

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

**STACY WHITE,
Plaintiff,**

v.

Case No. 18-CA-11749

**HILLSBOROUGH COUNTY, FLORIDA, et al.,
Defendants.**

**GOVERNMENT DEFENDANTS’
POST-JUDGMENT MOTION FOR SUPPLEMENTAL RELIEF
PROVIDING PROCEDURE FOR DISPOSITION OF SURTAX REVENUE**

Defendants, Hillsborough County (“County”) Hillsborough Transit Authority d/b/a HART (“HART”), the City of Tampa, City of Plant City , and Cindy Stuart as Clerk of the Court (“Clerk”) (collectively, the “Governments”), file this post-judgment motion for supplemental relief pursuant to section 86.061, Florida Statutes, and paragraph 3 of the court’s Final Judgment on Remand from the Florida Supreme Court entered April 7, 2021.¹

This post-judgment motion supplements the Governments’ motions for supplemental relief filed prior to entry of the final judgment on remand, and the legal authorities submitted to the court and arguments of counsel at the hearing on the motions held March 30, 2021. Pursuant to the court’s request at the March 30 hearing, here, the Governments propose a specific procedure for determination of surtax refund claims, and request that the court enter an order providing the proposed refund procedure as supplemental relief. However, if the court determines that the

¹ Paragraph 3 of the final judgment on remand states:

This Court also retains jurisdiction to consider the pending motions for supplemental relief and, if appropriate, to grant supplemental relief under Section 86.061, Florida Statutes, regarding the possible return of the surtax receipts to the Clerk and the disposition of the surtax receipts.

proposed procedure should not be granted as supplemental relief, in whole or in part, the Government requests that the court enter an order providing alternative procedures deemed appropriate by the court as supplemental relief.

Introduction

The transportation sales surtax was approved by Hillsborough County's voters at the election of November 6, 2018. While this lawsuit was filed on December 3, 2018, the Plaintiff did not seek injunctive relief. Accordingly, Article 11 was legally enforceable and, in fact, the Defendants were legally obligated to comply with Article 11 during the pendency of this suit, until the Florida Supreme Court's decision became final and its mandate was issued. Therefore, pursuant to the voters' approval of Article 11 of the County Charter, the Department of Revenue properly instructed businesses in Hillsborough County to collect the transportation sales surtax. The Department of Revenue collected the surtax, and deposited the funds with the Clerk. In accordance with her duties under Article 11 and sections 212.054 and 212.055, Florida Statutes, the Clerk distributed the funds to the local governments in accordance with the distribution formula provided in Article 11. Although the recipient local governments were not legally obligated to do so, they refrained from expending the surtax proceeds on transportation improvements pending the final resolution of Plaintiff's declaratory judgment action. With the Florida Supreme Court's decision and this court's final judgment ruling that Article 11 is unconstitutional, the recipient local governments now wish to establish a process for refunding the surtax proceeds pursuant to a procedure approved by this court.

Proceedings on Remand

On remand to this court following the Supreme Court's mandate issued March 15, 2021, the County and HART filed motions for supplemental relief under section 86.011, joined in by the

other Governments, seeking an order providing a procedure for refunding the surtax revenues. White filed a motion requesting that the court enter a final judgment on remand declaring the surtax and all of Article 11 invalid, in conformance with the Supreme Court's decision on appeal.

On March 30, 2021, a hearing was held on the Governments' motions for supplemental relief and White's motion for the entry of a final judgment on remand. At the hearing, the Governments did not oppose White's request for entry of a final judgment on remand. The court reserved ruling on the motions for supplemental relief, determining that the issue of supplemental relief should not be determined until after entry of the final judgment on remand. The final judgment on remand entered by the court expressly reserved ruling on the pending motions for supplemental relief and retained jurisdiction to determine the motions and to grant supplemental relief requested by the parties following entry of the judgment.

At the March 30 hearing, the court suggested that the Governments advise the court as to the particular surtax refund procedure sought as supplemental relief. The Governments' proposed refund procedure is provided as follows.

Refund Claims Procedure Proposed as Supplemental Relief

The Governments request that the court enter an order approving and directing the execution of a fair and equitable procedure for determining taxpayer refund claims, as further described below. The following procedures will allow refunds to be sought and determined in an effective and expeditious manner, with minimal burden and no cost to taxpayers, as well as the judicial system.

The Governments request that the court enter an order adopting and authorizing an extra-judicial process providing taxpayers with a voluntary, alternative option for seeking a refund. Participation in the process will be by application of the taxpayer. The refund claim application

will be in the form prescribed by the court in its order and attached to the order as an exhibit. The refund claim application form will, among other things, provide that by submitting the application, the taxpayer knowingly, voluntarily, and irrevocably agrees to subject the claim to final and binding determination under the procedure, and releases all causes of action against the Governments relating to payment of the tax or a refund, and waives the right to judicial determination of the claim.

The Governments request that the court appoint a panel of three retired judges of the Thirteenth Judicial Circuit, Hillsborough County, to preside over the determination of all refund claims submitted pursuant to the procedure. Under the court's order, the panel would be charged with presiding over all stages of adjudication of the claims, such that the refund claim applications would be filed directly with the panel, the panel would review and consider the refund claim application and evidence, and issue a binding written decision denying the claim or granting the claim in a specified amount.

The Governments specifically request that the court appoint the following three retired judges of this Circuit to the panel: former Chief Judge Manuel Menendez (1984-2015), former Judge William P. Levens (2000-2017), and former Judge Herbert M. Berkowitz (2012-2019) (collectively, "the Panel"). Counsel for the County has conferred with each of these former judges prior to filing this motion regarding their availability and willingness to serve on the Panel. All three agreed to serve on the Panel if selected and appointed by the court, and to do so on a pro bono basis.

The proposed refund claims procedure would take place over a 120-day period, running from the date of the publication of the notice to be published by the Clerk of the Court as discussed below. The entire procedure would be completed and terminate upon the expiration of that 120-

day period, unless extended by the Panel for an additional 120 days. The proposed procedures and the timeline is as follows:

- As stated above, the procedure shall be completed and shall terminate automatically upon expiration of a 120-day period. The 120-day period shall run from the date of publication of the notice to be published by the Clerk of the Court as discussed below.
- Within 10 days from the date the court enters its order granting the Defendants' motion for supplemental relief, each governmental agency that received surtax proceeds from the Clerk (collectively, the "Recipient Governments") shall file and serve in this action a certificate identifying the total amount of surtax revenue the Recipient Government received from the time the surtax took effect to the date of its certificate. The Recipient Governments shall also identify each distribution of surtax revenue it has received during such period by distribution date and amount.
- Within 15 days from the date the court enters its order granting the Defendants' motion for supplemental relief, the Clerk shall cause a notice to claimants to be published at least twice and at least 10 days apart, in a newspaper of general circulation in Hillsborough County, providing notice of right to submit a refund claim, the deadline for doing so, and information as to how to obtain and submit the application. This notice shall also be posted on the Clerk's website and the website of each of the Recipient Governments. It shall remain on these websites for the entire 120-day period. The notice shall also be posted to all social media accounts where the Recipient Governments have an established account, e.g. Twitter, Facebook, Nextdoor. The social media posts should be posted at least twice to each social media account and at least 20 days apart. The form of the notice to claimants shall be prescribed by the

court's order and attached to the order as an exhibit. The Clerk and Recipient Governments shall cooperate in providing assistance to taxpayers who contact them regarding the notice to claimants.

- The deadline for claimants to submit a refund claim application shall be 90 days from the date of the court's order granting the Defendants' motion for supplemental relief (30 days before the last day of the 120-day period). The application shall be in the form prescribed by the court in its order and attached to the order as an exhibit. The applicants shall submit payment receipts, bills of sale, invoices or similar proof of payment of the surtax as deemed acceptable by the Panel for all surtax payments for which a refund is claimed as attachments to the refund claim application. The panel shall issue final written determinations denying, or granting in a specified amount, all timely submitted refund claim applications no later than 7 days before the expiration of the 120-day period running from the date of the court's order granting supplemental relief.
- All claims approved by the panel shall be paid in the amount specified in the panel's written determination approving the claim no later than 120 days from the date of the court's order granting supplemental relief.

The court's order granting supplemental relief would authorize the panel to extend any of the foregoing time periods or deadlines by no more than 15 days, either on motion or on its own initiative. However, the deadline for submitting refund application claims may not be extended as to any individual application. Any other relief with respect the foregoing deadlines, time periods, or procedures shall be by made by filing a motion in this action.

Conclusion

For the reasons stated in the motions for supplemental relief filed prior to entry of the final judgment on remand, the legal authority provided to the court and argument of counsel presented at the hearing held March 30, 2021 (all of which are incorporated into and made a part of this post-judgment motion by reference), the court has jurisdiction and authority to grant the Governments' motions for supplemental relief as to a procedure for refund of collected surtax revenue.

The procedures specified above in this post-judgment motion will facilitate the orderly and expeditious handling of refund claims, and are appropriate supplemental relief in this case. Thus, the Governments request that this court enter an order granting this motion and entering an order providing the foregoing procedures for refund claims as supplemental relief, and any other further relief deemed appropriate.

Respectfully submitted on April 29, 2021.

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CERTIFICATE OF SERVICE

I CERTIFY that on April 29, 2021, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to all parties on the Service List below:

s/ Alan S. Zimmet
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