

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION**

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**AMERICAN PHILOSOPHICAL  
ASSOCIATION, *et al.*,**

**Plaintiffs,**

**v.**

**DISTRICT OF COLUMBIA,**

**Defendant.**

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**Case No. 2019 CVT 000003**

**Judge John F. McCabe**

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

On April 8, 2022, Class Plaintiff American Anthropological Association and Plaintiff American Philosophical Association, through counsel, filed Plaintiffs' Motion for Summary Judgment as to Defendant District of Columbia's Liability. American Anthropological Association and Plaintiff American Philosophical Association are hereinafter sometimes collectively referred to as "Plaintiff."

On March 29, 2023, the District of Columbia (sometimes referred to hereinafter as "Defendant") filed Defendant's Combined Opposition to Plaintiffs' Motion for Summary Judgment as to Defendant's Liability and Cross-Motion for Summary Judgment. On April 24, 2023, Plaintiff filed its Memorandum of Points and Authorities in Opposition to the District's Cross-Motion for Summary Judgment and its Reply Memorandum of Points and Authorities in Further Support of Their Motion for Summary Judgment as to Defendant District of Columbia's Liability. On May 8, 2023, Defendant filed its Reply in Support of Motion for Summary Judgment.

For the reasons set forth herein, the Court will grant the Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability and will deny the Defendant's Cross-Motion for Summary Judgment.

**Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability**

The Plaintiff's Motion for Summary Judgment as to Defendant District of Columbia's Liability (hereinafter referred to as the "Plaintiff's Motion") is premised on the claim of Plaintiff that D.C. Code Section 47-2005(3) violates the Dormant Commerce Clause of the U.S. Constitution. Section 47-2005(3) provides an exemption from sales taxes for sales to semipublic institutions provided that the institution was "located within the District."

The Court agrees with the contention of Plaintiff that Section 47-2005(3) facially discriminates against interstate commerce. Members of the Plaintiff class who are not "located in the District" are required to pay sales taxes while those which are located in the District are exempt. Out of state semipublic institutions such as those in the Plaintiff class are required to pay sales taxes when they stay at hotels in the District while in-state semipublic institutions are exempt. The same reasoning which the Supreme Court followed in Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1997) applies here.

Strict scrutiny applies to facially discriminatory statutes such as D.C. Code Section 47-2005(3). Such a statute is "per se invalid" unless the District "has no other means to advance a legitimate local interest." C & A Carbone, Inc. v. Clarkstown, 511 U.S. 383, 392 (1994).

The Court also agrees with Plaintiff that neither of the two reasons proffered by Defendant justifies the facially discriminatory statute. The Defendant asserts that the statute is simply a subsidy to local semipublic institutions. However, as the Supreme Court stated in Camps Newfound, even if a direct subsidy to local institutions could survive scrutiny, a

discriminatory tax provision would not. 564 U.S. at 589. The second justification provided by the Defendant is that the statute was enacted in order to avoid a loss of tax revenue. However, as Plaintiff asserts, such a rationale has been rejected in West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 205 (1994) and Bacchus Imports, Ltd. V. Dias, 468 U.S. 263, 273 (1984).

Finally, the Court agrees with Plaintiff (as asserted at pages 13-14 of the Motion for Summary Judgment) that several non-discriminatory avenues of assisting local semi-public institutions are available to the Defendant.

For all of the above reasons, the Court concludes that summary judgment on the issue of liability shall be granted in favor of Plaintiff.

#### **Defendant's Cross-Motion for Summary Judgment**

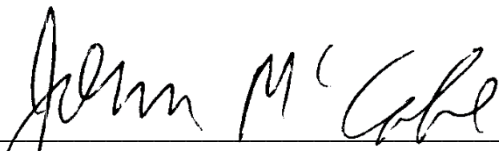
In its Cross-Motion for Summary Judgment, Defendant argues that only semi-public institutions that are tax exempt under Section 501(c)(3) of the Internal Revenue Code are entitled to an exemption under D.C. Code Section 47-2005(3). However, as Plaintiff asserts, the definition of "semipublic institution" is set forth in D.C. Code Section 47-2001(r) and contains no reference to the Internal Revenue Code. The Court thus denies the request of the Defendant to limit the scope of the Plaintiff class to institutions which are exempt under Section 501(c)(3) of the Internal Revenue Code.

The Court also rejects the arguments of Defendant at pages 22-25 of its Cross-Motion for Summary Judgment. As Plaintiff asserts at pages 6-9 of its Opposition to the District's Cross-Motion for Summary Judgment, there is no need for this Court to clarify the scope of the class or the damages each member of the Plaintiff class may receive. These matters have already been addressed in the Class Certification Order signed by the Honorable Judge Jonathan Pittman in his April 30, 2021 Order.

**WHEREFORE**, it is this 12<sup>th</sup> day of February, 2024, hereby

**ORDERED** that Plaintiffs' Motion for Summary Judgment as to Defendant District of Columbia's Liability is hereby **GRANTED**; and it is further

**ORDERED** that the Cross-Motion for Summary Judgment filed by Defendant the District of Columbia is hereby **DENIED**.

  
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JOHN F. MCCABE  
Judge, Superior Court of the District of Columbia

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