3) entities.

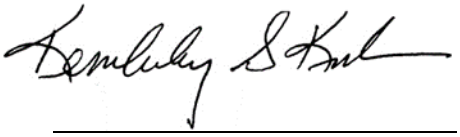
Accordingly, it is this 19th day of February, 2024,

ORDERED that the Motion to Dismiss, filed January 16, 2025, is **DENIED WITH PREJUDICE**. It is further

ORDERED that the Motion to Decertify the Class, filed January 16, 2025, is **DENIED.** It is further

ORDERED that the parties shall confer and submit to the Court a joint motion addressing future procedure of this matter and submit that motion, or, if parties do not agree, individual motions, to the Court on or before February 24, 2025. It is further

ORDERED that if parties agree to amend the class definition, they shall file a consent motion with proposed language on or before February 24, 2025.



Kimberley S. Knowles
Associate Judge

E-Serve
Jeffrey Klasfter, Esq.
Silvia Strikis, Esq.
Counsel for Petitioner

Brendan Heath, Esq.
Counsel for Respondent

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

AMERICAN PHILOSOPHICAL ASSOCIATION, et al., *Plaintiffs*, v. DISTRICT OF COLUMBIA, *Defendant*.	Case No. 2019 CVT 000003 Judge Jonathan H. Pittman Next Date: TBD

ORDER

Defendant District of Columbia ("District") seeks reconsideration of that portion of the order of January 29, 2019 ("January 29, 2019 Order"), which denied Defendant's motion to dismiss the complaint on the ground that Plaintiffs failed to apply for a refund from the Office of Tax and Revenue before filing suit. The January 29, 2019 Order was issued by the Honorable Anthony C. Epstein in Case No. 2017 CA 004057 B, which was pending in the Civil Division. Judge Epstein granted the District's motion to dismiss the complaint to the extent that it sought relief other than a refund of taxes paid, and then transferred the litigation to this Division, where it has been assigned a new case number (2019 CVT 0003). In addition, the District filed a separate motion on March 11, 2019, seeking a stay of briefing and discovery on class certification pending the outcome of the District's

motion for reconsideration. In the alternative, the District seeks an extension of time to oppose Plaintiffs' pending motion for class certification.

For the reasons set forth below, the Court will deny the motion for reconsideration and will deny the motion for stay. The Court will grant the District's motion for an extension of time to oppose the pending motion for class certification.

STANDARD OF REVIEW

The District seeks reconsideration under Superior Court Civil Rule 54(b).[1] Rule 54(b) addresses modification of interlocutory orders like the January 29, 2019 Order. Rule 54(b) provides that "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

The standard for reconsideration of interlocutory orders under Rule 54(b) is whether reconsideration is consonant with justice *See Marshall v. United States*, 145 A.3d 1014, 1018-19 (D.C. 2016) (discussing the standard for reconsideration of interlocutory orders). Reconsideration is warranted if, for example, moving parties "present newly discovered evidence, show that there has been an

[1] Superior Court Tax Rule 3 provides that certain Civil Rules, including Rule 54(b), are applicable to proceedings in the Tax Division.

intervening change in the law, or demonstrate that the original decision was based on a manifest error of law or was clearly unjust." *See Bernal v. United States*, 162 A.3d 128, 133 (D.C. 2017) (quotation, ellipsis, and brackets omitted). However, "it is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting theories or arguments that could have been advanced earlier." *Ali v. Carnegie Inst. of Wash.*, 309 F.R.D. 77, 81 (D.D.C. 2015) (quotation omitted); *SmartGene, Inc. v. Advanced Biological Labs., SA*, 915 F. Supp. 2d 69, 72 (D.D.C. 2013). Raising "arguments that should have been, but were not, raised in" the original filing "is, frankly, a waste of the limited time and resources of the litigants and the judicial system." *Estate of Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 9-10 (D.D.C. 2011); *see Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996) ("Reconsideration is not an appropriate forum for… arguing matters that could have been heard during the pendency of the previous motion.").

The "consonant with justice" standard is comparable to the "as justice requires" standard that federal courts apply for reconsideration of interlocutory orders. *See, e.g.*, *Capitol Sprinkler Inspection, Inc. v. Guest Servs., Inc.*, 630 F.3d 217, 227 (D.C. Cir. 2011). In deciding whether justice requires reversal of an interlocutory order, courts assess circumstances such as "whether the court

'patently' misunderstood the parties, made a decision beyond the adversarial issues presented, made an error in failing to consider controlling decisions or data, or whether a controlling or significant change in the law has occurred." *In Def. of Animals v. NIH*, 543 F. Supp. 2d 70, 75 (D.D.C. 2008) (quoting *Singh v. George Wash. Univ.*, 383 F. Supp. 2d 99, 101 (D.D.C. 2005)); *Loumiet v. United States*, 65 F. Supp. 3d 19, 24 (D.D.C. 2014) (same).

The purpose of this standard for reconsideration "is to ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters." *In re Okean B.V.*, 2013 U.S. Dist. LEXIS 126361, at *2 (S.D.N.Y. Sept. 4, 2013) (citations omitted). Courts have greater discretion to reconsider interlocutory orders than final judgments because the interest in finality is less, *Williams v. Vel Rey Properties*, 699 A.2d 416, 419 (D.C. 1997), but there is still a substantial interest against relitigation. The standard for reconsideration "attempts to balance the interests in obtaining a final decision on matters presented to the Court and the recognition that the Court, like all others, is capable of mistake and oversight." *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990). But where the trial court has considered a party's argument and ruled, a motion for reconsideration will typically not succeed. *See NYSA-PPGU Pension Fund v. Am. Stevedoring, Inc.*, 2013 U.S. Dist. LEXIS 124417 at *9 (D.N.J. Aug. 30, 2013) ("A motion for

reconsideration is improper when it is used to ask the Court to rethink what [it] had already thought through – rightly or wrongly.") (quotation and citation omitted).

"The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012) (citing *Husayn v. Gates*, 588 F. Supp. 2d 7, 10 (D.D.C. 2008)).

ANALYSIS

Judge Epstein concluded that nothing in the relevant provisions of the D.C. Code, sections 47-2021(a) and 47-3303, mandates that a plaintiff seeking refund of taxes paid must first request a refund from the District before bringing suit. January 29, 2019 Order at 2. Relying on *Avocados Plus Inc. v. Veneman*, 370 F.3d 1243 (D.C. Cir. 2004), Judge Epstein held that nothing in these provisions contains the "sweeping and direct statutory language indicating that there is no [] jurisdiction prior to exhaustion." *Id*. at 2. Conceding that the statute "does not contain straightforward language requiring administrative exhaustion as that found in, for example, D.C. Code § 47-825.01a(g)(1)," the District nonetheless argues that the "context" of section 47-2021(a) mandates exhaustion. While the District's argument has some appeal, the statute nonetheless does not contain the "sweeping

and direct language" mandating exhaustion.[2] In light of the language of the statute, the Court cannot conclude that Judge Epstein's ruling was an error at all, let alone a "manifest error of law or . . . clearly unjust" result that would justify reconsideration. *See Bernal*, 162 A.3d at 133.

Judge Epstein also concluded that although the Court could mandate exhaustion as a judicially created prudential requirement, he would not do so in the unique circumstances of this case. January 29, 2019 Order at 4. The District takes issue with this conclusion, relying primarily on *Kleiboemer* and *Keyes* (cited in note 2, *supra*), to support its argument that administrative exhaustion would provide the District with notice of potential liabilities. But another provision of the D.C. Code, namely D.C. Code § 12-309, addresses the circumstances under which a claimant must provide pre-litigation notice of claims to the District. That statute contemplates circumstances in which the District will not receive pre-litigation notice of certain claims. As there is a separate statute addressing when pre-

[2] In support of its "context" argument, the District relies on *Kleiboemer v. District of Columbia*, 458 A.2d 731, 733 n2 (D.C. 1983) for the proposition that because the federal courts had held that filing an administrative claim was a prerequisite to obtaining a refund of federal taxes, Congress must have intended that D.C. law incorporates the same requirement. Mot. at 11. *Kleiboemer* addressed claims for refunds under D.C. Code § 47-1586j(a) (1973 ed.). That section was recodified as D.C. Code § 47-1812.11 (1981 ed.), and was thereafter repealed in 2001. Moreover, *Kleiboemer* relied on *Keyes v. District of Columbia*, 362 A.2d 729 (D.C. 1976). But *Keyes* addressed D.C. Code § 47-709 (1973 ed.), the previous version of D.C. Code § 47-825.01a(g)(1), which, like the current version of that provision, explicitly requires administrative exhaustion before filing suit.

litigation notice is required, there is no need to graft a judicially-created notice requirement onto D.C. Code §§ 47-2021 and 47-3303 through the imposition of an exhaustion requirement.

Judge Epstein was careful to note that as a general matter, "[t]he common law exhaustion doctrine applies in tax cases." January 29, 2019 Order at 4. The Court reiterates this conclusion – as a general matter, a party seeking refund of taxes must first claim a refund from the Office of Tax and Revenue. But, in the unique circumstances of this case, Judge Epstein concluded that the Court need not exercise its discretion and require administrative exhaustion. The Court cannot conclude that Judge Epstein erred in reaching this conclusion, and will therefore not reconsider this ruling.

Finally, the District notes that the Court lacks jurisdiction over refund suits that are filed too late. The January 29, 2019 Order did not address this issue. The Court agrees that the statutory language mandates that refund suits must be filed within six months, and that the Court lacks jurisdiction over refund suits that are filed too late. The District of Columbia Court of Appeals and its predecessor courts have held that the time limitation contained in D.C. Code § 47-2403, the predecessor to D.C. Code § 47-3303, is jurisdictional.[3] *See, e.g.*, *Jewish War*

[3] D.C. Code § 47-2403 was recodified as D.C. Code § 47-3303 (1981 ed.), and was thereafter amended in 1982 to clarify that the six-month time to appeal begins with the notice of assessment, rather than payment of the tax. *See People's*

Veterans, U.S.A. Nat'l Mem'l Inc. v. District of Columbia, 243 F.2d 646, 647 (D.C. Cir. 1957) (discussing D.C. Code § 47-2403 (1951 ed.), which provided that an aggrieved taxpayer "may appeal 'within ninety days after notice of . . . assessment,'" and holding that "[t]he ninety-day requirement is jurisdictional to the appeal."); *Nat'l Graduate Univ. v. District of Columbia*, 346 A.2d 740, 743 (D.C. 1975) (holding that the six-month period in which a taxpayer "may appeal" under D.C. Code § 47-2403 (1973 ed.) "is jurisdictional in nature and not merely a statute of limitations"). Because both D.C. Code § 47-2021(a) and D.C. Code § 47-3303 provide that an aggrieved taxpayer "may appeal" the adverse action within six months, the Court concludes that the six-month limitation contained in these sections is jurisdictional. However, because at least some of the taxes alleged in the complaint were or may have been paid within six months of the filing of the lawsuit, the Court will not dismiss the plaintiffs' refund claim on this basis at this stage of the litigation.

Based on the foregoing, it is, this 30th day of May, 2019, hereby

ORDERED, that the District of Columbia's motion for reconsideration of the January 29, 2019 Order, filed on March 8, 2019, is **DENIED**; and it is

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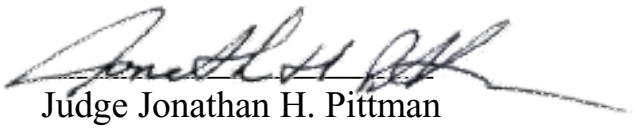
Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 752 n1 (D.C. 1983) (en banc). That amendment did not affect the jurisdictional nature of the six-month period in which to appeal.

FURTHER ORDERED, that the District's motion to stay discovery and briefing on class certification, filed March 11, 2019, is **DENIED IN PART** and **GRANTED in PART**; and it is

FURTHER ORDERED, that the District shall file its opposition to Plaintiffs' pending motion for class certification, appointment of Plaintiffs as class representatives and Plaintiffs' counsel as class counsel, filed on March 29, 2019 no later than sixty days from the date of this Order.



Judge Jonathan H. Pittman

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

AMERICAN PHILOPHICAL ASSOCIATION, *et al.*	:	
v.	:	Case No. 2017 CA 004057 B
DISTRICT OF COLUMBIA	:	

ORDER

The Court grants in part and denies in part defendant District of Columbia's motion to dismiss. Plaintiffs American Philosophical Association and American Anthropological Association may pursue their claim for a refund in this action even though they did not apply to the Office of Tax and Revenue ("OTR") for a refund of the sales taxes that they contend they unconstitutionally paid, but they may not obtain from the Court any non-monetary relief relating to these sales taxes. The Court will also transfer the case from the Civil Division to the Tax Division.[1]

Each plaintiff is a "semipublic institution" within the meaning of D.C. Code § 47-2001(r), and neither plaintiff maintains offices in the District. D.C. Code § 47-2005(3)(C) exempts semipublic institutions that are "located within the District" from paying District sales taxes, and the parties apparently agree that neither plaintiff qualifies for the exemption because neither is "located within the District." Each plaintiff has paid substantial sales and use taxes to hotels and other service providers related to its meetings in the District. Plaintiffs contend that the imposition of these taxes only on non-resident semipublic institutions violates the Commerce Clause of the U.S. Constitution and that they are entitled to recover the taxes they paid.

[1] The undersigned judge recently assumed responsibility for this motion following the retirement of the previously-assigned judge.

A. Exhaustion of administrative remedies

Contrary to the District's argument, plaintiffs were not required to apply for a refund from OTR before seeking refunds through the Court.

Exhaustion of administrative remedies may be categorically mandated by statute or prudentially required by courts. *See Washington Gas Light Co. v. Public Service Commission*, 982 A.2d 691, 700-01 (D.C. 2009); *District of Columbia v. Craig*, 930 A.2d 946, 955 (D.C. 2007). "If the statute does mandate exhaustion, a court cannot excuse it," even where exhaustion is futile or where "a seeming hardship results to the taxpayer." *See Craig*, 930 A.2d at 956 (quoting *Avocados Plus Inc. v. Veneman*, 370 F.3d 1243, 1247 (D.C. Cir. 2004), and other cases). "In order to mandate exhaustion, a statute must contain sweeping and direct statutory language indicating that there is no federal jurisdiction prior to exhaustion, or the exhaustion requirement is treated as an element of the underlying claim." *Avocados Plus*, 370 F.3d at 1248 (quotation and citation omitted). "But where Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (citation omitted). Because the common-law exhaustion doctrine "is a discretionary rule derived from equity, it allows for some flexibility." *Washington Gas Light Co.*, 982 A.2d at 701 (footnote omitted). "[W]hen the exhaustion requirement is itself a judicial creation," courts may "relieve plaintiffs of exhaustion requirements" if the "administrative process was virtually certain to prove futile." *Craig*, 930 A.2d at 956 (citations omitted).

No statute mandates that a taxpayer must apply for a refund from OTR before seeking a refund through judicial action. The two relevant statutory provisions are D.C. Code §§ 47-2021(a) and 47-3303. Section 47-2021(a) provides that "[a]ny person aggrieved" by OTR's "denial of a claim for refund … may, within 6 months … from the date of the denial of a claim

for refund appeal to the Superior Court of the District of Columbia." This provision authorizes judicial review of an administrative denial of a refund claim, but it does not state that a taxpayer must apply for an administrative refund before seeking judicial relief. Like the statute at issue in *Avocados Plus*, § 47-2021(a) "neither mentions exhaustion nor explicitly limits the jurisdiction of the courts," and it "merely creates an administrative procedure for challenging the [agency's] orders." *See Avocados Plus*, 370 F.3d at 1248. *Cf. Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*, 876 F.2d 109, 112-13 (D.C. Cir. 1989) (the Federal Power Act created a jurisdictional exhaustion requirement by providing that "[n]o proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon" and "[n]o objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission").

Section 47-3303 provides that "[a]ny person aggrieved by any assessment by the District of any … sales … tax or taxes … may, within 6 months after the date of such assessment appeal from the assessment" to the Superior Court, provided that the complainant "shall first pay such tax together with penalties and interest due thereon." The only prerequisite specified in the statute is that the person shall first pay the tax, and notably absent is any requirement that the person shall also first apply to OTR for a tax refund. The plain language of § 47-3303 does not require OTR review before the taxpayer files suit in Superior Court, and it permits appeal to this Court directly from the assessment of the tax, so long as the tax is first paid.

It is true that "to maintain a refund suit, a taxpayer must follow the specific, statutorily prescribed procedures governing such suits." *District of Columbia v. Craig*, 930 A.2d 946, 954 (D.C. 2007). "The required procedure to challenge either a tax or an assessment … is to pay the

tax and within six months of payment, bring a refund suit against the District, or its agency, in the Tax Division of Superior Court." *D.C. Department of Consumer and Regulatory Affairs v. Stanford*, 978 A.2d 196, 199 (D.C. 2009). This is exactly the procedure that plaintiffs here have followed: they paid the tax and then brought a refund suit against the District in this Court. As the District admits, "here plaintiffs have paid the taxes at issue, and therefore their suit does not imperil the general principle of 'pay first and litigate later.'" Motion at 9 (quoting *Stanford*, 978 A.2d at 199).

The common-law exhaustion doctrine applies in tax cases, so the Court must decide whether to exercise its discretion to require plaintiffs to apply to OTR for a refund before seeking refunds through the judicial process. The District has not persuaded the Court that exhaustion is warranted in the circumstances of this case. Courts may decline to require administrative exhaustion where the agency "lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute" that the agency is obligated to enforce. *See McCarthy*, 503 U.S. at 147-48. OTR does not have any special expertise concerning the Commerce Clause of the U.S. Constitution. *See generally D.C. Fire & Emergency Medical Services Dep't v. D.C. Public Employee Relations Board*, 105 A.3d 992, 996 (D.C. 2014) (a "court does not … defer to an agency's interpretation of law that the agency has not been delegated the authority to administer"). Moreover, all indications are that any application to OTR for a refund would be futile. The District takes the position that limiting the sales tax exemption for resident semipublic institutions is fully consistent with the Commerce Clause, Motion at 13-18, Reply at 8-9, and the District does not suggest that its tax agency will disagree with the legal opinion of its Attorney General.

These factors distinguish this tax case from the far more common tax cases in which taxpayers challenge the assessment or imposition of a tax as inconsistent with D.C. tax laws or regulations. The common-law exhaustion doctrine "serves several important policy functions: it prevents litigants from evading the agency's authority, thereby safeguarding the intent of the legislature in creating the agency; it protects agency authority by ensuring that the agency has the opportunity to apply its expertise and exercise its discretion; it aids judicial review by creating a record and promotes judicial economy by channeling claims to the decision maker of the legislature's choice." *See Washington Gas Light Co.*, 982 A.2d at 701 (footnotes omitted); *McCarthy*, 503 U.S. at 145 (the "twin purposes" of the exhaustion doctrine are "protecting administrative agency authority and promoting judicial efficiency"). By protecting agency authority, "the exhaustion doctrine recognizes the notion … that agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer," and "[e]xhaustion concerns apply with particular force when … the agency proceedings in question allow the agency to apply its special expertise." *Id.* (citations omitted).

All of these policies generally apply in typical tax disputes that turn on the construction and application of D.C. tax statutes or regulations. Although OTR does not have special expertise or institutional competence to resolve constitutional questions, it does have expertise in interpreting and applying D.C. tax laws and regulations. That is why courts "defer to reasonable administrative understandings of uncertain legislative commands in the taxation context." *See Hospitality Temps Corp. v. District of Columbia*, 926 A.2d 131, 134 (D.C. 2007) (quotation and citation omitted): *see generally D.C. Fire & Emergency Medical Services Dep't*, 105 A.3d at 996 (courts afford "a high degree of deference" to an agency's interpretation of a statute it administers); *St. Mary's Episcopal Church v. D.C. Zoning Commission*, 174 A.3d 260, 267 (D.C.

2017) ("An agency's interpretation of the regulations that govern it must be accorded great weight, and must be upheld unless it is plainly erroneous or inconsistent with the regulations."). Moreover, when OTR first addresses an issue of interpreting or applying a tax statute or regulation, "a judicial controversy may well be mooted." *See McCarthy*, 503 U.S. at 145. "And even where a controversy survives administrative review, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration, especially in a complex or technical factual context." *Id.* (citations omitted). This principle applies in typical cases involving disputes between District taxpayers and tax collectors, but not in a facial challenge to the constitutionality of a D.C. tax law.

B. The Anti-Injunction Act

To the extent that plaintiffs seek relief other than refunds, they do not state a claim upon which such non-monetary relief can be granted.

"The purpose of the anti-injunction statute is to preserve this right [of the government to prompt collection of taxes] by prohibiting a court from interfering with the collection of taxes, requiring the determination of the legality of the tax to be determined in a refund suit." *Tolu v. District of Columbia*, 906 A.2d 265, 267 (D.C. 2006). "This anti-injunction statute has been consistently interpreted as depriving the court of subject matter jurisdiction over causes of action for equitable relief regarding District of Columbia taxes." *Agbaraji v. Aldridge*, 836 A.2d 567, 569 (D.C. 2003) (citing *Barry v. American Tel. & Tel. Co.*, 563 A.2d 1069, 1073 & n.10 (D.C. 1989)). "[T]he anti-injunction statute applies to declaratory relief as well as injunctive relief." *Barry*, 563 A.2d at 1073.

Plaintiffs argue that the non-monetary relief they seek would not violate the Anti-Injunction Act because they only want OTR to issue an exemption to them. *See* Opp. at 8-9.

However, the practical effect of ordering the issuance of an exemption would be to interfere with the District's ability to collect sales taxes from non-resident semipublic institutions.

Furthermore, to avoid the Anti-Injunction Act bar, a taxpayer must show that it does not have an adequate legal remedy. *American Bus Association, Inc. v. District of Columbia*, 2 A.3d 203, 210 (D.C. 2010). An adequate legal remedy includes a "full opportunity to litigate [his or her] tax liability in a refund suit." *Craig*, 930 A.2d at 961. This case is a refund suit that gives plaintiffs a full opportunity to litigate their sales tax liability as non-resident semipublic institutions.

Plaintiffs' claim for refunds does not run afoul of the Anti-Injunction Act's bar on claims seeking equitable or declaratory relief. Indeed, the Act requires "the legality of the tax to be determined in a refund suit." *Tolu*, 906 A.2d at 267. Accordingly, plaintiffs' claim for refunds is a claim upon which the Court may grant relief consistent with the Act.

C. Transfer to the Tax Division

D.C. Code § 11-1201(1) gives the Tax Division jurisdiction of "all appeals from and petitions for review of assessments of tax," and § 11-1202 makes clear that this jurisdiction is exclusive: "Notwithstanding any other provision of law, the jurisdiction of the Tax Division of the Superior Court to review the validity and amount of all assessments of tax made by the District of Columbia is exclusive." Section 11-1202 applies "where federal or constitutional issues are raised." *Fernebok v. District of Columbia*, 534 F. Supp. 2d 25, 27 (D.D.C. 2008) (citing *Jenkins v. Washington Convention Center*, 236 F.3d 6, 11 (D.C. Cir. 2001)). This case involves the validity of assessing a sales tax on non-resident semipublic institutions. *See* Motion at 5 ("As an initial matter, plaintiffs here challenge the assessment of a tax"), 8 ("Plaintiffs' Suit Challenges the Assessment of a Tax."); *Fernebok*, 534 F. Supp. 2d at 28 ("Any distinction …

between assessment and imposition of a tax is illusory" with respect to Tax Division jurisdiction). The case therefore belongs in the Tax Division.

Even if § 11-1202 did not require this result, the Court would transfer the case in order to manage tax cases more efficiently and to help achieve consistency in judicial tax rulings.[2]

Accordingly, the Court will transfer this case to the Tax Division. The Tax Division in turn will schedule a hearing. At the hearing, the parties should be prepared to discuss (1) whether the Court needs any additional evidence or briefing in order to decide plaintiffs' constitutional challenge and (2) whether and how the Court should determine the amount of any refund due to plaintiffs if they prevail on their constitutional challenge. The parties should confer about these matters before the hearing.

D. Conclusion

For these reasons, the Court orders that:

1. The District's motion to dismiss is denied in part and granted in part.

2. The Court has jurisdiction to review plaintiffs' requests for refunds of the sales taxes they paid.

3. Plaintiffs' claims for relief other than refunds are dismissed.

Anthony C Epstein

Anthony C. Epstein
Judge

Date: January 29, 2019

[2] Notwithstanding the statute's reference to jurisdiction, there is no jurisdictional restriction that prohibits one division of the Court from considering matters more appropriately considered in another. *See Sanchez v. United States*, 919 A.2d 1148, 1154 (D.C. 2007).

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