

IN THE CIRCUIT COURT OF CHILTON COUNTY, ALABAMA

ROY BURNETT, on behalf of himself)
and a class of persons similarly)
situated,)
)
Plaintiff,)
)
v.)
)
CHILTON COUNTY, a political)
subdivision of the State of Alabama,)
CHILTON COUNTY HEALTHCARE)
AUTHORITY,)
)
Defendants.)

CV 2016-900112

SECOND AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION, TAX REFUND AND OTHER RELIEF

Comes Now the Plaintiff, Roy Burnett (“Plaintiff”), individually and on behalf of a class of persons and entities similarly situated, and states the following:

INTRODUCTION

1. This is a putative class action filed on behalf of all individuals and/or entities who have purchased, stored or used retail goods in Chilton County who were charged and paid a special sales and use tax levied pursuant to Alabama Act 2014-422 (“the Act”) (See Exhibit 1), which purports to authorize the governing body of Chilton County to levy and collect a \$0.01 sales and use tax in Chilton County. The governing body of Chilton County levied the sales and use tax purportedly authorized by the Act at a special meeting on or about June 4, 2014 with the tax becoming effective on or about August 1, 2014. On or about August 26, 2015, the governing body of Chilton County amended the levy by

expanding the scope of the sales and use tax. Chilton County has collected and continues to collect the sales and use tax without legal authority or jurisdiction, thereby rendering such collection illegal and void. The Plaintiff and the putative Class are entitled to the declaratory and injunctive relief requested herein, as well as a refund of all sales and use tax collected pursuant to the Act from August 1, 2014 through the present.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Roy Burnett, is an adult resident and owner of real property situated in Chilton County, Alabama (“the County”). He was charged and has paid the sales and/or use tax levied by the governing body of Chilton County pursuant to the purported authority of the Act.

3. Defendant Chilton County, Alabama is a political subdivision of the State of Alabama.

4. Defendant Chilton County Healthcare Authority is a healthcare authority created pursuant to Alabama law and has received and continues to receive proceeds of the illegal tax levied pursuant to the Act.

5. Because this proceeding contests the constitutionality of the Act, notice of this action has been served upon the Alabama Attorney General in accordance with Alabama Code §6-6-227.

6. Jurisdiction and venue are proper in the Circuit Court of Chilton County, Alabama pursuant to Alabama Code §6-3-11.

FACTS

7. During the 2014 Regular Session of the Alabama Legislature, Senate Bill (SB) 462 was introduced. The title and contents of SB 462 were for the purpose of raising revenue in Chilton County.

8. On or about March 20, 2014, a Budget Isolation Resolution (BIR) was purportedly adopted relating to SB 462 in the House of Representatives. The recorded vote on said BIR was yeas: 25, nays: 0, and abstains: 59 (See Exhibit 2). Thereafter, SB 462 was reported out of the House as passed.

9. On or about April 10, 2014, Governor Robert Bentley signed into law SB 462 which became Alabama Act 2014-422. The Act is a local act relating to Chilton County.

10. On or about June 4, 2014, the Chilton County Commission held a special meeting and voted unanimously to levy the sales and use tax purportedly authorized by the Act effective on or about August 1, 2014 (See Exhibit 3).

11. From August 1, 2014 to the present, Chilton County has continued to collect the sales and use tax purportedly authorized by the Act.

12. On or about August 26, 2015, the Chilton County Commission amended the levy of the sales and use tax purportedly authorized by the Act to expand the scope of said tax (See Exhibit 4).

CLASS DEFINITION AND CLASS ALLEGATIONS

13. Plaintiff brings this action on behalf of himself and all other persons and entities similarly situated as members of a proposed Class defined as follows:

All persons and/or entities that have paid or are subject to the sales and use tax levied by the governing body of Chilton County pursuant to Alabama Act 2014-422 from August 1, 2014 to the present.

14. The exact number of the members of the Class is not known, but it is believed to be in the tens of thousands of persons and entities. Therefore, the number of individual members is so extensive that joinder is impracticable.

15. There are common questions of law or fact between the Plaintiff's claims and the claims of the members of the Class. In fact, each class member's claim is identical to one another and to the Plaintiff's claims, including without limitation: (a) there was no legal levy by the governing body of Chilton County of additional sales and use taxes pursuant to the Act, (b) the collection of additional sales and use tax pursuant to the Act was and is without authorization or jurisdiction, is unlawful, void and due to be enjoined, (c) no additional sales and use tax pursuant to the Act is due to the County, (d) The Act is illegal, unconstitutional, void and unenforceable, and (e) Plaintiff and the Class are due a retroactive refund with interest of all taxes paid pursuant to the levy of sales and use tax by the governing body of Chilton County pursuant to the Act.

16. The claims of Plaintiff are typical of the claims of the members of the Class. The dispositive issues with respect to Plaintiff's claims are the same as the dispositive issues of the claims of the members of the Class, and the Plaintiff is not subject to unique defenses.

17. Plaintiff and his chosen Class Counsel will adequately and fairly protect the interests of the members of the Class, and there is no conflict of interest among groups of members of the Class, or between Plaintiff or Class

Counsel and the members of the Class.

18. The elements of Rule 23(b)(1)(A) are satisfied in this case. The prosecution of separate actions by or against members of the Class would create a risk of inconsistent adjudications with respect to such persons, which would establish incompatible standards of conduct for the party opposing the Class. Indeed, equal protection and due process concerns require that the Defendants not be subjected to incompatible standards of conduct with respect to the levy and collection of sales and use tax.

19. The elements of Rule 23(b)(2) are also satisfied. The Defendants have acted and intend to act on grounds generally applicable to the Class as a whole, thereby making appropriate final injunctive or declaratory relief with respect to the levy and collection of sales and use tax authorized by the Act.

20. Alabama law has long recognized that a class action seeking a refund is the permissible method for seeking to invalidate the levy and collection of an illegal or void tax.

COUNT ONE – DECLARATORY JUDGMENT

21. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

22. Plaintiff seeks a declaratory judgment pursuant to Rule 57, Ala. R. Civ. P., and Ala. Code §§6-6-222 and 223, to determine an actual, present and existing case and controversy between himself and the Class on one hand and Defendants on the other hand regarding the constitutionality, validity and

enforceability of the Act.

23. Plaintiff, individually and on behalf of the Class, seeks a judicial declaration of rights and duties with respect to the constitutionality, validity and enforceability of the Act.

24. Plaintiff, individually and on behalf of the Class, seeks *inter alia* a declaration that (a) the Act is illegal, unconstitutional, void and unenforceable, (b) the County's levy and collection of sales and use tax pursuant to the Act constitutes a taking of Plaintiff's and Class Members' property without due process of law, and (c) Plaintiff and Class Members are due a retroactive refund of all sales and use tax paid pursuant to the levy by the governing body of Chilton County of the sales and use tax purportedly authorized by the Act, with interest thereon.

25. Plaintiff seeks a speedy hearing of this action pursuant to Rule 57, Ala. R. Civ. P.

COUNT TWO - INJUNCTION

26. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

27. Plaintiff and the Class are entitled to an injunction (a) enjoining Chilton County from levying and collecting sales and use tax pursuant to the purported authorization of the Act, (b) prohibiting Chilton County from instituting or pursuing a lien, tax sale, assessing late fees, interest or penalty against Plaintiff or any Class Member for delinquency or non-payment of the sales and

use tax purportedly authorized by the Act, (c) rescinding any lien, tax sale, late fees, interest or penalty imposed against Plaintiff or any Class Member for delinquency or non-payment of the sales and use tax purportedly authorized by the Act, (d) enjoining the operation and enforcement of the Act and all actions of the governing body of Chilton County levying and collecting sales and use tax purportedly authorized by the Act, (e) escrowing all proceeds of the sales and use tax until this case is resolved, and (f) requiring the refund to Plaintiff and Class Members of all sales and use tax illegally levied and collected by the governing body of Chilton County pursuant to the purported authority of the Act, with interest thereon.

COUNT THREE – SUIT FOR REFUND

28. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

29. The sales and use taxes referenced herein were imposed and collected without legal authority or jurisdiction, are invalid, illegally assessed, unlawful and void. Plaintiff and Class Members paid these taxes under threat of penalty, by mistake, by error and/or the taxes were exacted from Plaintiff and Class Members without legal justification. Accordingly, Plaintiff and each Class Member who paid said taxes are entitled to a retroactive refund, plus interest, as allowed and required by law.

30. The Plaintiff and each Class Member who paid the subject taxes did so under pain of penalty for non-compliance. Exaction of an illegal and invalid

tax constitutes a deprivation of property and Plaintiff's and each class member's claim based upon said deprivation vested upon incurrence of such tax liability. Plaintiff, individually and on behalf of the Class, followed established law by filing this class action to obtain a retroactive refund of illegally collected taxes. Accordingly, Plaintiff and the putative Class have a vested legal right to pursue and obtain the remedy of a retroactive refund of said taxes. Indeed, every person and entity that incurred sales and use tax liability pursuant to the levy by the governing body of Chilton County of sales and use tax pursuant to the purported authority of the Act holds a vested right and cause of action to contest such taxes and obtain a refund. Further, a failure to provide a retroactive refund of illegal taxes would (a) deprive Plaintiff and the Class of a meaningful post-deprivation remedy, (b) validate the taking of Plaintiff's and Class Members' property without legal authority, and (c) thereby constitute an unlawful taking and a violation of the Plaintiff's and Class Members' right to due process under the law.

COUNT FOUR

Act No. 2014-422 is Void for Violation of Art. IV, §71.01 Ala. Const. 1901 (Alternatively as Amend. No. 448 "The Budget Isolation Amendment")

31. The citizens of this state, being aware of what has transpired in the past regarding bills making basic appropriations, directly addressed the responsibilities of not only the Governor, but also of the Legislature in their primary task of passing a budget during regular sessions of the Legislature. Amendment No. 448 to the Alabama Constitution requires that the Governor "[o]n or before the second legislative day of each regular session of the legislature, ... transmit to the legislature for its consideration a proposed budget for the then

next ensuing budget period.” Section (c) of Amendment No. 448 provides that “[t]he duty of the legislature at any regular session to make the basic appropriations for any budget period that will commence before the first day of any succeeding regular session shall be *paramount*.” (Emphasis added). Ala. Const. Art. IV, §71.01(C) (recodifying Ala. Const. Amend. No. 448, the “Budget Isolation Amendment”). There is *only one exception* to the requirement of the Budget Isolation Amendment - that appropriations bills must be “paramount”: passage of a Budget Isolation Resolution (“BIR”). “The house in which a bill is pending can, by adoption of a resolution concurred in by *three-fifths of the quorum present*, consider other legislation.” *Id.* (Emphasis added). More specifically, Amendment 448(C) states, in pertinent part:

“[P]rovided, ... that following adoption, *by vote of either house of not less than three-fifths of a quorum present*, of a resolution declaring that the provisions of this paragraph (C) shall not be applicable in that house to a particular bill, which shall be specified in said resolution by number and title, the bill so specified may proceed to final passage therein.”

Ala. Const. Amend. 448(C) (emphasis added).

32. Section 52 of the Constitution of Alabama 1901 provides that a majority of each house shall constitute a quorum to do business. Thus, in the House, which has 105 members, the presence of 53 members is required to constitute a minimum quorum. The requirement of Amendment 448(c) is that 3/5 of the “quorum present” vote in favor of passing the BIR. Therefore, if the minimum quorum of only 53 members were present, 3/5 of 53, or 32 favorable votes by members of the House of Representatives are required to comply with Amendment 448(c). A larger quorum would require a greater number of favorable

votes to comply with Amendment 448(c).

33. The House of Representatives considered a BIR with regard to SB 462. The recorded vote total for the BIR regarding SB 462 was yeas: 25, nays: 0, and abstains: 59. (See Exhibit 2). Thus, the favorable votes fell below the minimum number of 32 favorable votes required to comply with Amendment 448(c) assuming the presence of only a minimum quorum of 53 representatives.

34. Accordingly, the Act is null, void and unenforceable by reason of violation of Amendment 448(c), Ala. Const. Art. IV, §71.01.

COUNT FIVE

Act 2014-422 is Void for Violation of Art. 4, §70, Ala. Const.

35. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

36. Article 4, §70 of the Alabama Constitution reads, in pertinent part:

“All bills for raising revenue shall originate in the house of representatives.”

37. The Act originated in the Alabama Senate as SB 462. It is clearly a “bill for raising revenue” in that its chief purpose is to create revenue, raise revenue or increase revenue in Chilton County by authorizing the governing body of Chilton County to levy and collect new and additional sales and use tax.

38. Accordingly, Act 2014-422 is void for violating Article 4, §70 of the Alabama Constitution.

COUNT SIX**Act 2014-422 is Void for Violation of Art. 4, §106, Ala. Const.**

39. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

40. Act 2014-422 is a local law and that, as a local law, it is subject to the requirements of Article IV, §106 of the Alabama Constitution. As amended by Amend. No. 341, §106 provides:

Section 106. No special, private, or local law shall be passed on any subject not enumerated in section 104 of this Constitution, ... unless notice of the intention to apply therefore shall have been published, ... which notice shall state the substance of the proposed law ... The courts shall pronounce void every special, private, or local law which the journals do not affirmatively show was passed in accordance with provisions of this section.

41. A notice relating to the proposed Act 2014-422 was published in the Clanton Advertiser on February 16, February 23, March 2, and March 9, 2014. (Exhibit 5). Said notice advertised the entire bill as proposed.

42. Said notice does not comply with §106 in that it fails to notify the public of the following essential and material aspects of the proposed legislation, including but not limited to the following – the provision contained in §14 regarding the repeal of an earlier passed act, Act 2014-162, which was expressly repealed by this Act.

43. Based on the foregoing, Act 2014-422 violates §106, and is constitutionally infirm and unenforceable on that basis. Due to the fact that Chilton County derived its authority to impose the subject taxes from said Act,

Chilton County's Resolutions adopted June 4, 2014 (Exhibit 6) and August 26, 2015 (Exhibit 7) are also unenforceable against Plaintiff and the Class.

COUNT SEVEN

Act 2014-422 is Void for Violation of Art. 4, §107, Ala. Const.

44. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

45. Act 2014-422 is a local law and that, as a local law, it is subject to the requirements of Article IV, §107 of the Alabama Constitution. Section 107 provides:

Section 107. The legislature shall not, by a special, private, or local law, repeal or modify any special, private, or local law except upon notice being given and shown as provided in the last preceding section.

46. A notice relating to the proposed Act 2014-422 was published in the Clanton Advertiser on February 16, February 23, March 2, and March 9, 2014. (Exhibit 5). Said notice advertised the entire bill as proposed.

47. Said notice does not comply with §107 in that it fails to notify the public of the provision contained in §14 regarding the repeal of an earlier passed act, Act 2014-162, which was expressly repealed by Act 2014-422, as enacted.

48. Based on the foregoing, Act 2014-422 violates §107, and is constitutionally infirm and unenforceable on that basis. Due to the fact that Chilton County derived its authority to impose the subject taxes from said Act, Chilton County's Resolutions adopted June 4, 2014 (Exhibit 6) and August 26, 2015 (Exhibit 7) are also unenforceable against Plaintiff and the Class.

DEMAND FOR RELIEF

Wherefore, Premises Considered, Plaintiff and the Class request the Court to:

1. Certify this action as a class action in accordance with Alabama law.

2. Preliminarily Enjoin the Defendants from collecting and/or expending sales and use tax levied and collected pursuant to purported authority of the Act, or alternatively, requiring the escrow of all sales and use tax collected pursuant to the Act until Final Judgment is entered.

3. Enter a Final Order and Judgment against Defendants as follows:

a. Declaring that the Act is unconstitutional, null, void, and unenforceable;

c. Declaring that the resolutions of the governing body of Chilton County levying and requiring collection and payment of sales and use tax purportedly authorized by the Act are illegal, null, void and unenforceable;

d. Enjoining the collection of any sales and use tax in by Chilton County pursuant to the Act;

e. Enjoining the expenditure of the proceeds of the sales and use tax already collected;

f. Requiring the Defendants to account to Plaintiff and the Class for all proceeds of the sales and use tax levied and collected and expended by the Defendants pursuant to the purported authority of the Act

- g. Requiring the Defendants to refund to Plaintiff and the Class all sales and use tax collected by Chilton County pursuant to the Act and remitted to the Hospital Authority and others;
- h. Awarding Plaintiff's counsel reasonable attorneys' fees and expenses;
- i. Awarding Plaintiff a reasonable amount for his service as Class Representative;
- j. Requiring Defendants to pay all costs of this action; and
- k. Awarding Plaintiff such further and additional relief as may be just and equitable or otherwise authorized by law.

/s/ Jeffrey M. Sewell
Jeffrey M. Sewell (SEW001)
French A. McMillan (MCM030)
Alana Beard (SEW006)
Sewell Sewell McMillan, LLC
1841 Second Avenue, Suite 214
Jasper, AL 35501
Telephone: (205) 544-2350
Facsimile: (205) 544-2345
Email: jeff@sewellmcmillan.com
Email: french@sewellmcmillan.com
Email: alana@sewellmcmillan.com

OF COUNSEL:

SEWELL SEWELL MCMILLAN, LLC
1841 Second Avenue, Suite 214
Jasper, AL 35501
Telephone: (205) 544-2350
Facsimile: (205) 544-2345

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of July, 2016, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing to the following AlaFile participants:

CHILTON COUNTY, ALABAMA

Ken Webb

Email: kwebb@webbeley.com

Jamie Kidd

Email: jkidd@webbeley.com

CHILTON COUNTY HEALTHCARE AUTHORITY

J. Hobson Presley, Jr.

E-mail: hpresley@balch.com

J. Russell Campbell

E-mail: rcampbell@balch.com

Jason B. Tompkins

E-mail: jtompkins@balch.com

Michael P. Taunton

E-mail: mtaunton@balch.com

Hon. Luther Strange, Attorney General

c/o Billington N. Garrett

Email: bgarrett@ago.state.al.us

/s/ French A. McMillan

FRENCH A. McMILLAN