

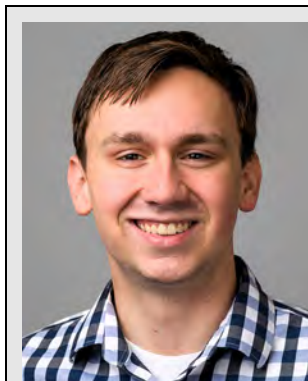
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Andrew Wilford is the director of the Interstate Commerce Initiative at the National Taxpayers Union Foundation.

In this installment of Commerce Crossroads, Wilford examines the long, contentious debate over St. Louis's efforts to extend its taxing authority to remote workers.

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In the middle of June, years of litigation surrounding St. Louis's assessment of earnings tax obligations on remote employees performing work outside city limits during the pandemic culminated in a settlement agreement. Under the terms of this agreement, the St. Louis Collector of Revenue agreed to honor refund claims made by remote workers during the period in question.¹

That may seem to mark the end of a long, contentious (and litigious) debate over St. Louis's efforts to extend its taxing authority to workers who lacked any direct connection to the city. But while St. Louis may appear to concede its opponents' point, it is clear the city still hopes to keep the lion's share of the revenue it gained from taxing remote workers.

Background and Legal Proceedings

Before 2020 the collector of revenue's office did not attempt to impose its 1 percent earnings tax on employees of St. Louis-based businesses if they performed their work outside city limits. Remote taxpayers had earnings tax withheld but were able to apply for and receive refunds from the city for days spent working remotely.

With the onset of the pandemic, however, the collector of revenue began denying refund requests for work performed remotely. In doing so, it created a new distinction between remote work and business travel; the city continued to honor refund requests for the latter.² Despite this clear change in policy, there was at no point any change in the underlying Missouri statute governing local earnings taxes, nor did St. Louis undertake any formal rulemaking procedures to indicate a shift in its tax treatment of remote workers.

Following the collector of revenue's denial of their refund requests, six remote workers filed suit against St. Louis. All six either had the city's earnings tax withheld from their paychecks by their employer or had paid under protest upon being contacted by the collector of revenue.

The case hinged upon interpretation of Missouri law, which allows local jurisdictions to apply an earnings tax to nonresident income for "work done or services performed or rendered in the city."³ The trial court's opinion focused mainly on the definition of the word "rendered," which the city tried to argue should be considered to mean the same thing as "delivered."

¹Settlement Agreement, *Boles v. City of St. Louis*, Case Nos. 2122-CC00713/ED111495 (Mo. Ct. App. June 12, 2024).

²Order and Judgment, *Boles v. City of St. Louis*, Case No. 2122-CC00713 (Mo. Cir. Ct. Jan. 19, 2023).

³Mo. Rev. Stat. section 92.111.

The trial court disagreed with that interpretation, however, noting that that definition of the word “rendered” would be logical only if the statute read “work done or services performed or rendered *into* the city,” not “in the city.” Moreover, the court pointed out that the city had not applied its own argument before the pandemic, which cast doubt upon whether St.

Louis even believed what it was arguing, as there is little reason for the city to have left all that revenue on the table before 2020 if St. Louis truly believed it was entitled to it.

Consequently, the trial court ordered St. Louis to grant the six remote workers refunds. The trial court did not, however, grant class action status to plaintiffs, which would have entitled other affected remote workers to similar relief.

St. Louis appealed to the Missouri Court of Appeals, which yielded a nearly identical decision.⁴ Plaintiffs attempted to appeal the refusal of class action certification to the state supreme court in the middle of 2023, but the request was denied.⁵

Meanwhile, the Missouri Legislature has repeatedly considered bills that would have required St. Louis to issue refunds to remote workers and preclude similar enforcement of local earnings taxes against remote workers in the future. The most recent example was H.B. 1516, which passed the House by a wide margin,⁶ though it ended up not being voted on by the Senate.

The Settlement Agreement

The combination of court losses and the potential for a renewed state preemption effort led St. Louis to agree to a settlement. Under the conditions of the settlement, St. Louis agreed to honor earnings tax refund claims for days worked remotely during the years 2020 through 2023. For returns covering 2020 through 2022, however, refund claims must be filed between July 1 and September 30 of this year.⁷

While this settlement does represent St. Louis’s agreement to provide some mechanism for taxpayers to reclaim taxes that courts have said they should never have owed in the first place, everything about the refund process is designed to be as inconvenient and inaccessible as possible. That begins with the arbitrary three-month refund period tucked away in the middle of the fall, a time when most taxpayers are not thinking about their income taxes. The collector of revenue did agree to honor previously submitted refund claims, but only 2,100 had been submitted at the time of the settlement.⁸

For each year that a taxpayer wishes to submit a refund claim, they must submit a completed Form E1-R, copies of W-2s they received that year, a lease agreement or mortgage deed to prove their residence outside the city, and proof of employer verification of their claims to work outside the city. This rather substantial collection of documents must then be mailed to the collector of revenue’s office — there is no option to submit electronically.⁹

St. Louis appears to believe that most taxpayers will decide simply not to bother jumping through all these hoops. The state legislative research arm estimated that H.B. 1516 would cost St. Louis around \$98.4 million,¹⁰ while the city argued in legal filings that the cost could be closer to \$150 million.¹¹ Yet despite those lofty numbers, the city has budgeted only \$26 million for refund claims.¹² That is hard to explain unless St. Louis expects that most taxpayers owed refunds will not claim them.

Thus far, the city’s bet appears to be paying off. While H.B. 1516’s fiscal note estimated that around 100,000 taxpayers could be owed refunds from St. Louis, the collector of revenue claimed that just 113 applications had been received in the first few days of the refund period (in addition to

⁸ Mike Colombo and Joe Millitzer, “St. Louis to Reimburse \$26M in Earnings Tax to Remote Workers,” Fox2Now, June 14, 2024.

⁹ For a full rundown of how to prepare and submit Form E1-R, see Andrew Wilford, “Here’s How to Claim Your St. Louis Earnings Tax Refund,” National Taxpayers Union Foundation, July 9, 2024.

¹⁰ Fiscal Note, H.B. 1516 (Mar. 12, 2024).

¹¹ Application for Transfer, *Boles v. City of St. Louis*, No. ED111495 (Mo. May 31, 2023).

¹² Austin Huguélet, “St. Louis Braces for \$26 Million Earnings Tax Hit,” *St. Louis Post-Dispatch*, Apr. 17, 2024.

⁴ *Boles*, Case Nos. 2122-CC00713/ED111495.

⁵ Mandate, *Boles v. City of St. Louis*, No. SC100102 (Mo. July 20, 2023).

⁶ H.B. 1516, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024).

⁷ Refund claims for 2023 must be filed before April 15, 2025.

the 2,100 received beforehand).¹³ More applications may come in closer to the deadline, but at the current pace, St. Louis is far more likely to receive a few thousand applications than 100,000.

Broader Context

The outcome of this refund battle has implications beyond St. Louis. Though the legal arguments in this case concerned not constitutional issues but rather narrow questions of statutory interpretation, the constitutionality of taxing workers with no physical connection to the taxing jurisdiction remains an unanswered question.

That question was nearly answered back in the first year of the pandemic, when Massachusetts issued an emergency regulation asserting its right to tax workers who switched to working remotely out of state during the pandemic.¹⁴ The state of New Hampshire filed suit against Massachusetts over this policy, but before the U.S. Supreme Court decided whether to grant certiorari, the regulation was withdrawn. The regulation no longer being in effect may have been what led the Supreme Court to deny certiorari, even though Justices Samuel A. Alito Jr. and Clarence Thomas voted to grant it.¹⁵

If that is the case, it was a missed opportunity. Seven states continue to impose some form of so-called convenience of the employer rules,¹⁶ or rules that require taxpayers who switch to working remotely out of state to continue paying taxes to the state they used to work in — a state-level analogue to St. Louis's actions. Not only do these rules represent a difficult-to-justify extension of states' taxing jurisdiction, but they also create substantial confusion and compliance burdens for affected taxpayers.

Absent judicial intervention, disputes over who has the authority to tax remote workers are

likely only to catch more taxpayers in the crossfire. New York's convenience of the employer rule is so despised by neighboring states that a few — most recently New Jersey — have retaliated with their own versions of the rule.¹⁷ But while that may sate some of the frustration of retaliating states' budget officials, it does nothing to help the actual taxpayers stuck navigating counterintuitive state income tax obligations.

The outcome here matters also from a good-governance perspective. Should St. Louis succeed in retaining most of the tax revenue at issue, it will have substantially enriched itself by deliberately flouting its jurisdictional limits and taxing workers that courts said it should have lacked the power to tax. Needing to return only a small fraction of its ill-gotten gains is hardly the kind of consequence that will deter other taxing authorities from pushing the envelope in the future.

Conclusion

At first glance, a settlement in which St. Louis agrees to honor remote work refund claims may appear to tie a bow on a dispute attributable mainly to the pandemic, but this half-hearted attempt at redress should in no way dissuade Missouri legislators from seeking a more comprehensive solution.

In a broader sense, the shift to remote work, particularly hybrid work, has proven to be a far more durable legacy of the pandemic than mask mandates or quarantines. This fact should create renewed urgency for states and localities to come up with ways to ensure that remote and mobile work is not more complicated than traditional in-office work. Unfortunately, many appear more inclined to contribute to the problem than solve it. ■

¹³ Rachel Lippman, "Window Reopens for St. Louis Earnings Tax Refund Applications," St. Louis Public Radio, July 5, 2024.

¹⁴ 830 Mass. Code. Regs. section 62.5A.3 (Mar. 5, 2021).

¹⁵ *New Hampshire v. Massachusetts*, 141 S. Ct. 2848 (June 28, 2021), cert. denied.

¹⁶ Wilford, "The 2024 ROAM Index: How State Tax Codes Affect Remote and Mobile Workers," National Taxpayers Union Foundation, Jan. 11, 2024.

¹⁷ Pennsylvania has a full convenience of the employer rule, while Connecticut and New Jersey apply their versions of the rule only against states that impose convenience of the employer rules against their residents.