OHIO COURT OF APPEALS, NINTH JUDICIAL DISTRICT

Boler v. Rittman

2025-Ohio-5780 · No. 25AP0010 · Decided December 29, 2025

SUMMARY

The Ninth District Court of Appeals affirmed summary judgment for the City of Rittman in a suit seeking repayment of municipal income taxes collected at an allegedly unauthorized 1.5% rate from 2008 through 2021. Relying on State ex rel. Rittman v. Spitler and related precedent, the court held that the claims were substantively governed by R.C. Chapter 2723 and that the taxpayers' failure to file the written protest and notice of intent to sue required by R.C. 2723.03 barred recovery. The court also upheld the denial of the taxpayers' Civ.R. 56(F) continuance and motion to compel discovery.

CASE DETAILS

COURT	Ohio Court of Appeals, Ninth Judicial District
WRITING FOR THE COURT	Stevenson, J.; Sutton, J.; Flagg Lanzinger, P.J.
JURISDICTION	Ohio Court of Appeals, Ninth Judicial District
DECIDED	December 29, 2025
DOCKET	25AP0010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Taxpayers appealed from a Wayne County Court of Common Pleas judgment granting the City summary judgment and dismissing their claims for repayment of allegedly wrongfully collected municipal income taxes.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The denial of a Civ.R. 56(F) continuance and a motion to compel discovery is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tara Boler, Trista Bise v. City of Rittman, Ohio

TOPICS

income tax · tax refunds · tax collection · summary judgment · appellate procedure

PRACTICE AREAS

state and local taxation | municipal law | civil procedure | appellate procedure | tax litigation

QUESTIONS PRESENTED

1. Whether the taxpayers' claims were substantively governed by R.C. Chapter 2723 rather than R.C. Chapter 718, regardless of how the claims were labeled in the complaint.
2. Whether the taxpayers' failure to file the written protest and notice of intent to sue required by R.C. 2723.03 barred their claims for recovery of the allegedly illegal taxes, including their equitable claims.
3. Whether the futility exception excused compliance with R.C. 2723.03 because the City had already denied refund requests.
4. Whether the trial court abused its discretion by denying the taxpayers' Civ.R. 56(F) motion for a continuance.
5. Whether the trial court abused its discretion by implicitly denying the taxpayers' motion to compel discovery before granting summary judgment.

HOLDINGS

1. Claims seeking recovery of municipal income taxes alleged to have been illegally imposed or collected are substantively governed by R.C. Chapter 2723, not R.C. Chapter 718, regardless of whether the complaint characterizes them as claims for overpayment, declaratory relief, unjust enrichment, or money had and received.
2. The written-protest and notice-of-intent-to-sue requirements of R.C. 2723.03 are mandatory and must be strictly followed; failure to comply bars an action to recover allegedly illegally collected taxes, regardless of whether the plaintiff seeks declaratory, equitable, monetary, or injunctive relief.
3. The futility exception did not excuse the taxpayers' failure to file a written protest and notice of intent to sue because the City had authority to grant a refund; the taxpayers showed only that obtaining relief was unlikely, not that the required act would have been legally incapable of producing relief.
4. The trial court did not abuse its discretion by denying the taxpayers' Civ.R. 56(F) motion because they failed to identify material facts that additional discovery could establish to rebut the City's summary-judgment argument.
5. The trial court did not abuse its discretion by implicitly denying the taxpayers' motion to compel discovery because the taxpayers failed to demonstrate prejudice or explain how the requested discovery would have rebutted the City's summary-judgment motion.

KEY QUOTATIONS

> *"the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels."* (¶ 15)

> *"the written protest and notice of intention to sue provisions of R.C. 2723.03 are mandatory and must be strictly adhered to if an action for the recovery of allegedly wrongfully collected taxes is to be maintained."* (¶ 18)

> *"a "vain act" occurs when an administrative body lacks the authority to grant the relief sought; a vain act does not entail the petitioner's probability of receiving the remedy."* (¶ 24)

FACTUAL BACKGROUND

Rittman voters approved a 1.5% municipal income-tax levy for a 30-year period ending in 2007, but the City continued collecting a 1.5% rate from 2008 through January 2023 even though it was permitted to impose only a 1.0% rate. The City discovered the error in July 2022, refunded the 2022 overcollection, but refused to refund amounts collected from 2008 through 2021. Boler and Bise sued for recovery of the allegedly illegal overcollections, but they did not file written protests or notices of intent to sue when they paid the taxes.

PROCEDURAL HISTORY

The taxpayers sued the City for declaratory relief, recovery under Ohio's municipal income-tax refund provisions, unjust enrichment, and money had and received. The trial court initially denied the City's motion to dismiss or for summary judgment. After the Ohio Supreme Court denied the City's prohibition action in State ex rel. Rittman v. Spitler and held that the claims were substantively governed by R.C. Chapter 2723, the City renewed its summary-judgment motion. The trial court denied the taxpayers' Civ.R. 56(F) request, did not rule expressly on their motion to compel discovery, and granted summary judgment for the City. The appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Rittman v. Spitler, 2024-Ohio-5668
- Ryan v. Tracy, 6 Ohio St.3d 363 (1983)
- Temple v. Wean United, Inc., 50 Ohio St.2d 317 (1977)
- Grafton v. Ohio Edison Co., 77 Ohio St.3d 102 (1996)
- Ormandy v. Dudzinski, 2011-Ohio-5005
- Nolan v. Nolan, 11 Ohio St.3d 1 (1984)
- State ex rel. Dannaher v. Crawford, 78 Ohio St.3d 391 (1997)
- State ex rel. Newton v. Court of Claims, 73 Ohio St.3d 553 (1995)
- Gissiner v. Cincinnati, 2008-Ohio-3161
- Coventry Courts, LLC v. Cuyahoga County, 2023-Ohio-1037
- Hughes v. Board of County Commissioners for Portage County, 2023-Ohio-260
- Musial Offices, Ltd. v. County of Cuyahoga, 2020-Ohio-5426
- State ex rel. Albright v. Court of Common Pleas of Delaware County, 60 Ohio St.3d 40 (1991)
- Karches v. Cincinnati, 38 Ohio St.3d 12 (1988)
- Horvath v. Barberton, 2022-Ohio-1302

- State ex rel. Teamsters Local Union No. 436 v. Board of County Commissioners, 2012-Ohio-1861
- Nemazee v. Mount Sinai Medical Center, 56 Ohio St.3d 109 (1990)
- Cessna v. Lone Star Steakhouse & Saloon of Ohio, Inc., 2001 WL 1379451 (9th Dist. Nov. 7, 2001)
- McPherson v. Goodyear Tire & Rubber Co., 2003-Ohio-7190
- Tandem Staffing v. ABC Automation Packing, Inc., 2000 WL 727534 (9th Dist. June 7, 2000)
- Weaver v. Ohio Farmers Insurance Co., 2022-Ohio-2716
- Koballa v. Twinsburg Youth Softball League, 2006-Ohio-4872
- Commodity Blenders, Inc. v. Van Wezel, 2016-Ohio-7993
- State v. Yerkey, 2022-Ohio-4298
- Steven A. Ettinger, Inc. v. Kramer, 2021-Ohio-2219