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A Bridge Too Far: Ohio Court of Common Pleas Finds Convenience Rule Unconstitutional

On September 26, 2022, the Ohio Court of Common Pleas in *Morsy v. Dumas*, held that Cleveland's municipal income tax on remote workers was unconstitutional on an "as applied" basis. The taxpayer lived in Pennsylvania and was employed by a company located in Cleveland, Ohio.

Prior to the COVID-19 pandemic, Morsy would stay in Cleveland Monday through Friday returning home for the weekend. In response to the pandemic, however, the Governor of Ohio declared a state of emergency and a stay-at-home order was issued. The Ohio legislature also passed a law that required Morsy's employer to treat days Morsy worked from home due to the pandemic as days worked at the employer's place of business in Cleveland. As a result, Morsy's employer continued to withhold municipal income tax from her wages even though Morsy was not physically located in Cleveland when performing her duties. Claiming that the deemed-work-from-Cleveland rule was unconstitutional, Morsy sought a refund of her withheld income tax.

The City of Cleveland argued that Morsy's physical presence in the City prior to the pandemic satisfied any due process jurisdictional concerns, and that "the ability to continue performing her job duties through a virtual network connection with her employer, located in Cleveland, created a substantial nexus" thereby satisfying the constitutional requirements for taxing remote workers.

Morsy countered that physical presence in the early part of 2020 did not give rise to ongoing personal jurisdiction for the entire year when she was not otherwise physically present. Citing case law that explained physical presence is necessary to a municipality's income tax jurisdiction, the taxpayer argued that there was no case law authorizing tax jurisdiction over an employee on the basis of a virtual connection with the employer's place of business.

The Court of Common Pleas agreed with Morsy. The court explained that "[t]raditional due process is a minimal requirement for acquiring jurisdiction to impose an income tax on an individual." Observing that "an employee enjoys the protections, opportunities and benefits" of a taxing authority when the employee is physically present, the court concluded that "[t]he ability of an employee to communicate virtually with her office and to perform her job duties from home does not create the fiscal relation required by the case law." As a result, the court held that the law requiring Morsy's work from home days be treated as work from Cleveland days was unconstitutional in the case at bar.

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