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No. 26-TX-47

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA,
Appellant,

v.

AMERICAN PHILOSOPHICAL ASSOCIATION, *et al.*,
Appellees.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT THE DISTRICT OF COLUMBIA

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INTRODUCTION

The common law did not permit recovery of taxes that a taxpayer voluntarily paid. As a result, tax refunds are creatures of statute and must be authorized by the legislature. In the District of Columbia, the statutes governing sales tax refunds require taxpayers to first submit a refund claim to the Office of Tax and Revenue (OTR). Filing a refund claim with OTR *before* filing suit is a mandatory, jurisdictional requirement. The statute specifies that the Superior Court has "jurisdiction to determine whether there has been any overpayment of tax" and to order a refund "if a timely refund claim has been filed." D.C. Code § 47-3310(b). For decades, this Court has interpreted similar statutes to impose a jurisdictional prerequisite—the taxpayer must file a timely administrative claim. If she does not, her case must be dismissed. That jurisdictional rule is consistent with the basic principle of District tax law that courts may issue refunds only as authorized by statute. And it fits neatly within the broader web of District and federal tax statutes, which consistently impose jurisdictional bars to suit.

In a properly brought suit, if the court determines that the taxpayer is indeed entitled to a refund, the court may award prejudgment interest as of the date of the claim for refund or petition to the court under D.C. Code § 47-3310(c)(1). This Court has interpreted that statute to require individualized notice of claims in order to start the clock. And this Court has emphasized the importance of notice to the District of the exact amount of the refund that the individual claimants seek.

The Superior Court departed from these principles. This case involves a class of nonprofits who contend that the District's sales-tax exemption for semipublic institutions located in the District violates the dormant Commerce Clause. In addressing these claims, the Superior Court made a series of errors. First, it concluded that neither the named plaintiffs nor any of the class members were required to file pre-suit refund claims with OTR, even though the statute authorizing such suits predicates the Superior Court's "jurisdiction" on a timely administrative refund claim. Second, the court's analysis of the merits was flawed because it never addressed the District's argument that the dormant Commerce Clause is inapplicable to the statutes at issue. And third, the court awarded the class members prejudgment interest dating back to the filing of the motion for class certification in 2019, even though the District did not have notice of the amounts of the class members' claims until the class period closed in June 2025.

STATEMENT OF THE ISSUES

1. Whether the Superior Court erred in holding that it had jurisdiction to order tax refunds under a statute authorizing jurisdiction "if a timely refund claim has been filed" where no refund claim was ever filed;

2. If there was jurisdiction, whether this Court should remand for consideration of the merits, where the trial court failed to address whether the dormant Commerce Clause applies to the sales-tax exemption statute; and

3. Whether the Superior Court erred in ordering prejudgment interest for unnamed class members as of the date of the filing of the motion for class certification or the date of the overpayment under a statute authorizing interest "from the date of filing a claim for refund or a petition to the Superior Court."

STATEMENT OF THE CASE

Plaintiffs sued the District in 2017, alleging that it violated the dormant Commerce Clause by offering sales tax exemptions only for semipublic institutions located in the District. JA 47-49. Plaintiffs sought sales tax refunds for themselves and a putative class of other out-of-state semipublic institutions for events they held at hotels in the District. JA 47-49, 51. The Superior Court denied the District's motions to dismiss for lack of jurisdiction due to plaintiffs' failure to file refund claims with OTR. JA 84-91 (denial of original motion to dismiss); JA 100-08 (denial of reconsideration); JA 138-43 (denial of renewed motion to dismiss). The court eventually granted plaintiffs' motion for class certification, JA 109-27, granted plaintiffs' motion for summary judgment, JA 134-37, and approved a claims process that began in March 2025 and closed on June 6, 2025, JA 146-48. The court also awarded pre- and post-judgment interest, with prejudgment interest beginning for class members as of the date of the motion for class certification or the date of the overpayment (if that date was later). JA 155-56. The Superior Court entered final judgment on December 19, 2025. JA 163-65. The District timely filed this appeal on January 16, 2026.

STATEMENT OF FACTS

1. Legal Background.

A. The sales tax exemption for semipublic institutions.

Like nearly all states, the District relies on sales tax revenue to fund essential government operations. *See* D.C. Fiscal Policy Inst., *A Resident's Guide to the DC Budget* (Feb. 7, 2026), https://dcfpi.org/all/a-residents-guide-to-the-dc-budget. The District's public education system, healthcare services, and infrastructure projects, among others, depend on the District's ability to effectively collect and account for this revenue. *See id.* Indeed, sales tax is one of the three largest sources of local tax revenue for the District. *See id.* And the prompt and accurate collection of sales tax revenue is particularly vital because the District must balance its budget each year. *See* D.C. Code § 1-206.03(d).

Chapter 20 of Title 47 of the D.C. Code imposes a tax on the retail sale of enumerated goods and services. *See* D.C. Code § 47-2001 *et seq*. The vendor must collect the sales tax from the purchaser, who is required by law to pay the tax to the vendor. *Id.* §§ 47-2003(a), 47-2004(a); *see Dist. Hosp. Partners, LP v. District of Columbia*, 290 A.3d 45, 47 (D.C. 2023). If a vendor collects taxes exceeding the scheduled rates, it must refund the excess back to the purchaser, or else the excess becomes a tax debt owed by the vendor to the District. D.C. Code § 47-2003(b).

Another provision, Section 47-2005(3), exempts certain sales to "semipublic institutions" from sales taxes. "Semipublic institutions" are defined as "any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual." *Id.* § 47-2001(r). To qualify for the exemption, the semipublic institution must, among other requirements, obtain a tax exemption certificate from OTR and be "located within the District." *Id.* § 47-2005(3)(A), (C).

B. The statutory scheme for seeking tax refunds.

In 1970, Congress created the court system that now governs the District. *See* District of Columbia Court Reform and Criminal Procedure Act of 1970 (Court Reform Act), Pub. L. No. 91-358, 84 Stat. 473. In doing so, it "abolished all [tax] remedies other than the appeal procedures specifically provided in the tax statutes." *Nat'l Graduate Univ. v. District of Columbia*, 346 A.2d 740, 742 (D.C. 1975). As a result, a taxpayer seeking a refund "must follow the specific, statutorily-prescribed procedures governing such suits." *District of Columbia v. Craig*, 930 A.2d 946, 954 (D.C. 2007). That is because "[r]ecovery of taxes illegally or erroneously assessed and voluntarily paid was not permitted at common law and is a matter within the purview of the legislative branch." *District of Columbia v. Keyes*, 362 A.2d 729, 732 (D.C. 1976). This Court has therefore held that "a basic precept of the District's scheme of taxation" is that "[r]efunds of taxes cannot be made absent an authorizing statute." *District of Columbia v. Nat'l Bank of Wash.*, 431 A.2d 1, 5 (D.C. 1981).

Under the Home Rule Act, responsibility for tax administration is vested in the Office of the Chief Financial Officer, of which OTR is a part. D.C. Code § 1-204.24d(10). Section 47-2020(a) creates an administrative procedure for obtaining a sales tax refund. That provision allows for the refund of sales taxes "erroneously or illegally collected . . . if [an] application under oath is filed with [OTR] for such refund within 3 years from the payment thereof." D.C. Code § 47-2020(a). "Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax." *Id.*; *see also Hosp. Partners*, 290 A.3d at 47-48. If the refund request is made by the vendor rather than the purchaser, the statute provides that "no actual refund of monies shall be made to such vendor, until he shall first establish to the satisfaction of [OTR], under such regulations as [OTR] may prescribe, that the vendor has repaid to the purchaser the amount for which the application for refund is made." D.C. Code § 47-2020(a).

If OTR denies the refund claim, Section 47-2021 authorizes the claimant to appeal the denial to the Superior Court. Specifically, that statute provides: "[a]ny person aggrieved . . . by a denial of a claim for refund . . . may, within 6 months from the . . . denial of a claim for refund appeal to the Superior Court of the District of Columbia to the same extent as set forth in [D.C. Code] §§ 47-3303, 47-3304, 47-3306, 47-3307, and 47-3308." D.C. Code § 47-2021(a).[1] Section 47-3310 clarifies that the Superior Court's jurisdiction to adjudicate a refund suit under Section 47-2021 is tied to the timely filing of a refund claim with OTR: "[i]n any proceeding under [Title 47,] the Superior Court has jurisdiction to determine whether there has been any overpayment of tax and to order that any overpayment be credited or refunded to the taxpayer, *if a timely refund claim has been filed*." *Id.* § 47-3310(b) (emphasis added).

If OTR or the Superior Court determines that there has been an overpayment and that a taxpayer is entitled to a refund, "interest shall be allowed and paid on the overpayment at the rate of 6% per annum from the date the overpayment was paid until the date of refund." *Id.* § 47-3310(c). But there is an exception for "any overpayment that was not assessed and then paid as a deficiency or as additional tax." *Id.* § 47-3310(c)(1). For that kind of overpayment, "[i]nterest shall be allowed

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[1] Section 47-2021 also authorizes a suit by any person aggrieved by "a final determination of tax," but this refers to an action by OTR assessing a deficiency or additional tax as the result of an audit or other administrative process, which is not implicated in this case. *See, e.g.*, *Hutchison Bros. Excavating Co. v. District of Columbia*, 511 A.2d 3, 5 & n.5, 8 (D.C. 1986); *First Interstate Credit All., Inc. v. District of Columbia*, 604 A.2d 10, 10 (D.C. 1992).

and paid only from the date of filing a claim for refund or a petition to the Superior Court, as the case may be." *Id.*

2. Procedural History.

In June 2017, the American Philosophical Association and American Anthropological Association filed a putative class action complaint in the Superior Court's Civil Division challenging the District's sales tax exemption for semipublic institutions under D.C. Code § 47-2005(3)(C). JA 47-49. Plaintiffs are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and are therefore semipublic institutions under the statutory definition. *See* D.C. Code § 47-2001(r). Both plaintiffs are also located outside the District. They alleged that Section 47-2005(3)(C) facially violated the dormant Commerce Clause by offering sales tax exemptions only to semipublic institutions located in the District, not those located elsewhere. JA 47-49. They sought declaratory and injunctive relief and a refund of taxes they incurred during conferences held in the District. JA 54-56. They also sought relief on behalf of a putative class of similarly situated entities. JA 54-56.

At the outset, the District moved to dismiss on the ground that plaintiffs had not followed the required procedure of first filing an administrative refund claim with OTR. Two years later, Judge Epstein denied the District's motion in relevant part. JA 84-89. He concluded that "[n]o statute mandates that a taxpayer must apply for a refund from OTR before seeking a refund through judicial action." JA 85. Therefore, only a discretionary "common-law exhaustion doctrine" applied, and Judge Epstein was unpersuaded "that exhaustion is warranted in the circumstances of this case." JA 87. The court did, however, dismiss the claims for declaratory and injunctive relief under the Anti-Injunction Act, D.C. Code § 47-3307, and ordered the case transferred to the Tax Division, where it was assigned to Judge Pittman. JA 89-91. Plaintiffs have not cross-appealed that dismissal.

The District then moved for reconsideration on the exhaustion issue, but Judge Pittman declined to reconsider Judge Epstein's ruling. JA 100-08. Although Judge Pittman did not find that filing a refund claim was a jurisdictional prerequisite to filing suit, he did conclude that the statute's timing requirement—that any refund suit be filed within six months—*was* jurisdictional. JA 106-07. In reaching that conclusion, Judge Pittman relied in part on Section 47-3303, which requires a suit challenging any "assessment" of taxes to be filed "within 6 months after the date of such assessment," perhaps construing the payment of the sales tax itself to be the "assessment," JA 106-07. As the District had explained, the sales taxes at issue in this case were not subject to the pre-payment "assessment" procedure applicable to other types of taxes. *See, e.g.*, D.C. Code § 47-4312(b) (explaining the procedure for a deficiency assessment of taxes, which includes a requirement that a notice of proposed assessment be sent to the taxpayer by OTR). Judge Pittman also cited the six-month timing requirement in Section 47-2021, which states that any sales-tax refund suit must be filed "within 6 months . . . from the date of the denial of a claim for refund," D.C. Code § 47-2021(a). JA 106-07. He did not explain why he concluded that the six-month time limit in that statute was jurisdictional, JA 107, but the "denial of a claim for refund" was not.

The District filed an answer preserving its exhaustion defense, JA 93, and plaintiffs sought class certification, JA 113-14. Two years later, in 2021, Judge Pittman certified a class of all semipublic institutions that do not have offices in the District that paid sales taxes to certain hotels in connection with meetings related to the institution's purpose or membership beginning December 12, 2016 (six months before the filing of the complaint). JA 126-27.

Plaintiffs moved for summary judgment on whether Section 47-2005(3) violated the dormant Commerce Clause, JA 135-36, and the case was reassigned to Judge McCabe, JA 25. In 2024, in a decision spanning less than two pages, Judge McCabe granted summary judgment for plaintiffs on the constitutional question. JA 135-36. Judge McCabe agreed with plaintiffs' argument that the sales tax exemption burdened interstate commerce in a facially discriminatory manner by providing differential treatment based on whether a semipublic institution was located inside or outside the District, and that the District's justification of the statute as a subsidy to local nonprofits or an attempt to avoid a loss of tax revenue failed to satisfy strict scrutiny. JA 135-36. The case was then reassigned to Judge Knowles. JA 10-11.

In January 2025, the District filed a renewed motion to dismiss, identifying D.C. Code § 47-3310(b) as additional support for its argument that plaintiffs were required to first seek an administrative refund from OTR before filing suit. The District explained that Section 47-3310(b) grants the Superior Court jurisdiction to determine whether there has been a tax overpayment "if a timely refund claim has been filed," which makes filing a refund claim a necessary step before initiating a civil suit. JA 140 (quoting D.C. Code § 47-3310(b)).

Judge Knowles addressed the jurisdictional argument on the merits, acknowledging that Section 47-3310(b) granted the Superior Court jurisdiction "if a timely refund claim has been filed," but concluding that this did not cabin the court's jurisdiction to cases where a timely refund claim was filed. JA 142 ("[T]he statute lacks a qualifier to indicate the Superior Court *only* has jurisdiction where a timely refund has been filed.").

In March 2025, Judge Knowles amended the class definition in response to plaintiffs' concession that the class only included 501(c)(3) organizations and established the claims procedure. JA 146-48. The third-party claims administrator was to mail the notice and proof of claim forms to potential class members by March 28, and the claims period would end on June 6. JA 147. After the claims period closed, the claims administrator transmitted the proof of claims to the District, the Superior Court held an evidentiary hearing on disputed claims, and the parties submitted briefing on the disputed claims as well as on the issues of pre- and post-judgment interest and attorney's fees. *See* JA 150-60.

In November 2025, as relevant here, Judge Knowles issued an order on prejudgment interest. JA 155-56. The court held that 6% annual prejudgment interest was authorized for the named plaintiffs and class members under D.C. Code § 47-3310(c)(1), which allows interest "from the date of filing a claim for refund or a petition to the Superior Court." JA 155. For the named plaintiffs, the court authorized prejudgment interest from the date of the complaint, June 12, 2017, as the "petition to the Superior Court." JA 156. But for the other class members, the court rejected the District's argument that the relevant date was the date the claims period closed, which was when the District received proof of claims for all the class members. Instead, it held that the interest began to run from March 29, 2019, the filing date of the first motion for class certification, or, if the taxes were incurred after that date, from the date of the overpayment. JA 156.

The Superior Court entered final judgment on December 19, 2025. JA 163. Under that judgment, the District is required to pay $8.4 million in tax refunds and prejudgment interest to 215 claimants, none of which filed a refund claim with OTR before bringing suit. JA 163, 167-70. Plaintiffs' counsel will receive 32% of that common fund in fees. JA 157-59, 164.

The District timely appealed. The District is not required to pay judgments in tax cases until appeals are resolved, *see* D.C. Code § 47-3304(b), and is entitled as a matter of right to a stay pending appeal of a money judgment without posting a bond, *see, e.g.*, *Gasser v. District of Columbia*, No. 04-7018, 2004 WL 1248980, at *1 (D.C. Cir. June 7, 2004); *Hoban v. Wash. Metro. Area Transit Auth.*, 841 F.2d 1157, 1159 (D.C. Cir. 1988); *Kaseman v. District of Columbia*, 368 F. Supp. 2d 27, 29 (D.D.C. 2005).

STANDARD OF REVIEW

This Court reviews questions of law, including questions of subject-matter jurisdiction and statutory interpretation, de novo. *See Abadie v. D.C. Cont. Appeals Bd.*, 843 A.2d 738, 741 (D.C. 2004).

SUMMARY OF ARGUMENT

1. The Superior Court erred in refusing to dismiss the case for lack of jurisdiction. Section 47-3310(b) creates the judicial remedy for taxpayers claiming refunds for an alleged overpayment of sales tax. The statute provides that the Superior Court has "jurisdiction" to determine whether there has been an overpayment and to order a refund "if a timely refund claim has been filed." D.C. Code § 47-3310(b). The plain text of that statute makes filing a "timely refund

claim" with OTR a "jurisdiction[al]" prerequisite to suit. *Id.* The "if" clause of Section 47-3310(b) would serve no purpose if a pre-suit refund claim were not a prerequisite to filing suit.

That has been the law in this Court for decades. In the 1950s, the D.C. Circuit affirmed a trial court's jurisdictional dismissal of a case brought under the materially identical predecessor statute to Section 47-3310(b) because the plaintiff had not filed a timely refund claim. *See Am. Sec. & Tr. Co. v. District of Columbia*, 235 F.2d 19 (D.C. Cir. 1956). Plaintiffs here never filed a refund claim with OTR at all, so the same result is warranted in this case.

And if that were not enough, that straightforward statutory interpretation is supported by the blackletter law governing tax refund suits, the surrounding statutory scheme, and the wider web of District and federal tax law, which are replete with jurisdictional bars to suit. Tax refund suits are pure creatures of statute, and individuals seeking tax refunds must adhere strictly to the statutory scheme. Unlike other areas of the law, courts are powerless to adjudicate tax refund cases that deviate from the scheme that Congress or the Council has created. This Court has reiterated that understanding of the balance of power between the court and the legislature for decades. And under the relevant statutes, individuals who seek a sales tax refund must first file a claim with OTR. *See* D.C. Code §§ 47-2020(a), 47-2021(a).

The arguments against jurisdictional dismissal are unpersuasive. Although the District brought Section 47-3310(b) to the Superior Court's attention in a renewed motion to dismiss, jurisdiction is an issue that may be raised at any time, including for the first time on appeal. The Superior Court addressed the District's arguments on the merits, but its sole reason for rejecting a jurisdictional dismissal was its view that the statute's language ("if a timely refund claim has been filed") was not strong enough to preclude jurisdiction if a timely refund claim was not filed. Read in context, however, this clause could mean nothing else. Plaintiffs' related argument that Section 47-3310(b) is a claim-processing rule and not a jurisdictional bar relies on inapplicable precedents about time bars and fails to account for either the unique circumstances of tax refund cases or the statutory context.

Plaintiffs also argued that they could not have filed a claim for refund with OTR because they are purchasers, not the vendors on whom the sales tax is imposed. But that is incorrect. As the District explained, plaintiffs are the person "who has actually paid the tax," D.C. Code § 47-2020(a), and so may seek a refund for that reason, just as purchasers (not vendors) in a recent case before this Court did without difficulty. *See Hosp. Partners*, 290 A.3d at 47. Nothing in the statutes, regulations, or OTR's refund claim form is inconsistent with allowing plaintiffs to seek a refund. Besides, that argument is self-defeating—if plaintiffs cannot satisfy the statutory requirements to seek a tax refund, their suit must be dismissed. And finally, it is immaterial that plaintiffs assert that OTR would have denied or not adjudicated the constitutional arguments in their refund claim. Filing such a claim is jurisdictional requirement; this Court has held that futility is no excuse.

2. However, if the Court finds there was jurisdiction, it should remand for reconsideration of the merits. The District argued that the dormant Commerce Clause does not apply to the statutes here, which were enacted by the Council and passively approved by Congress. And Congress is not bound by the dormant Commerce Clause. This Court has recognized that this issue is unsettled, yet the Superior Court failed to address the argument at all. A remand for further consideration is the most prudent course.

3. Finally, the Superior Court erred in awarding prejudgment interest for class members from the date of the filing of the class certification motion in 2019 or, for class members who paid taxes after the filing of the motion, from the date of overpayment. The statute authorizing prejudgment interest directs that the interest be awarded "from the date of filing a claim for refund or a petition to the Superior Court." D.C. Code § 47-3310(c)(1). And this Court's precedent explains that this language requires individualized notice so that the District is aware of the exact amount of refund claimed. Generalized notice of a class of unspecified claims is insufficient. Taking account of the statutory language and this Court's notice requirement, the earliest date that any class member could be said to have made an

individualized, precise refund claim is June 6, 2025—the date the claims period closed and the District received the class members' proof of claims forms. The Superior Court's decision to impose a far earlier start date satisfies neither the language of the statute nor this Court's precedent, and it should be rejected.

ARGUMENT

I. The Superior Court Lacked Jurisdiction Because Plaintiffs Did Not File Timely Refund Claims With OTR Before Filing This Suit.

A. Section 47-3310(b) required plaintiffs to file refund claims before filing suit.

Section 47-3310(b) authorizes the Superior Court to adjudicate claims for sales tax refunds, but only if a timely refund claim was first submitted to OTR. Both the statute's text and binding precedent confirm that Section 47-3310(b) operates as a jurisdictional bar that prevents the Superior Court from adjudicating non-exhausted refund claims. Moreover, the requirement that a taxpayer first exhaust administrative remedies before filing suit is a foundational principle of taxation law and critical to efficient operation of the District's tax system. Because none of the class members in this suit filed a refund claim with OTR, the Superior Court should have dismissed their suit for lack of jurisdiction.

1. The plain text of Section 47-3310(b) ties the Superior Court's jurisdiction to the filing of a timely refund claim with OTR.

"The rules of statutory construction are well established in the District of Columbia." *Expedia, Inc. v. District of Columbia*, 120 A.3d 623, 630 (D.C. 2015).

The first step is "to read the language of the statute and construe its words according to their ordinary sense and plain meaning." *Id.* (internal quotation marks omitted). The "literal words" of the statute are "not the sole index to legislative intent, but rather are to be read in light of the purpose of the statute taken as a whole, and are to be given a sensible construction." *Id.* at 631 (internal quotation marks omitted). "[C]ourts eschew interpretations that lead to unreasonable results, that create obvious injustices, or that produce results at variance with the policies intended to be furthered by the legislation." *Id.* (internal quotation marks omitted). For tax statutes specifically, "[o]nly if the statute remains ambiguous after resorting to all of the normal tools of statutory construction should the Court construe any remaining reasonable ambiguity against the District and in favor of the taxpayers." *Id.* (internal quotation marks omitted).

Section 47-3310(b) provides that "the Superior Court has *jurisdiction* to determine whether there has been any overpayment of tax and to order that any overpayment be credited or refunded to the taxpayer, *if a timely refund claim has been filed*." D.C. Code § 47-3310(b) (emphasis added). That text makes plain that the filing of "a timely refund claim" is a prerequisite to the Superior Court having "jurisdiction" over a refund dispute. The text of Section 47-2021—which creates the cause of action for refund suits over sales taxes—reinforces that reading. It states that a person "aggrieved . . . by a denial of a claim for refund . . . may, within 6 months . . . from the denial of a claim for refund appeal to the Superior Court." D.C. Code § 47-2021(a). That provision likewise ties the Superior Court's authority to hear the refund dispute to OTR's "denial of a claim for refund." Together, these provisions dictate that without a timely refund claim, the trial court lacks jurisdiction and must dismiss the case. *See D.C. Off. of Tax & Revenue v. BAE Sys. Enter. Sys., Inc.*, 56 A.3d 477, 483 (D.C. 2012) ("Whenever possible, a statute should be interpreted as a harmonious whole." (internal quotation marks omitted)).

A contrary reading would render "if a timely refund claim has been filed" in Section 47-3310(b) pure surplusage. *See Grayson v. AT&T Corp.*, 15 A.3d 219, 238 (D.C. 2011) (en banc). There would be no need to specify that the Superior Court has jurisdiction over refund suits "if a timely refund claim has been filed" if the court *also* has jurisdiction over refund suits where *no* refund claim was ever filed. Similarly, it is hard to see how Section 47-2021(a) would carry any meaning if a refund claim were not a predicate to suit: it would be unnecessary to tie the timing of that suit to OTR's denial of the refund claim, or to describe the Superior Court's review as an "appeal" of that denial if the taxpayer could simply bypass administrative review altogether. Here, the statutory specification that the Superior Court's jurisdiction is predicated on an administrative refund claim "does really necessarily, or at least reasonably, imply the preclusion of alternatives." *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 427 (D.C. 2009) (quoting *Indep. Ins. Agents* *of Am., Inc. v. Hawke*, 211 F.3d 638, 644 (D.C. Cir. 2000)); *see Expedia*, 120 A.3d at 643 ("under the *expressio unius est exclusio alterius* canon of statutory construction, it is sometimes reasonable to imply a missing 'only' [before 'if'] when the express mention of one alternative naturally excludes all others").

2. Binding precedent supports the District's interpretation.

Reading "if a timely refund claim has been filed" as a jurisdictional prerequisite is confirmed by binding precedent interpreting an earlier version of the statute. In *American Security & Trust Co. v. District of Columbia*, 235 F.2d 19 (D.C. Cir. 1956), the D.C. Circuit interpreted what was then codified as Section 47-2413, which provided that a refund claim must be filed within two years of the tax payment and that, "[i]n any proceeding under this chapter, the Board of Tax Appeals for the District of Columbia shall have jurisdiction to determine whether there has been any overpayment of tax and to order that such overpayment be credited or refunded to the taxpayer: Provided, That a timely refund claim has been filed." *Id.* at 20 n.1 (quoting D.C. Code § 47-2413(b)). The court agreed with the District that this language was "plain" and granted the court jurisdiction "only in the event that the claim for refund is seasonably filed." *Id.* at 20. Because the taxpayer in that case had filed a refund claim with OTR's predecessor outside the two-year statutory period, the court confirmed that the trial court "ha[d] no jurisdiction to decide anything" and affirmed the jurisdictional dismissal. *Id.*

As a pre-1971 D.C. Circuit case, *American Security* is binding on this Court, unless and until it is overruled en banc. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971). And *American Security*'s application to this case is straightforward: Section 47-3310(b)'s limitation on the Superior Court's jurisdiction ("if a timely refund claim has been filed") is materially indistinguishable from the language of its predecessor ("Provided, That a timely refund claim has been filed."). In both instances, the legislature granted the reviewing court limited jurisdiction to adjudicate a taxpayer's refund claim but *only* if an administrative "refund claim" was filed first. Because plaintiffs here never filed refund claims, the Superior Court had "no jurisdiction to decide anything," and this Court must vacate its judgment and remand for dismissal. *Am. Sec.*, 235 F.2d at 20.

3. That reading is consistent with the broader web of District and federal tax laws.

Were more needed, statutory history and context make the jurisdictional prerequisite even clearer.

To start, this Court has repeatedly recognized the basic principle that tax refund suits require an authorizing statute because recovery of taxes voluntarily paid "is a matter within the purview of the legislative branch." *Keyes*, 362 A.2d at 732. There is no such thing as a common-law claim for a tax refund. *See id.*; *Craig*, 930 A.2d at 954. As a result, although tax statutes are "necessarily formalistic and often technical," "[i]t is essential that [courts] adhere to their technicalities, even if at times a seeming hardship results to the taxpayer." *Keyes*, 362 A.2d at 737. That means that, "to maintain a refund suit, a taxpayer must follow the specific, statutorily-prescribed procedures governing such suits." *Craig*, 930 A.2d at 954. Courts simply have no jurisdiction to issue tax refunds outside the strictures of the District's statutory scheme.

One of those strictures is, of course, that claims for sales tax refunds must first be made to OTR, as set out in Section 47-3310(b). And that requirement is not only set out in Section 47-3310(b); it is reiterated in every statute that authorizes the relief plaintiffs seek here: sales taxes "erroneously or illegally collected" may be refunded "if application under oath is filed with [OTR] for such refund within 3 years from the payment thereof." D.C. Code § 47-2020(a). And "[a]ny person aggrieved by . . . a denial of a claim for refund . . . may, within 6 months from . . . the date of the denial of a claim for refund appeal to the Superior Court." *Id.* § 47-2021(a). Each of those statutes emphasizes the necessity of a refund claim filed with OTR. And Section 47-2021(a) specifically limits the individuals who may "appeal to the Superior Court" to those "aggrieved by . . . a denial of a claim for refund." As a whole, then, the statutory scheme for refunds of sales taxes is limited to individuals who have filed a refund claim with OTR. A freestanding common-law claim for a tax refund is not an option; a taxpayer must comply with the statutory scheme if she wants relief.

That jurisdictional requirement is consistent with the rest of District tax law. For instance, to challenge a real property tax, District law states that the taxpayer "may appeal the proposed assessed value or classification to the Superior Court . . . in the same manner and to the same extent as provided in §§ 47-3303 and 47-3304 . . . ; provided, that the owner shall have in good faith first appealed the assessed value or classification to the [Real Property Tax Appeals Commission]." D.C. Code § 47-825.01a(g)(1). As this Court explained in *Craig*, the "provided" clause makes an administrative appeal a jurisdictional requirement for suit: "only after a property owner has appealed to the [Commission] and paid her taxes may she petition the Superior Court Tax Division for review and for a tax refund." *Craig*, 930 A.2d at 954 (interpreting former D.C. Code § 47-825.01). Under the statute, "subject matter jurisdiction of the Superior Court does not attach until that administrative review prerequisite has been satisfied." *Id.* (citation modified) (quoting *Keyes*, 362 A.2d at 733, 734 n.11).

Because of the government's unique need for certainty in the tax context, the tax code is replete with similar jurisdictional bars. In addition to *Craig*, many other cases have held that taxpayers must file administrative refund claims before filing refund suits. *See Kleiboemer v. District of Columbia*, 458 A.2d 731, 736 (D.C. 1983) ("[T]he timely filing of individual claims for refund at the administrative level was a prerequisite to recovery of refunds . . . ."); *Keyes*, 362 A.2d at 732-33 ("Under the statutory procedure applicable to this case, the recovery of refunds through appeal to the Superior Court requires, as a first step, a complaint to the Board of Equalization and Review."). The six-month time limits to appeal to the Tax Division in Sections 47-2021 and 47-3303(a) are likewise jurisdictional. *See* JA 106-07; *First Interstate Credit All., Inc. v. District of Columbia*, 604 A.2d 10, 11 (D.C. 1992); *see also Friendship Hosp. for Animals, Inc. v. District of Columbia*, 698 A.2d 1003, 1006 (D.C. 1997) (construing an identical time limit in Section 47-1815.1 to be jurisdictional). In suits challenging assessments, the requirement to first pay the taxes assessed is a jurisdictional requirement. *First Interstate*, 604 A.2d at 11. The District's Anti-Injunction Act, Section 47-3307, is a jurisdictional bar. *District of Columbia v. United Jewish Appeal Fed'n of Greater Wash., Inc.*, 672 A.2d 1075, 1079 (D.C. 1996). And the federal refund-suit provision, 26 U.S.C. § 7422, likewise "make[s] timely filing of a refund claim a jurisdictional prerequisite to bringing suit." *Comm'r v. Lundy*, 516 U.S. 235, 240 (1996).

Bizarrely, the Superior Court *acknowledged* that the six-month time limit to appeal under Sections 47-3303(a) and 47-2021(a) is one of those jurisdictional bars. *See* JA 107 ("Because both D.C. Code § 47-2021(a) and D.C. Code § 47-3303 provide that an aggrieved taxpayer 'may appeal' the adverse action within six months, the Court concludes that the six-month limitation contained in these sections is jurisdictional."); *First Interstate*, 604 A.2d at 11 ("[F]ailure to file within the six-month period [described in Section 47-3303] deprives the Superior Court of jurisdiction to consider the taxpayer's appeal."). Yet it refused to extend that logic to the predicate act of filing a refund claim with OTR that is included in the same provision in Section 47-2021(a). Thus, under the Superior Court's interpretation of this statutory scheme, applying for a refund in the first place is not a jurisdictional requirement, but the time limit to appeal the denial of that decision *is* a jurisdictional requirement. That makes little sense. If a taxpayer need not file a refund claim with OTR at all to seek review in the Superior Court, then the six-month limitation lacks any force, in direct conflict with this Court's decisions.

Treating administrative exhaustion as a jurisdictional requirement makes good sense, not just because of the unique historical pedigree of tax refund suits, but also for practical reasons. As this Court noted in *Keyes*, reiterated in *Kleiboemer*, and explained yet again in *Craig*, "absent the expected filing of claims at the administrative level, the District could not know the full extent of its liability for refunds and could not plan its budget accordingly." *Craig*, 930 A.2d at 965 n.24. Tax refund suits that bypass OTR threaten "financial instability" and in reality must be funded by "an additional tax on innocent taxpayers, or the reduction of services, in an already financially beleaguered city." *Keyes*, 362 A.2d at 737. "[T]he financial interests of the District and the public interest would not be served by allowing taxpayers in such a case to bypass the statutory procedures for refund." *Kleiboemer*, 458 A.2d at 735. Construing Section 47-3310(b) as the Superior Court did creates a fundamental inconsistency with the rest of the tax code that "lead[s] to unreasonable results," "create[s] obvious injustices" for the District and for taxpayers, and "produce[s] results at variance with the policies intended to be furthered by the legislation." *Expedia*, 120 A.3d at 631 (internal quotation marks omitted).

The impracticability of the Superior Court's approach is especially obvious in class actions, which are themselves significant departures from normal litigation. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). In the normal course, refund claims are processed by OTR, which is designed to perform all the administrative work required to investigate the claims and verify the information submitted. But here, the Superior Court had to shoulder that burden in the first instance for hundreds of claims, all at once, because the court allowed plaintiffs and class members to bypass the normal statutory procedures. *See, e.g.*, JA 150 (describing several days of hearings), 151-55 (addressing issues ranging from whether each individual organization is a 501(c)(3), whether they have an office located in the District, and the status of their tax exemption form). The Tax Division of the Superior Court is meant to *review* refund claims; it makes no sense for judges to act as OTR administrators from the outset.

B. The Superior Court and plaintiffs' contrary reasoning lacks merit.

The Superior Court's reasoning and plaintiffs' arguments against treating a refund claim as a jurisdictional prerequisite are all unpersuasive.

First, to the extent plaintiffs argue that the law of the case or principles of forfeiture or waiver support affirmance, they are wrong. The District's argument is jurisdictional, and so it may be raised at any time—even for the first time on appeal. *Friendship Hosp.*, 698 A.2d at 1006; *see Customers Parking, Inc. v. District of Columbia*, 562 A.2d 651, 654 (D.C. 1989) (noting that the court has an independent obligation to ensure its own jurisdiction). And although the District acknowledged below that it did not bring Section 47-3310(b) specifically to the Superior Court's attention until its renewed motion to dismiss in January 2025, *see* JA 140-41, the District's original motion to dismiss and motion for reconsideration each emphasized that the tax statutes mandate exhaustion of refund claims by requiring those claims to first be filed with OTR, citing Sections 47-2020(a), 47-2021(a), and 47-3303. *See* JA 85-89; JA 104-07. In any event, the Superior Court addressed the District's Section 47-3310(b) argument on the merits, JA 142-43, meaning the argument is fully preserved for this Court's review. *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995); *District of Columbia v. Helen Dwight Reid Educ. Found.*, 766 A.2d 28, 33 n.3 (D.C. 2001).

Second, the Superior Court's sole basis for rejecting the District's renewed motion to dismiss, which relied on Section 47-3310(b), is that although a plain reading of that statute "indicates that the Superior Court has jurisdiction over claims where a timely refund has been filed," "the statute lacks a qualifier to indicate the Superior Court *only* has jurisdiction where a timely refund has been filed." JA 142. The court found the phrase "if a timely refund claim has been filed" insufficient because "if" is "weaker" than phrases like "provided that," "must," and "only," which had been used in other statutes. JA 143. And the court seemed to agree with plaintiffs' argument that the minor change to Section 47-3310(b)'s predecessor statute from "provided, that" to "if" "indicates an intentional use of the word . . . to not create a subject-matter jurisdiction bar to bringing suit in Superior Court." JA 143.

That reasoning fails to give the statute's words their ordinary meaning, much less read those words "in the light of the purpose of the statute taken as a whole." *Expedia*, 120 A.3d at 630-31 (internal quotation marks omitted). The ordinary meaning of "provided" is "on condition," "on these terms," "this being understood, conceded, or established," or—critically—"if." *Webster's New Twentieth Century Dictionary of the English Language* 1450 (2d ed. 1968), https://tinyurl.com/pd73p93j; *see* Bryan A. Garner, *Garner's Modern English Usage* 744 (4th ed. 2016) ("provided that" is equivalent to "if" and "nine times out of ten the word *if* is a better choice than either *provided that* or *providing that*"). This minor wording change—substituting "provided, that" with its direct synonym "if"—cannot bear the weight the Superior Court placed on it. Even if such a reading were possible in isolation, it would be impossible when considering the broader tax code, the decades of precedent about the unique nature of tax refund suits, and the "practical consequences when determining a reasonable construction of the District's sales tax law." *Expedia*, 120 A.3d at 637. The idea that the legislature intended to undo the holding of *American Security* and create an unexplained exception to a longstanding, well-worn principle of jurisdictional exhaustion is an unreasonable construction that leads to unreasonable results.

That is particularly true where nothing in the legislative history suggests that this wording change was intended to alter the statute's meaning. Indeed, all indications are to the contrary. The change from "provided, that" to "if" appears for the first time as part of Congress's adoption of the Court Reform Act in 1970. *See* Pub. L. No. 91-358, § 161(a)(7), 84 Stat. 473, 581. The House Report explained that that section of the Court Reform Act "amends various tax statutes of the District to reflect the exclusive jurisdiction of the Tax Division of the new Superior Court[,] to repeal provisions made obsolete by the transfer, and to allow six months, rather than ninety days, for filing tax cases because of the abolition of the alternate common-law remedies in U.S. District Court. *There are no other substantive changes*." *Nat'l*

Graduate Univ., 346 A.2d at 742 (quoting H.R. Rep. No. 91-907, at 165 (1970)). And this Court concluded, based on that legislative history, that "except for the enlarged time requirement, Congress intended to retain identical requirements for filing petitions in the Superior Court as were provided in the predecessor section for filing in the District of Columbia Tax Court." *Id.* The Court accordingly rejected an argument that a change in the predecessor to Section 47-3303's timing requirements for petitions to appeal transformed what was "a jurisdictional requirement" into "merely a statute of limitations." *Id.* at 743.

The same reasoning applies here, to the change from "provided, that" to "if" in the predecessor to Section 47-3310(b). "Since Congress intended to make no changes" to these tax statutes, the refund claim requirement, "as in the predecessor section, is jurisdictional in nature." *Id.* at 743. To conclude otherwise would conflict with this Court's precedents and violate the principle that legislatures do not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

Third, plaintiffs' argument that Section 47-3310(b) is a claim-processing rule that speaks only to a party's procedural obligations and not the Superior Court's authority also fails. That interpretation reduces the exhaustion requirement to a mere filing deadline and, again, ignores decades of precedent confirming that tax refund suits require explicit statutory authorization. *See Craig*, 930 A.3d at 954. Because of this "basic precept of the District's scheme of taxation," *Nat'l Bank of Wash.*, 431 A.2d at 5, Section 47-3310 is not governed by recent cases from the Supreme Court and this Court about whether "*time bars* are nonjurisdictional" or are instead "claim-processing rules, which seek to promote the orderly progress of litigation," *United States v. Kwai Fun Wong*, 575 U.S. 402, 409-10 (2015) (emphasis added) (internal quotation marks omitted).

At bottom, Section 47-3310(b) is not a time bar. Indeed, it does not contain a timing requirement at all—the six-month deadline to bring suit following denial of a sales-tax refund claim is housed in Section 47-2021, not Section 47-3310(b). Instead, as with the property tax statutes, Section 47-3310(b) creates a scheme where a taxpayer's "prior resort to the statutorily-prescribed administrative review procedure for seeking a [sales] tax refund is an essential element in a procedure of purely statutory origin." *Craig*, 930 A.2d at 954 (internal quotation marks omitted). This Court's precedents in *American Security*, *Keyes*, *Kleiboemer*, and *Craig*, among others, set out the relevant rule—not the Supreme Court's recent decisions about time bars and claim-processing. But even if those principles applied, Section 47-3310(b) would easily satisfy them. For the reasons already discussed, there is no doubt that the "traditional tools of statutory construction" "plainly show that Congress imbued [this] procedural bar with jurisdictional consequences." *Kwai Fun Wong*, 575 U.S. at 410. Indeed, this Court has even construed statutory requirements that are closer to time bars, like the six-month time limits to appeal to the Tax Division, to be jurisdictional. *First Interstate*, 604 A.2d at 11; *Friendship Hosp.*, 698 A.2d at 1006.

Fourth, plaintiffs' assertion that they could not have filed a refund claim with OTR for sales tax overpayments because they are purchasers, not vendors, is inconsistent with the statute and fails to persuade. An application for a sales tax refund "may be made by the person upon whom such tax was imposed and who has actually paid the tax." D.C. Code § 47-2020(a). Under the sales tax statutes, the purchaser is the ultimate taxpayer—the one "who has actually paid the tax," *id.*—because "[t]he vendor is required to collect the tax from the purchaser, who is required to reimburse the vendor for the tax." *Hosp. Partners*, 290 A.3d at 47 (citing D.C. Code § 47-2003(a)). The vendor is also required to pay the purchaser back in the event any excess tax is collected. D.C. Code § 47-2003(b). In other words, in most cases (including this one), it is undeniably the purchaser "who has actually paid the tax" and thus may seek a refund through OTR. The statute itself recognizes that Section 47-2020(a) may apply to individuals other than vendors, because it specifies that "[w]hen an application is made by a vendor who has collected reimbursement of such tax," the vendor cannot receive a refund until he establishes to OTR's satisfaction that he "has repaid to the purchaser the amount for which the application for refund is made." *Id.* § 47-2020(a). That provision would be superfluous if vendors were the only payors that could seek refunds for sales taxes. *See Grayson*, 15 A.3d at 238.

Plaintiffs' reading is also inconsistent with this Court's decision in *Hospital Partners*, which involved a refund claim to OTR brought by a hospital that was the ultimate payor of the sales tax, not the vendor on whom the tax was imposed. *See* 290 A.3d at 47. According to plaintiffs, that lawsuit should have been impossible because the hospital was not the taxed entity. In reality, OTR accepted the hospital's refund claim and adjudicated its merits, and the Superior Court and this Court reviewed the merits too. Although the hospital's standing to pursue a refund claim was not directly addressed in the decision, the ruling shows that plaintiffs here at a minimum could have attempted to bring refund claims to OTR.

Relatedly, plaintiffs' insistence that OTR's sales-tax refund claim form does not accommodate refund claims of sales tax paid by purchasers is simply not true. *See* JA 82-83. The form exists to provide a uniform application under oath for any purchaser or vendor to apply to OTR for a refund for sales tax paid that was allegedly illegally or erroneously collected. Nothing on the form is inconsistent with an application by a purchaser, and nothing would prohibit plaintiffs from using the form to provide the required information to OTR. *See* JA 131-33 (excerpt from plaintiffs' summary judgment exhibit summarizing the information from hotel bills showing the required information). Moreover, although no statute or regulation expressly compels refund applicants to use the form, the statute requires "an application under oath . . . filed with [OTR]." D.C. Code § 47-2020(a). The claim form, signed by the applicant and sworn or affirmed under oath, along with an attached letter adequately explaining the basis for the requested refund, would suffice. And if OTR had denied a refund claim on a formalistic ground not supported by law, that denial would still satisfy the statutory exhaustion argument. But plaintiffs made no such effort.

Even if the Court thinks that the statute is ambiguous with respect to whether a purchaser may file a claim for refund, it should hold that the statute does permit such claims. For one, genuinely ambiguous tax statutes should be construed in favor of the taxpayer. *Expedia*, 120 A.3d at 631. And here it is in the *general* taxpayer's interest to be able to file a refund claim for sales tax as a purchaser, even if it may not benefit these specific plaintiffs because of litigation choices that they have made. The Court should also adhere to its normal practice of deferring to OTR's reasonable interpretation of statutes it administers as long as that interpretation is "not plainly wrong or inconsistent" with the statutory language or legislative intent. D.C. Code § 2-510(c); *see NBC Subsidiary WRC-TV, LLC v. D.C. Off. of Tax & Revenue*, 125 A.3d 337, 338 (D.C. 2015). And in reality, purchasers routinely file applications with OTR for refunds of sales taxes that the purchasers paid that were illegally or erroneously collected and OTR adjudicates those claims. *See Hosp. Partners*, 290 A.3d at 47.

Ultimately, plaintiffs' argument is self-defeating. If plaintiffs do not believe that they qualify as "the person upon whom such tax was imposed and who has actually paid the tax," D.C. Code § 47-2020(a), then they are left without *any* statutory authorization for the filing of their refund suit. And if that is so, their case must be dismissed because the court cannot issue refunds "absent an authorizing statute." *Keyes*, 362 A.2d at 732; *Nat'l Bank of Wash.*, 431 A.2d at 5.

Finally, plaintiffs argued that filing refund claims with OTR would have been futile because OTR could not declare the statute unconstitutional and would have denied their claims. Those arguments are irrelevant because filing a claim is not just an ordinary exhaustion of administrative remedies, it is a jurisdictional prerequisite. This Court has previously rejected arguments just like plaintiffs', and it should do so here too. *See, e.g.*, *Craig*, 930 A.2d at 955-58 (statutory requirement of exhaustion enforced in the face of a constitutional claim); *see United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 9 (2008) ("Congress has the authority to require administrative exhaustion before allowing a suit against the Government, even for a constitutional violation"—a principle "fully applicable to claims of unconstitutional taxation."). Adhering to that same principle here would still authorize judicial review of constitutional claims, just as part of the normal, statutorily mandated procedure for pursuing tax refunds.

II. If There Is Jurisdiction, The Court Should Remand For Reconsideration Of The Merits.

If the Court concludes that the Superior Court had jurisdiction to hear the plaintiffs' refund suit despite their failure to file refund claims, it should nevertheless remand for consideration of whether the dormant Commerce Clause applies to the District. "It is well established that Congress may authorize the States to engage in regulation that the Commerce Clause would otherwise forbid." *Maine v. Taylor*, 477 U.S. 131, 138 (1986). Under the Home Rule Act, "Congress . . . has the opportunity to disapprove any law passed by the Council before the law may become effective," which raises the question "whether, as a matter of law . . . Council-passed legislation that Congress did not disapprove . . . could actually violate the dormant Commerce Clause." *Am. Bus Ass'n, Inc. v. District of Columbia*, 2 A.3d 203, 213 n.19 (D.C. 2010); *see DC Winery, LLC v. D.C. Alcoholic Beverage Control Bd.*, 299 A.3d 574, 579 n.6 (D.C. 2023) ("There may be some debate over whether the dormant Commerce Clause applies to laws . . . that the D.C. Council passed and Congress declined to disapprove."). *But see Milton S. Kronheim & Co. v. District of Columbia*, 91 F.3d 193, 198 (D.C. Cir. 1996).

The Superior Court did not address this issue in the proceedings below, even though the District argued that the dormant Commerce Clause does not apply to Council-enacted legislation passively approved by Congress. *See* D.C. Opp. to Pls.' Mot. for Summ. J. at 8 n.2 (Mar. 29, 2023). This Court is "a court of review, not of first view," *Gilliam v. D.C. Dep't of Forensic Scis.*, 343 A.3d 900, 906 (D.C. 2025) (internal quotation marks omitted), so it need not address this thorny question in the first instance. Instead, if the Court does not vacate the Superior Court's judgment for lack of subject-matter jurisdiction, it should remand for consideration of the dormant Commerce Clause question.

III. The Superior Court Erred In Ordering Prejudgment Interest Dated Before The Close Of The Class Claim Period.

If the Court concludes that the Superior Court had jurisdiction to hear this dispute and declines to remand for consideration of the dormant Commerce Clause's application, it should at minimum vacate one portion of the order awarding prejudgment interest to the class members. All agree that the relevant statute authorizes an award of prejudgment interest from the date the class members filed a "petition" to the Superior Court. The Superior Court interpreted this language to mean the date that the plaintiffs sought class certification, even though the actual identity of the class members and the amounts of their claims were not conveyed to the District until much later, at the end of the class claims period. That ruling was wrong. The purpose of the prejudgment interest provision is to ensure that the District has notice of the nature and amount of the claims against it; until the claims period closed, the District had neither. Properly applying this statute, the class members are not entitled to prejudgment interest until the date that they identified themselves and the value of their refund claims to the District.

The statutory text establishes the parameters of the prejudgment interest period. D.C. Code § 47-3310(c) generally authorizes 6% annual prejudgment interest for refunds on overpayments. The default period for when prejudgment interest accrues is "from the date the overpayment was paid until the date of refund." D.C. Code § 47-3310(c). But paragraph (1) establishes an exception to that default rule for certain kinds of taxes that are "not assessed and then paid as a deficiency or as additional tax." *Id.* § 47-3310(c)(1). The sales taxes at issue here fall into this category because they were collected from purchasers at the point of sale; they were not paid in response to a deficiency assessment by OTR. For these kinds of non-deficiency-assessment taxes, prejudgment interest is calculated "only from the date of filing a claim for refund or a petition to the Superior Court, as the case may be." *Id.*

In *Kleiboemer*, this Court explained that this language requires individual claims, not class allegations, before prejudgment interest begins to accrue. *See* 458 A.2d at 736 (construing the same statutory language relevant here, that "interest shall be allowed and paid only from the date of filing a claim for refund or a petition to the Superior Court," in the predecessor statute to Section 47-3310). *Kleiboemer* explained that to calculate the start date for prejudgment interest under the earlier version of Section 47-3310, individual claims, not class claims, "are needed . . . so that the District will know the exact amount of refunds actually claimed and can plan accordingly." 458 A.2d at 737. In other words, the District "could not know the full extent of its liability for refunds and could not plan its budget accordingly" unless it was given more than "mere notice that the taxing statute has been challenged." *Id.* at 735, 737. For that reason, the *Kleiboemer* Court rejected the argument that a class action petition filed in Superior Court could count as the "date of filing a . . . petition to the Superior Court" for the purpose of calculating prejudgment interest for each individual class member. *Id.* at 736-37. Instead, the Court reasoned, prejudgment interest must run from the date the *individual* taxpayer filed a petition or claim for refund and provided the District with the exact amount of refund claimed. *Id.* And under no circumstances could statutory prejudgment interest run "from the date the taxpayer overpaid the tax." *Id.* at 736.

Here, there is no dispute that the *named* plaintiffs provided notice of their claims when they filed their complaint on June 12, 2017, JA 155-56, but the remaining class members did not identify themselves until the close of the claims period. *Kleiboemer* requires, at a minimum, some form of individualized notice to the District of "the full extent of its liability for refunds" for each class member to trigger the start of prejudgment interest under Section 47-3310(c)(1). 458 A.2d at 735. That notice did not occur before June 6, 2025, the end of the claims period and the deadline for submitting proof of claims. *See* JA 147. That was when the District learned the specifics of each class member's refund claim and is therefore the correct start date for prejudgment interest under Section 47-3310(c)(1).

The Superior Court rejected that straightforward conclusion. With no discussion of *Kleiboemer* or the District's need for individualized notice of claims, the court ordered that prejudgment interest for class members should begin from the date of the class certification motion—March 29, 2019—or for claims accruing after that date, the date of overpayment. JA 156. That was error. Plaintiffs' class certification motion identified the parameters of who was in the class, but it did not spell out the amount of the refund for each class member or serve as a meaningful substitute for an individualized claim in any other way. Again, *Kleiboemer* emphasized that "mere notice that the taxing statute has been challenged" is insufficient to trigger the start of the prejudgment interest clock under the statute. 458 A.2d at 737. Without "[i]ndividual claims" making clear "the exact amount of refunds actually claimed," *id.*, the plain language of 47-3310(c)(1) is not satisfied.

Nor does it make any sense that, for class members whose claims accrued after the motion for class certification was filed, the "date of overpayment" could be the date that interest begins. JA 156. The date of overpayment is not an option under the statute for the refunds plaintiffs seek here, which were part of an overpayment "not assessed and then paid as a deficiency or as additional tax." D.C. Code § 47-3310(c)(1). Indeed, *Kleiboemer* rejected the date of overpayment as the start date for interest in these circumstances because it goes against "the express language of the statute." 458 A.2d at 736. By contrast, if plaintiffs had sought refunds for an overpayment that *was* assessed and then paid as a deficiency or as additional tax, like property tax might be, the statute allows interest "from the date the overpayment was paid." D.C. Code § 47-3310(c); *see also Kleiboemer*, 458 A.2d at 737 (explaining that "taxpayers in the instant case who did not pay the tax because of an assessment of deficiency" may only receive interest that "runs from the respective dates they filed their claims for refund, rather than from the dates they paid the tax").

Plaintiffs, for their part, argued that class members' prejudgment interest should run either from the date of the complaint or, if the overpayments were made after the complaint, from when the overpayment was made. That argument is fundamentally incompatible with *Kleiboemer* and the text of Section 47-3310(c)(1), and this Court should reject it.

* * *

Dismissal of this case for lack of jurisdiction is the correct—and fair—result. This Court has long recognized that "fiscal considerations require" adherence to the "formalistic" and "technical" requirements of the tax statutes, "even if at times a seeming hardship results to the taxpayer." *Keyes*, 362 A.2d at 737. Despite that principle, and decades of precedent, plaintiffs chose to bypass OTR and bring a class action instead.

The consequences of plaintiffs' choice to sue in Superior Court, and the Superior Court's erroneous decision to entertain this lawsuit, now fall unfairly on the District and its taxpayers. "Where class action tax refunds for fiscal years in the past are in issue, the relief sought would not emanate from some inexhaustible treasury. The reality is that the funds could only be supplied by an additional tax on innocent taxpayers, or the reduction of services, in an already financially beleaguered city." *Id.* "[A]bsent the expected filing of claims at the administrative level, the District could not know the full extent of its liability for refunds and could not plan its budget accordingly." *Kleiboemer*, 458 A.2d at 735. "[T]he financial interests of the District and the public interest would not be served by allowing taxpayers in such a case to bypass the statutory procedures for refund." *Id.*

CONCLUSION

This Court should vacate the judgment and remand with instructions to dismiss for lack of subject-matter jurisdiction. If the Court concludes there is jurisdiction, it should vacate the judgment for reconsideration of the merits. Alternatively, if it takes neither course, it should reverse the Superior Court's decision on prejudgment interest for class members and provide that that interest should accrue beginning June 6, 2025, the close of the class claims period.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 8, 2026, this brief was served through this Court's electronic filing system to:

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