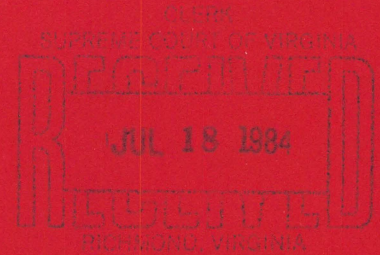


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IN THE  
SUPREME COURT OF VIRGINIA  
AT RICHMOND

---

RECORD NO. 831753

---

DEPARTMENT OF TAXATION,  
COMMONWEALTH OF VIRGINIA,

Appellant,

v.

JOHN C. SMITH, et al.,

Appellees.

---

APPENDIX

---

Gerald L. Baliles  
Attorney General of Virginia

Kenneth W. Thorson  
Senior Assistant Attorney General

Julia K. Hatcher  
Assistant Attorney General

Office of the Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219

Counsel for Appellant

James M. Rees  
Henry F. Brandenstein, Jr.  
Rees, Broome and Diaz, P.C.  
8133 Leesburg Pike  
Suite 810  
Vienna, Virginia 22180

Counsel for Appellees



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V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

JOHN C. SMITH

Plaintiff

vs.

AT LAW NO. 23756

DEPARTMENT OF TAXATION OF  
THE COMMONWEALTH OF VIRGINIA

Serve: William H. Forst  
State Tax Commissioner  
Department of Taxation  
Richmond, Virginia 23215

Defendant

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, by counsel, and moves this court for the entry of a judgment against the Defendant in the amount hereinafter set forth and in support thereof states as follows:

1. This action is authorized pursuant to Section 58-1130, Code of Virginia 1950, as amended.
2. The Plaintiff is an individual and at all times relevant the Plaintiff was a bona fide resident of the State of Maryland.
3. Plaintiff, JOHN C. SMITH, regularly and systematically conducts business in the County of Arlington; and therefore, this court is proper venue for the maintenance of this action.
4. Pursuant to Chapter IV of Section 58 of the Code of Virginia 1950, as amended, Plaintiff made a timely filing of non-resident individual income tax returns for all years relevant to this cause of action.

5. That by assessment from the DEPARTMENT OF TAXATION OF THE COMMONWEALTH OF VIRGINIA, Plaintiff SMITH was required to pay an additional TWO HUNDRED FIFTY-FIVE AND 90/100 DOLLARS (\$255.90) for taxable year 1980, FOUR HUNDRED SIXTY-EIGHT AND 61/100 DOLLARS (\$468.61) for taxable year 1979, and TWO HUNDRED FORTY-TWO AND 66/100 DOLLARS (\$242.66) for taxable year 1978, representing taxes paid by Plaintiff SMITH to the State of Maryland and disallowed as a credit against the Virginia State Tax Assessment.

6. Plaintiff SMITH paid to the DEPARTMENT OF TAXATION TWO HUNDRED SIXTY-THREE AND 98/100 DOLLARS (\$263.98) representing the 1980 assessment, plus EIGHT AND 08/100 DOLLARS (\$8.08) interest, FIVE HUNDRED TWENTY-FIVE AND 61/100 DOLLARS (\$525.61) representing the 1979 assessment, plus FIFTY-SEVEN AND NO/100 DOLLARS (\$57.00) interest, and TWO HUNDRED NINETY-ONE AND 41/100 DOLLARS (\$291.41) representing the 1978 assessment plus FORTY-EIGHT AND 75/100 DOLLARS (\$48.75) interest, in 1981.

7. The DEPARTMENT OF TAXATION erroneously assessed the additional tax and interest in the amount of ONE THOUSAND EIGHTY-ONE AND NO/100 DOLLARS (\$1,081.00).

8. All of the assessments outlined above constitute wrongful assessments under the Statutes of Virginia and the case law as established in the case of Greenfield v. Forst, et al, Fairfax County Circuit Court, Law No. 29001.

WHEREFORE, JOHN C. SMITH requests this court for the entry of a judgment against the DEPARTMENT OF TAXATION OF THE COMMONWEALTH OF VIRGINIA in the amount of ONE THOUSAND EIGHTY-ONE AND NO/100 DOLLARS (\$1,081.00), interest as provided in § 58-1140:1 Code of Virginia 1950, as amended, costs and such other relief as this court may determine.

JOHN C. SMITH  
By Counsel

REES, BROOME & DIAZ, P.C.

By: 

James M. Rees  
Counsel for Plaintiff

By: 

Kenneth J. Kopozis  
Counsel for Plaintiff

8133 Leesburg Pike, Suite 810  
Vienna, Virginia 22180  
(703) 790-1911

6843B/maw

FILED

DEC 8 1982

D. A. BELL, Clerk  
U.S. District Court, Va.  
By: W. H. H. H. Clerk

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

JOHN C. SMITH,

Plaintiff,

v.

Law No. 23756

DEPARTMENT OF TAXATION,  
COMMONWEALTH OF VIRGINIA,

Defendant.

RESPONSE TO APPLICATION FOR CORRECTION  
OF ERRONEOUS ASSESSMENT FILED AS A  
MOTION FOR JUDGMENT

The Department of Taxation, Commonwealth of Virginia, responding to the Application for Correction of Erroneous Assessment filed as a Motion for Judgment, states that:

1. The allegations of paragraphs 1, 2, 4 and 6 of the Motion for Judgment are admitted.

2. Defendant is without information from which it may determine whether the allegation of paragraph 3 of the Motion for Judgment is true or false.

3. The allegations of paragraph 5 of the Motion for Judgment are admitted except that it is denied that the contested assessments are assessments "representing taxes paid by plaintiff Smith to the State of Maryland," and, by way of further response, defendant states that a credit for taxes paid to the State of Maryland was allowed to plaintiff by defendant and that the portion of the credit claimed on plaintiff's Virginia nonresident,

income tax return which was disallowed by defendant represents taxes paid not to the State of Maryland but to local government within the State of Maryland.

4. The allegations of paragraphs 7 and 8 of the Motion for Judgment are conclusions of law which need be neither admitted nor denied, and, by way of further response, defendant maintains that the case of Greenfeld v. Forst, Circuit Court of Fairfax County (Law No. 29001 decided originally on June 25, 1974, reheard and reddecided on June 4, 1975), is not controlling in this case for the reasons that:

- a. The decision is in another circuit in the Commonwealth;
- b. The Department does not acquiesce in the decision; and
- c. The Maryland law upon which the Greenfeld decision was based has been amended and, therefore, its ratio decidendi is no longer apposite.

WHEREFORE, the Department of Taxation, Commonwealth of Virginia, respectfully requests that the Motion for Judgment of the plaintiff be denied, that the assessment be affirmed, that this case be dismissed and that such other relief may be granted as this Honorable Court determines is proper.

DEPARTMENT OF TAXATION,  
COMMONWEALTH OF VIRGINIA

By:   
Counsel

Gerald L. Baliles  
Attorney General

Kenneth W. Thorson  
Senior Assistant Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 786-0080

CERTIFICATE

I certify that on the 6<sup>TH</sup> day of December, 1982, I mailed a true copy of this Response to James M. Rees, Esq., Suite 810, 8133 Leesburg Pike, Vienna, Virginia 22180 in accordance with Rule 1:12 of the Rules of the Supreme Court of Virginia.

  
Counsel for Department of  
Taxation



V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

TILFORD A. JONES

Plaintiff

vs.

AT LAW NO. 18-215

DEPARTMENT OF TAXATION OF  
THE COMMONWEALTH OF VIRGINIA

Serve: William H. Forst  
State Tax Commissioner  
Department of Taxation  
Richmond, Virginia 23215

Defendant

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, TILFORD A. JONES, by counsel, and moves this Court for the entry of a judgment against the Defendant in the amount hereinafter set forth and in support thereof states as follows:

1. This action is authorized pursuant to Section 58-1130, Code of Virginia 1950, as amended.

2. The Plaintiff is an individual and at all times relevant the Plaintiff was a bona fide resident of the State of Maryland.

3. Plaintiff, TILFORD A. JONES, regularly and systematically conducts business in the County of Arlington, and therefore, this Court is proper venue for the maintenance of this action.

4. Pursuant to Chapter IV of Section 58 of the Code of Virginia 1950, as amended, Plaintiff made a timely filing of non-resident individual income tax returns for all years relevant to this cause of action.

5. That by assessment from the DEPARTMENT OF TAXATION OF THE COMMONWEALTH OF VIRGINIA, Plaintiff, TILFORD A. JONES, was required to pay an additional ONE HUNDRED FORTY-FIVE AND 38/100 DOLLARS (\$145.38) for the taxable year 1979, representing taxes paid by Plaintiff to the State of Maryland and disallowed as a credit against the Virginia State Tax Assessment.

6. Plaintiff, TILFORD A. JONES, paid to the DEPARTMENT OF TAXATION ONE HUNDRED FORTY-FIVE AND 38/100 DOLLARS (\$145.38), representing the 1979 assessment.

7. The DEPARTMENT OF TAXATION erroneously assessed the additional tax in the amount of ONE HUNDRED FORTY-FIVE AND 38/100 DOLLARS (\$145.38).

8. The assessment outlined above constitutes a wrongful assessment under the Statutes of Virginia and the case law as established in the case of Greenfeld v. Forst, et al, Fairfax County Circuit Court, Law No. 29001.

WHEREFORE, TILFORD A. JONES requests this Court for the entry of a judgment against the DEPARTMENT OF TAXATION OF THE COMMONWEALTH OF VIRGINIA in the amount of ONE HUNDRED FORTY-FIVE AND 38/100 DOLLARS (\$145.38), interest as provided in § 58-1140.1 Code of Virginia 1950, as amended, costs and such other relief as this court may determine.

TILFORD A. JONES  
By Counsel

REES, BROOME & DIAZ, P.C.

By: James M. Rees  
James M. Rees  
Counsel for Plaintiff

By: Kenneth J. Kopocis  
Kenneth J. Kopocis  
Counsel for Plaintiff

8133 Leesburg Pike, Suite 810  
Vienna, Virginia 22180  
(703) 790-1911

7737B/wjg

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

TILFORD A. JONES,  
Plaintiff,

v.

DEPARTMENT OF TAXATION,  
COMMONWEALTH OF VIRGINIA,

Defendant.

LAW NO. 23845

RESPONSE TO APPLICATION FOR CORRECTION  
OF ERRONEOUS ASSESSMENT FILED AS A  
MOTION FOR JUDGMENT

Comes now the defendant, the Department of Taxation, Commonwealth of Virginia, responding to the Application for Correction of Erroneous Assessment filed as a Motion for Judgment, and states that:

1. The allegations of paragraphs 1, 4 and 6 of the Motion for Judgment are admitted.
2. Defendant is without information from which it may determine whether the allegations of paragraphs 2 and 3 of the Motion for Judgment are true and false.
3. The allegations of paragraph 5 of the Motion for Judgment are admitted except that it is denied that the amount of the assessment was \$145.38, and it is denied that the contested assessments are assessments "representing taxes paid by Plaintiff to the State of Maryland," and, by way of further response, defendant states that (a) the assessment was in the amount of \$145.36 and (b) a credit for taxes paid to the State of Maryland was allowed to plaintiff by defendant and that the portion of the credit claimed on plaintiff's Virginia nonresident, income tax

return which was disallowed by defendant represents taxes paid not to the State of Maryland but to local government within the State of Maryland.

4. The allegations of paragraphs 7 and 8 of the Motion for Judgment are conclusions of law which need be neither admitted nor denied, and, by way of further response, defendant maintains that the case of Greenfield v. Forst, Circuit Court of Fairfax County (Law No. 29001 decided originally on June 25, 1974, reheard and redecided on June 4, 1975), is not controlling in this case for the reasons that:

- a. The decision is in another circuit in the Commonwealth;
- b. The Department does not acquiesce in the decision; and
- c. The Maryland law upon which the Greenfield decision was based has been amended and, therefore, its ratio decidendi is no longer apposite.

WHEREFORE, the Department of Taxation, Commonwealth of Virginia, respectfully requests that the Motion for Judgment of the plaintiff be denied, that the assessment be affirmed, that this case be dismissed and that such other relief may be granted as this Honorable Court determines is proper.

DEPARTMENT OF TAXATION  
COMMONWEALTH OF VIRGINIA

By:

Julia K. Hatcher  
Counsel

Gerald L. Baliles  
Attorney General

Kenneth W. Thorson  
Senior Assistant Attorney General

Julia K. Hatcher  
Assistant Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 786-0061



CERTIFICATE

I certify that on the 7<sup>th</sup> day of January, 1983, I mailed a true copy of this Response to James M. Rees, Esq., 8133 Leesburg Pike, Suite 810, Vienna, Virginia 22180 in accordance with Rule 1:12 of the Rules of the Supreme Court of Virginia.

Julia K. Hatcher  
Counsel for Department of Taxation

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

DAVID PAUL WEAVER :

Plaintiff :

vs. :

AT LAW NO. 23-16

DEPARTMENT OF TAXATION OF :  
THE COMMONWEALTH OF VIRGINIA :

Serve: William H. Forst :  
State Tax Commissioner :  
Department of Taxation :  
Richmond, Virginia 23215 :

Defendant :

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, DAVID PAUL WEAVER, by counsel, and moves this Court for the entry of a judgment against the Defendant in the amount hereinafter set forth and in support thereof states as follows:

1. This action is authorized pursuant to Section 58-1130, Code of Virginia 1950, as amended.

2. The Plaintiff is an individual and at all times relevant the Plaintiff was a bona fide resident of the State of Maryland.

3. Plaintiff, DAVID PAUL WEAVER, regularly and systematically conducts business in the County of Arlington; and therefore, this Court is proper venue for the maintenance of this action.

4. Pursuant to Chapter IV of Section 58 of the Code of Virginia 1950, as amended, Plaintiff made a timely filing of non-resident individual income tax returns for all years relevant to the maintenance of this cause of action.

5. That by assessment from the DEPARTMENT OF TAXATION OF THE COMMONWEALTH OF VIRGINIA, Plaintiff DAVID PAUL WEAVER was required to pay an additional THREE HUNDRED THIRTY-FOUR and 40/100 DOLLARS (\$334.40) for taxable year 1979 and THREE HUNDRED FORTY-TWO AND 03/100 DOLLARS (\$342.03) for taxable year 1978, representing taxes paid by Plaintiff DAVID PAUL WEAVER to the State of Maryland and disallowed as a credit against the Virginia State Tax Assessment.

6. Plaintiff DAVID PAUL WEAVER paid to the DEPARTMENT OF TAXATION FOUR HUNDRED TWENTY AND 63/100 DOLLARS (\$420.63), representing the 1979 assessment plus EIGHTY-SIX AND 23/100 DOLLARS (\$86.23) interest, FOUR HUNDRED TWENTY AND 97/100 DOLLARS (\$420.97), representing the 1978 assessment plus SEVENTY-EIGHT AND 94/100 DOLLARS (\$78.94) interest.

7. The DEPARTMENT OF TAXATION erroneously assessed the additional tax and interest in the amount of EIGHT HUNDRED FORTY-ONE AND 60/100 DOLLARS (\$841.60).

8. All of the assessments outlined above constitute wrongful assessments under the Statutes of Virginia and the case law as established in the case of Greenfield v. Forst, et al, Fairfax County Circuit Court Law No. 29001.

## II.

9. The Plaintiff hereby incorporates by reference the allegations contained in paragraphs one through four as if fully laid out herein.

10. Plaintiff did not claim full credit for income taxes paid to the State of Maryland for tax years 1980 and 1981 because of the Department of Taxation's non-recognition of the doctrine of Greenfield v. Forst, et al., Fairfax Circuit Court, At Law No. 29001.

11. Plaintiff is entitled to a full credit for income taxes paid to the State of Maryland to the extent of the Plaintiff's maximum income tax liability to Virginia.

12. Plaintiff paid THREE HUNDRED SEVENTY-SIX AND NO/100 DOLLARS (\$376.00), in state income taxes to the Defendant upon the filing of his 1980 Virginia Nonresident Income Tax Return.

13. Plaintiff paid SIXTY-SEVEN AND NO/100 DOLLARS (\$67.00) in state income taxes to the Defendant upon the filing of his 1981 Virginia Nonresident Income Tax Return.

14. Plaintiff has made a claim for refund of the taxes referred to in paragraphs ten and eleven above with the Department of Taxation by filing an amended Virginia Nonresident Income Tax Return for tax years 1980 and 1981.

15. Plaintiff is entitled to a refund of the taxes referred to in paragraphs twelve and thirteen under the doctrine of Greenfield v. Forst, et al., Fairfax County Circuit Court, Law No. 29001.

WHEREFORE, DAVID PAUL WEAVER requests this Court for the entry of a judgment against the DEPARTMENT OF TAXATION OF THE COMMONWEALTH OF VIRGINIA in the amount of ONE THOUSAND TWO HUNDRED EIGHTY-FOUR AND 60/100 DOLLARS (\$1,284.60), interest as provided in § 58-1140.1 Code of Virginia 1950, as amended costs and such other relief as this Court may determine.

DAVID PAUL WEAVER  
By Counsel

REES, BROOME & DIAZ, P.C.

By: James M. Rees  
James M. Rees  
Counsel for Plaintiff

By: Kenneth J. Kopocis  
Kenneth J. Kopocis  
Counsel for Plaintiff

8133 Leesburg Pike, Suite 810  
Vienna, Virginia 22180  
(703) 790-1911

7736B/wjg



V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

JAN 10 1983

DAVID PAUL WEAVER,

Plaintiff,

v.

Law No. 23846

DEPARTMENT OF TAXATION,  
COMMONWEALTH OF VIRGINIA,

Defendant.

RESPONSE TO APPLICATION FOR CORRECTION  
OF ERRONEOUS ASSESSMENT FILED AS A  
MOTION FOR JUDGMENT

Comes now the defendant, the Department of Taxation, Commonwealth of Virginia, responding to the Application for Correction of Erroneous Assessment filed as a Motion for Judgment, and states that:

1. The allegations of paragraphs 1, 4 and 6 of the Motion for Judgment are admitted.
2. Defendant is without information from which it may determine whether the allegations of paragraphs 2 and 3 of the Motion for Judgment are true or false.
3. The allegations of paragraph 5 of the Motion for Judgment are admitted except that it is denied that the contested assessments are assessments "representing taxes paid by Plaintiff David Paul Weaver to the State of Maryland," and, by way of further response, defendant states that a credit for taxes paid to the State of Maryland was allowed to plaintiff by defendant and that the portion of the credit claimed on plaintiff's Virginia nonresident, income tax return which was disallowed by defendant represents taxes paid not to the State of Maryland but to local government within the State of Maryland.

4. The allegations of paragraphs 7 and 8 of the Motion for Judgment are conclusions of law which need be neither admitted nor denied, and, by way of further response, defendant maintains that the case of Greenfeld v. Forst, Circuit Court of Fairfax County (Law No. 29001 decided originally on June 25, 1974, reheard and reddecided on June 4, 1975), is not controlling in this case for the reasons that:

- a. The decision is in another circuit in the Commonwealth;
- b. The Department does not acquiesce in the decision; and
- c. The Maryland law upon which the Greenfeld decision was based has been amended and, therefore, its ratio decidendi is no longer apposite.

## II.

5. The allegations of paragraphs 1 and 4 as incorporated by reference in paragraph 9 of the Motion for Judgment are admitted. The defendant is without information from which it may determine whether the allegations of paragraphs 2 and 3 as incorporated by reference in paragraph 9 of the Motion for Judgment are true or false.

6. Defendant is without information from which it may determine whether the allegations of paragraphs 10 and 14 of the Motion for Judgment are true or false.

7. The allegation of paragraph 11 of the Motion for Judgment is admitted to the extent such taxes are imposed by and paid to the State of Maryland.

8. The allegations of paragraphs 12 and 13 of the Motion for Judgment are admitted.

9. The allegation of paragraph 15 of the Motion for Judgment is a conclusion of law which need be neither admitted nor denied, and, by way of further response, defendant maintains that the case of Greenteld v. Forst, Circuit Court of Fairfax County (Law No. 29001 decided originally on June 25, 1974, reheard and reddecided on June 4, 1975), is not controlling in this case and incorporates by reference the reasons contained in subparagraphs a, b and c of paragraph 4 as if fully laid out herein.

WHEREFORE, the Department of Taxation, Commonwealth of Virginia, respectfully requests that the Motion for Judgment of the plaintiff be denied, that the assessment be affirmed, that the refund be denied, that the case be dismissed and that such other relief may be granted as this Honorable Court determines is proper.

DEPARTMENT OF TAXATION,  
COMMONWEALTH OF VIRGINIA

By: Julia K. Hatcher  
Counsel

Gerald L. Baliles  
Attorney General

Kenneth W. Thorson  
Senior Assistant Attorney General

Julia Hatcher  
Assistant Attorney General  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 786-0061

CERTIFICATE

I hereby certify that on the 7th of January, 1983, I mailed a true copy of the foregoing Response to James M. Rees, Esquire, Rees, Broome & Diaz, P.C., 8133 Leesburg Pike, Vienna, Virginia 22180 in accordance with Rule 1:12 of the Rules of the Supreme Court of Virginia.

  
Counsel for Department of  
Taxation

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

JOHN C. SMITH,

Plaintiff,

vs.

AT LAW NO. 23756

DEPARTMENT OF TAXATION OF THE  
COMMONWEALTH OF VIRGINIA,

Defendant.

DAVID P. WEAVER,

Plaintiff,

vs.

AT LAW NO. 23846

DEPARTMENT OF TAXATION OF THE  
COMMONWEALTH OF VIRGINIA,

Defendant.

TILFORD A. JONES,

Plaintiff,

vs.

AT LAW NO. 23845

DEPARTMENT OF TAXATION OF THE  
COMMONWEALTH OF VIRGINIA,

Defendant.

STIPULATION OF FACTS

THIS DAY CAME the Plaintiff, by counsel, James M. Rees, and the Defendant, by counsel, Julia K. Hatcher, and tendered a certain stipulation of fact, consisting of thirteen numbered paragraphs, and moved that they be permitted to file the same, and that said stipulation be accepted as agreed statements of fact and as evidence in this cause; which motion the Court grants and orders that said stipulation be filed as a part of the record herein.

1. That Plaintiff, JOHN C. SMITH, JR., resides at 5204 Chandler Street, Bethesda, Maryland 20014, and as such is a bona fide resident of the State of Maryland.



2. That JOHN C. SMITH, JR., regularly and systematically conducts business in the County of Arlington, Virginia.

3. That pursuant to Chapter 4 of Section 58 of the Code of Virginia 1950, as amended, Plaintiff made a timely filing of nonresident individual income tax returns for all years relevant to this cause of action.

4. That by assessment from the Department of Taxation, Plaintiff Smith was required to pay an additional amount of TWO HUNDRED SIXTY-THREE AND 98/100 DOLLARS (\$263.98), for the 1980 assessment, plus EIGHT AND 8/100 DOLLARS (\$8.08) interest, FIVE HUNDRED TWENTY-FIVE AND 61/100 DOLLARS (\$525.61), for the 1979 assessment, plus FIFTY-SEVEN AND NO/100 DOLLARS (\$57.00) interest, and TWO HUNDRED NINETY-ONE AND 41/100 DOLLARS (\$291.41), for the 1978 assessment, plus FORTY-EIGHT AND 75/100 DOLLARS (\$48.75) interest, in 1981, representing taxes paid either to the state of Maryland or Montgomery County, Maryland, and disallowed as a credit against the Virginia state tax assessment.

5. That TILFORD JONES resides at 6216 Kennedy Drive, Chevy Chase, Maryland 20815, and as such, is a bona fide resident of the State of Maryland.

6. That Plaintiff TILFORD A. JONES regularly and systematically conducts business in the County of Arlington, Virginia.

7. That pursuant to Chapter 4 of Section 58 of the Code of Virginia 1950, as amended, Plaintiff made a timely filing of nonresident individual income tax returns for all years relevant to this cause of action.

8. That by assessment from the Department of Taxation, Plaintiff TILFORD A. JONES was required to pay an additional amount of ONE HUNDRED FORTY-FIVE AND 36/100 DOLLARS (\$145.36), for the 1979 assessment, representing taxes paid either to the state of Maryland or Montgomery County, and disallowed as a credit against the Virginia state tax assessment.

9. That Plaintiff DAVID PAUL WEAVER is a bona fide resident of the State of Maryland.

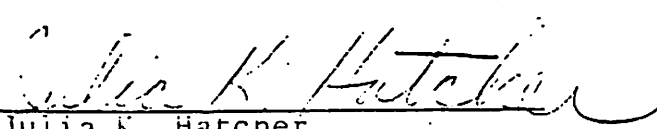
10. That Plaintiff DAVID PAUL WEAVER regularly and systematically conducts business in the County of Arlington, Virginia.

11. That pursuant to Chapter 4 of Section 58 of the Code of Virginia 1950, as amended, Plaintiff made a timely filing of nonresident individual income tax returns for all years relevant to this cause of action.

12. That by assessment from the Department of Taxation, Plaintiff DAVID PAUL WEAVER was required to pay an additional amount of FOUR HUNDRED TWENTY-~~THREE~~ AND 63/100 DOLLARS (\$420.63), for the 1979 assessment, plus EIGHTY-SIX AND 22/100 DOLLARS (\$86.23) interest, FOUR HUNDRED TWENTY-~~THREE~~ AND 97/100 DOLLARS (\$420.97), for the 1978 assessment, plus SEVENTY-EIGHT AND 94/100 DOLLARS (\$78.94) interest, representing taxes paid either to the state of Maryland or Charles County, Maryland, and disallowed as a credit against the Virginia state tax assessment.

13. That the sole issue before the court is whether the tax credits claimed represent state taxes or local taxes as defined in Chapter IV of Title 58 of the Code of Virginia 1950, as amended.

By:

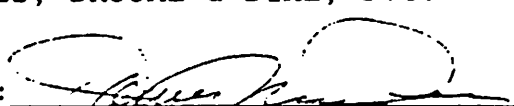
  
Julia K. Hatcher  
Supreme Court Building  
101 North Eighth Street  
Richmond, Virginia 23219  
(804) 186-2071

filed 6/9/23

F.A.B.

REES, BROOME & DIAZ, P.C.

By:

  
James M. Rees  
Counsel for Plaintiffs  
8133 Leesburg Pike, Suite 810  
Vienna, Virginia 22180  
(703) 790-1911

1075D/mn

Circuit Court of Arlington County  
Virginia

WILLIAM L. WINSTON  
JUDGE  
PAUL D. BROWN  
JUDGE  
CHARLES H. DUFF  
JUDGE  
THOMAS R. MONROE  
JUDGE

June 24, 1983

WALTER T. MCCARTHY  
JUDGE RETIRED  
COURT HOUSE  
ARLINGTON, VIRGINIA

Julia K. Hatcher, Esq.  
Supreme Court Building  
101 North Eighth Street  
Richmond, Virginia 23219

James M. Rees, Esq.  
8133 Leesburg Pike, Suite 810  
Vienna, Virginia 22180

Re: Smith vs. Department of Taxation of the  
Commonwealth of Virginia, At Law No: 23756

Dear Ms. Hatcher and Mr. Rees:

After consideration of argument of Counsel, the briefs, the stipulation of facts and examination of the Maryland and Virginia statutes cited the Court concludes that the Maryland income tax paid by residents of Maryland, including that paid pursuant to Maryland Statute ~~to~~ Article 81 Section 283, on income derived from a Virginia source qualify for the credit granted by Virginia to non-residents by Section 58-151.015(b) of the Code of Virginia.

The stipulated taxes paid by the Plaintiffs appear to the Court to be income taxes for which Maryland residents were liable to the State of Maryland upon their income derived from Virginia sources. Those incomes are also subject to taxation by the Commonwealth of Virginia under Title 58 of the Virginia Code. Those taxes have been paid by the Plaintiffs to the State of Maryland. Therefore the amounts of income taxes payable by the Plaintiffs under Title 58 of the Virginia Code should be credited with those tax payments made to Maryland provided the laws of Maryland grant a substantially similar credit to Virginia residents.

The Court is also of opinion that Section 291 of Article 81 of the Maryland Code is controlling and grants a substantially similar credit to Virginia residents.

Section 290 of Article 81 is not controlling as this section provides for a reduction in amount of the Maryland income tax payable by Maryland residents whereas Section 291 provides for the income tax liability to Maryland of Virginia residents. Section 290 forecloses a Maryland resident from a credit against local taxes prescribed by Section 283 but this proviso is silent as to any foreclosure of such a credit to a Virginia resident. Section 283 (a-1) is not controlling because no Virginia locality imposes a tax on the income of Maryland residents.

By Section 291 the entire Maryland tax liability of a Virginia resident is credited by his Virginia Income Tax payment. It follows that the Virginia-tax liability to a Maryland resident should be credited by his Maryland Income Tax payment as Section 291 is similar to Virginia Code 58-151.015(b).

The Court also concludes, that when read together, Sections 283, 287 and 288 of Article 81 provide a general scheme for Income Taxes imposed by the State of Maryland, and that the tax imposed by Article 81, Section 283 is a state tax as that term is used in Section 58-151.015 of the Code of Virginia.

It will be appreciated if Mr. Rees will prepare sketches of proper orders in these cases for endorsement by Ms. Hatcher and presentment to the Court taking care to include any exceptions the Commonwealth may care to make.

Very truly yours,

*Franklin P. Backus*  
Franklin P. Backus  
Judge *Designate*.

FPB:pb

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

JOHN C. SMITH, :

Plaintiff, :

v. : AT LAW NO. 23756

DEPARTMENT OF TAXATION :

Defendant. :

ORDER

This cause came to be heard upon Plaintiff's motion for judgment, Defendant's answer thereto, the filing of Memorandum of Law by both parties, the agreed Stipulation of Facts, Defendant's Exhibit and upon argument of counsel; and

IT APPEARING to the Court after consideration of argument of counsel, the briefs, the stipulation of facts and examination of the Maryland and Virginia Statutes, that the Maryland Income Tax paid by the Plaintiffs, pursuant to Maryland Statute, Article 81, Section 283, on income derived from a Virginia source, qualify for the credit granted by Virginia to non-residents by Section 58-151.015(b) of the 1950 Code of Virginia, as Amended; and

IT FURTHER APPEARING to the Court that the taxes paid by Plaintiffs to the State of Maryland are income taxes for which Plaintiffs were liable to the State of Maryland upon their income derived from Virginia sources; that the income derived from Virginia sources was subject to taxation by the Commonwealth of Virginia under Title 58 of the Virginia

Recorded in Common Law Order

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Code; that the stipulated taxes have been paid by the Plaintiffs to the State of Maryland; that the amount of income taxes payable by the Plaintiffs under Title 58 of the Code of Virginia should be credited with the stipulated tax payments made in Maryland provided that the Laws of Maryland grant a substantially similar credit to Virginia residents; and

IT FURTHER APPEARING to the Court that Section 291 of Article 81 of the Maryland Code is controlling and grants a substantially similar credit to Virginia residents; that Section 290 of Article 81 of the Maryland Code is not controlling in this case in that it provides for the reduction in the amount of the Maryland income tax payable by Maryland residents; and whereas Section 291 provides for the income tax liability to Maryland of Virginia residents; that Section 290 forecloses a Maryland resident from a credit against local taxes prescribed by Section 283 of the Maryland Code, that this proviso is silent as to any foreclosure of such credit to a Virginia resident; and that Section 283(a-1) is not controlling because no Virginia locality imposes a tax on income of Maryland residents; and

IT FURTHER APPEARING to the Court that pursuant to Section 291 of the Maryland Code, the entire Maryland tax liability of a Virginia resident is credited by his Virginia income tax payment; that it follows, therefore, that the Virginia tax liability to a Maryland resident should be credited


by his Maryland income tax payment in that Section 291 of the Maryland Code is similar to Virginia Code Section 58-151.015(b); and

IT FURTHER APPEARING to the Court, and the Court concludes that when read together, Section 283, 287 and 288 of Article 81 of the Maryland Code provide a general scheme for income taxes imposed by the State of Maryland, and that the tax imposed by Article 81, Section 283, is a State tax as that term is used in Section 58-151.015 of the Code of Virginia; and

IT FURTHER APPEARING to the Court that the Defendant erroneously assessed additional tax and interest against the Plaintiff in the amount of ONE THOUSAND EIGHTY ONE AND NO/100) DOLLARS (\$1,081.00), and that the assessment constitutes a wrongful assessment under the Statutes of Virginia; it is therefore

ADJUDGED, ORDERED AND DECREED that the amount of ONE THOUSAND EIGHTY ONE AND NO/100 DOLLARS (\$1,081.00) be refunded to the Plaintiff, plus additional interest due as provided in Section 58-1140.1 of the 1950 Code of Virginia.

ENTERED this 28<sup>th</sup> day of July, 1983.

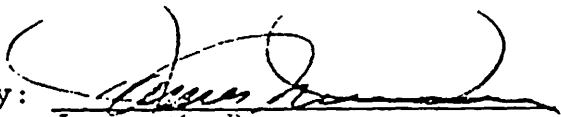
  
JUDGE FRANKLIN P. BACKUS  
Judge Designate



SEEN:

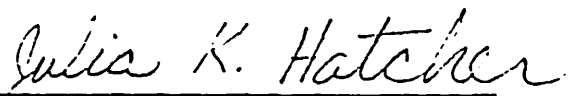
REES, BROOME & DIAZ, P.C.

By:

  
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SEEN AND OBJECTED TO:

By:

  
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### ASSIGNMENTS OF ERROR

The Department of Taxation, Commonwealth of Virginia, by counsel, assigns the following errors on its appeal from the decision of the Circuit Court of Arlington County:

First - The trial court erred in ruling that the Maryland income tax paid by plaintiffs pursuant to article 81, § 283 of the Annotated Code of Maryland (1957) on income derived from a Virginia source qualifies for the credit Virginia grants to nonresidents in § 58-151.015(b) of the Code of Virginia.

Second - The trial court erred in ruling that article 81, § 291 of the Annotated Code of Maryland (1957) is controlling and that the Virginia tax liability of a Maryland resident should be credited with his Maryland income tax payments because § 291 is similar to § 58-151.015(b) of the Code of Virginia.

Third - The trial court erred in ruling that article 81, § 290 of the Annotated Code of Maryland (1957) is not controlling in this case.

Fourth - The trial court erred in ruling that article 81, § 283(a-1) of the Annotated Code of Maryland (1957) is not controlling in this case.

Fifth - The trial court erred in ruling that, when read together, §§ 283, 287 and 288 of article 81 of the Annotated Code of Maryland (1957) provide a general scheme for income taxes imposed by the State of Maryland, rather than a scheme for income taxes imposed by the local governments in Maryland.