SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

AMERICAN PHILOSOPHICAL FOUNDATION, et al,	:	
	:	Case No. 2019 CVT 000003
v.	:	Judge Kimberley S. Knowles
DISTRICT OF COLUMBIA	:	

ORDER

On September 3-4 and October 1-2, 2025, the Court held hearings to resolve any issues concerning the validity of submitted Proof of Claims forms (collectively "the hearing"). Present at the hearings were Jeffrey Klafter, counsel for Petitioner; Silvija Strikis, counsel for Petitioner; E. Perot Bissell, counsel for Petitioner; Brendan Heath, counsel for Respondent; Bazil Facchina, D.C. Office of Tax Revenue ("OTR"); Elissa Borges, D.C. Office of the Attorney General; and Adam Tuetken, D.C. Office of the Attorney General.

Pending in this matter are the disputed proof of claims forms; any other issues appropriately raised in parties' post-hearing briefs; Plaintiff's Motion to Require the District to Pay for the Costs of Providing Notice and Proof of Claim Forms to Potential Class Members, filed December 27, 2024 ("Motion to Pay Costs"); Plaintiffs' Motion for Award of Attorneys' Fees and Expenses, and a Service Award, Filed October 17, 2025 ("Motion for Attorneys' Fees"); and Respondent's Opposed Motion to Vacate, filed October 17, 2025. This Order will not rule on the Opposed Motion to Vacate, as that addresses the Honorable John F. McCabe's February 13, 2024, Order and is not before this Court.[1]

I. Background

This matter was initiated in the Civil Division of the Superior Court of the District of Columbia in Case No. 2017-CA-004057-B. On February 1, 2019, this matter was transferred to the Tax Division of the Superior Court of the District of Columbia. On April 30, 2021, Judge Pittman issued an Order certifying the class as all "semipublic institutions that do not have offices within the District that paid a sales or hotel tax to any of the hotels listed below…." after

[1] The Honorable John F. McCabe will address this motion.

finding that class action is a superior method of resolution in this matter as the inverse would permit re-litigation of this issue on cases brought by similarly situated plaintiffs. On February 13, 2024, Judge McCabe issued Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment, finding that D.C. Code Section 47-2005(3) facially discriminates against interstate commerce and granted summary judgment on the subject of liability in favor of Petitioners.

II. Disputed Proof of Claims Forms

The class definition, as amended by Order issued March 12, 2025, is:

> All semipublic institutions that do not have offices within the District and which have been classified as exempt from federal taxation pursuant to IRC 501(c)(3), that paid a sales or hotel tax to any of the hotels listed below in connection with any meetings held at any such hotels for the purpose for which the institution was organized or for honoring the institution or its members from December 12, 2016, and continuing until there is a final determination that the requirement under D.C. Code § 47-2005(3)(C) that a semipublic institution must reside in the District in order to obtain an exemption from sales and hotel taxes violates the Commerce Clause of the United States Constitution (the "Class Period"):
>
> The Washington Hilton, the Marriott Marquis, the Renaissance Washington, the Omni Shoreham Hotel, the Grand Hyatt Hotel, the Mayflower Hotel, the Hyatt Regency, the JW Marriot, the Capital Hilton, the Willard Intercontinental, the Marriott Wardman Park Hotel, the Fairmont, the Mandarin Oriental, the Watergate Hotel, the Hilton D.C. National Mall Hotel, the Marriott Georgetown, the Washington Marriott at Metrocenter, and the Westin Washington City Center.

The District's objections to claimants are divided into seven categories: the organization is not a 501(c)(3); the meeting was not held at a class hotel; the claimant had a D.C. location at the time of the meeting; the claimant had an active D.C. tax exemption that they did not use; the claimant provided insufficient proof of payment; the claimant's meeting does not go towards its purpose or honoring its members; and the meeting was outside the class period. The District submitted an updated list of their objections in Exhibit A, filed October 17, 2025 with their post-hearing brief. As some of the District's objections are partial, only relating to some of the claimant's meetings, the Court's findings, as detailed below, are narrowed similarly.

A. On Being a 501(c)(3)

The outstanding objections in this category are DCT00000177 – Pacific Northwest Waterways Association and DCT00001195 – John Carroll Society. The Court will sustain the

Pacific Northwest Waterways Association objection as the party did not appear to testify, nor did Petitioners provide the Court with any additional evidence to consider.

On the John Carroll Society ("JCS"), the District argues that JCS derives its IRS nonprofit status by virtue of its membership within the Catholic Church, and under a parent organization, the United States Conference of Catholic Bishops ("USCCB"). The District argues that JCS' indicated Tax Identification Number ("TIN") does not correspond to any IRS-recognized 501(c)(3) organization. Petitioners argue that JCS is a wholly separate organization from USCCB and has its own TIN.

At the hearing, Petitioners admitted into evidence Exhibit F, a letter from the IRS' Director of Exempt Organizations, which states that the USCCB's subordinate organizations are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Exhibit F states that these subordinate organizations are not listed in the Tax Exempt Organization Search on the IRS website, but are verified through the Official Catholic Directory. Exhibit F contains a copy of the Official Catholic Directory for 2024 which lists JCS as a subordinate organization.

The Court finds that the John Carroll Society is a 501(c)(3) organization, as verified through information supplied by the IRS. Therefore, the Court denies this objection.

B. On Not Being a Class Hotel

The outstanding objections in this category are DCT00001081 – Greater Philadelphia Health Action; DCT00001082 – Institute of American Indian & Alaska Native Culture; DCT00001142 – Concerned Women for America; and DCT00001168 – Association for Talent Development. At this time, the Court will reject Petitioner's oral request, made at the hearing, to expand the list of hotels detailed in the class definition, and will sustain all objections.

C. On Having a DC Location

The outstanding objections in this category are DCT00001136 – Cherry Blossom Inc. and DCT0001195 – John Carroll Society. On Cherry Blossom Inc., the District argues that Cherry Blossom Inc. obtained a Certificate of Exemption, which, pursuant to DC Code § 47-2005(3)(c), requires the organization to be located in the District of Columbia. The District argues that allowing Cherry Blossom Inc. to claim that they both do and don't have a location in the District of Columbia would be contradictory. Petitioners offered Robert Wolfe, treasurer, as a witness. Mr. Wolfe testified that his organization has never had an office in the District of Columbia and the address listed on the Certificate of Exemption is their former lawyer's address, which he was

not aware was used on the Certificate of Exemption.

The Court credits Mr. Wolfe's testimony that Cherry Blossom Inc. has never had an office in the District of Columbia. To address the District's argument that the claimant is trying to "have it both ways," Cherry Blossom Inc., as it relates to the meetings claimed, never used their tax exemption, so the Court rejects the argument that it is encouraging gaming the system. Therefore, the Court will deny this objection.

On the John Carroll Society, the District argues that it would be inequitable for JCS to avail itself of a tax-free nonprofit status it enjoys by virtue of its identity with a D.C. organization, USCCB, while claiming it is legally distinct from that same organization and hence ineligible for in-District favorable treatment. Petitioners argue that the fact that JCS' tax status is derivative of the exemption obtained by USCCB is not related to whether JCS can be considered to be located in the District of Columbia.

In considering Exhibit F, the IRS' Director of Exempt Organizations refers to the organizations listed in the Official Catholic Directory for 2024 as "institutions operated by the Roman Catholic Church in the United States." It seems inappropriate to impart on all agencies and instrumentalities of the Roman Catholic Church operating in the United States the address of USCCB, especially when the Official Catholic Directory lists JCS as being in Glen Echo, Maryland. Therefore, the Court will deny this objection.

D. On Not Using Tax Exemption

The outstanding objections in this category are DCT00000174 – American Anthropological Association; DCT00000187 – Congressional Fire Services; DCT00001010 – Shakespeare Association of America; DCT00001054 – College and University Professional Association; DCT00001067 – International Society for Technology in Education; DCT00001111 – National Association of Corporate Directors; DCT00001116 – American Bankruptcy Institute; DCT00001121 – American Epilepsy Society; DCT00001136 – Cherry Blossom Inc.; DCT00001138 – American Thyroid Association Inc.; DCT00001142 – Concerned Women for America; DCT00001160 – Women's Zionist Organization of America Inc.; DCT00001162 – Marine Corps Scholarship Foundation; DCT00001172 – The Nature Conservancy; and DCT00001202 – National School Boards Association Inc. Parties have asked the Court to rule on these objections collectively, and the Court agrees that that is appropriate.

The District's argument against these claimants is that they all possessed valid,

nonexpired District tax exemption certificates which could have been presented to avoid paying the sales tax. The District argues that the requirement that an organization have a location in the District of Columbia, which is needed to receive the certificate, is not applied on a continual basis, and claimants who move outside the District of Columbia are allowed to continue using that certificate. Petitioners offered Denise Cappuccio, Chief Financial Officer for claimant Concerned Women for America, as a witness. Ms. Cappuccio testified that she called OTR on two separate occasions to inquire whether her organization was allowed to continue using the certificate after relocating to Virginia. Ms. Cappuccio testified that an OTR representative, on both occasions, told her Concerned Women for America were no longer able to use their tax exemption as they had moved out of the District of Columbia. The District argues that does not prove she could not use the exemption, only that she was advised not to.

Cherry Blossom Inc.'s Certificate of Exemption form, introduced as Exhibit I, does not address whether relocation affects an organization's use of the exemption, only that it "is valid from the effective to the expiration date stated. See Sales and Use Tax Exemption under DC Code § 47-2005(3)." DC Code § 47-2005(3)(c) states that sales to semipublic institutions shall not be exempt unless "such institution *is* located in the District" (emphasis added). The DC Code does not state, as the District argues, that a plain reading of this statute indicates that the organization need only be located in DC at the time of their application, but uses a present tense, which indicates that the organization need be located in DC at the time they use the exemption.

The Court credits Ms. Cappuccio's testimony. As the Certificate of Exemption form does not explain whether the tax exemption may continue to be used, it is reasonable to expect organizations to contact OTR and to rely on the information given to them by OTR employees.

Additionally, the Court recognizes that there is no language in the Class Definition indicating that the failure to use a tax exemption precludes a claimant from joining the class. Therefore, the Court will deny all objections in this category.

E. On Providing Insufficient Proof of Payment

The outstanding objections in this category are DCT00000177 – Pacific Northwest Waterways Association; DCT00001089 – Association for Jewish Studies; and DCT00001198 – Association of Public Health Laboratories. The Court will sustain the Pacific Northwest Waterways Association and Association of Public Health Laboratories objections as the parties did not appear to testify, nor did Petitioners provide the Court with any additional evidence to

consider.

On the Association for Jewish Studies, the District argues that claimant provided insufficient proof of payment as the meeting in question is scheduled for December 12, 2025, and has yet to occur. Petitioners argue that the class period has not ended. While the Court will reserve its full analysis on future claims for the discussion below, the Court will sustain this objection.

F. On the Purpose of the Meeting

The outstanding objections in this category are DCT00000105 – Pinellas Education Organization; DCT0000117 – Drama Club Inc.; DCT00000148 – Connecticut Association of Boards of; DCT00000154 – Global Concepts Charter School; DCT00000158 – Wingate University; DCT00000166 – Stowers Resource Management Inc.; DCT00000171 – Stowers Institute for Medical Research; DCT00000172 – Sexual Violence Center; DCT00000183 – Rose Villa Inc.; DCT00001095 – Neomed Center Inc.; DCT00001126 – Museum Associates; DCT00001144 – Benedictine College; DCT00001146 – Cornelia de Lange Syndrome Foundation Inc.; DCT00001151 – Friendship Community Care Inc.; and DCT00001152 – Illinois Arts Alliance. The Court will sustain all objections as the parties neither appeared to testify, nor did Petitioners provide the Court with any additional evidence to consider.

G. On Being Outside the Class Period

The outstanding objections in this category are DCT00001087 – Varep; DCT00001095 – Neomed Center Inc.; DCT00001126 – Museum Associates; and DCT00001168 – Association for Talent Development. At the hearing, Petitioners stated that they did not challenge these objections. Therefore, the Court will sustain these objections.

III. Other Issues Raised in Post-Hearing Briefs

A. On Interest

The parties agree that, pursuant to D.C. Code Section 47-3310(c), claimants are entitled to a 6% pre-judgment interest on the amount of tax overpaid. Parties disagree on what date that interest should start.

D.C. Code Section 47-3310(c) states that "interest shall be allowed and paid only from the date of filing a claim for refund or a petition to the Superior Court, as the case may be, on that part of any overpayment that was not assessed and then paid as a deficiency or as additional tax." The District argues that the original named plaintiffs are entitled to interest on the amounts of tax

incurred in the meeting described in their initial Complaint filed June 12, 2017, but other class members are only entitled to interest calculated as of the date the claims period closed, June 6, 2025. Petitioner argues that interest should run from the filing of the initial Complaint on June 12, 2017, as the Proof of Claims forms were never filed with this Court and can therefore not be what the statute is indicating. Petitioner does concede that for meetings that occurred after June 12, 2017, interest should begin on the date that tax was paid.

The Court could not find any instructional case law on this issue, nor did parties offer any, so the Court will rely on a plain reading of the statute. D.C. Code Section 47-3310(c) states that interest shall be allowed and paid from the date of petition to the Superior Court. Therefore, the Court finds that for the original plaintiffs, interest shall be paid from the date the original complaint was filed, June 12, 2017. As D.C. Code Section 47-3310(c)(1) also states that interest shall be allowed and paid from the date of filing "as the case may be", the Court finds, in this case, it would be appropriate to consider that, for other claimants, not the original plaintiffs, the filing date of the first motion for class certification, March 29, 2019, would be the correct date for interest to begin. Finally, for all meetings that occurred after March 29, 2019, the Court finds it appropriate to begin interest from the date of overpayment.

D.C. Code Section 28-3302(b) states that interest on judgments against the District of Columbia is at the rate not exceeding 4% per annum. Therefore, post-judgment interest will accrue at an annual rate of 4%.

B. On the Continuance of the Case

Petitioner argues that the District is continuing to enforce D.C. Code Section 47-2005(3) in violation of the Dormant Commerce Clause, as found by the Honorable John F. McCabe in his Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Cross-Motion for Summary Judgment, issued February 13, 2024, and the Court should retain jurisdiction over this case to continue to enforce its judgment that D.C. Code Section 47-2005(3) is unconstitutional. Petitioners requested the Court allow an additional claims process, which would cover the period from June 7, 2025 to the date a final judgment is issued in this matter.

The District argues that Petitioners are asking the Court to step beyond the bounds of this case and turn itself into a roving ombudsman on behalf of different, future, or hypothetical entities. The District argues that the class will definitively close at the time of the final determination of the constitutionality of D.C. Code Section 47-2005(3), and any new claimants

would be completely disconnected from the governing class definition and the Complaint.

The Court acknowledges that, from the day the class closed, on June 6, 2025, until the day the final judgment will be rendered, there are potential claimants who are overpaying tax pursuant to D.C. Code Section 47-2005(3) and who would fulfill every non-time related requirement in the amended class definition. The Court agrees with the District that it would be inappropriate to continue this case past the issuing of the final judgment, but agrees with the Petitioner that there must be some recourse for these organizations. The Court will decline to open a second claims period but finds that these organizations will, after the final judgment is issued, be able to appeal to OTR or open a case with the D.C. Superior Court, as appropriate, for overpayment of tax.

IV. Plaintiffs' Motion to Pay Costs

Petitioners argue that, pursuant to Rule 23(d) of the District of Columbia Superior Court Rules of Civil Procedure, the District should be required to pay for the costs of providing notices and proof of claims forms to all potential Class members. The District, in its post-hearing brief, states it "does not object to paying the administrative fees incurred by the claims administrator as part of the final judgment." Petitioner, in its response to the District's post-hearing brief, stated the final amount of these costs is $72,907.00. The Court finds it appropriate to require the District to pay this cost, that it has agreed to, and will include this amount in the judgment.

V. Petitioners' Motion for Attorneys' Fees

Petitioners' Motion for Attorneys' Fees argues that, pursuant to District of Columbia Superior Court Rules of Civil Procedure 54(d)(2) and 23(h), Petitioners are entitled to an award of attorneys' fees and nontaxable costs incurred for litigating this action, and for a Service Award to Class Representative American Anthropological Association. Petitioners are requesting the fee and expense awards are authorized by the common-fund doctrine, which provides that, when the efforts of a litigant create a common fund, all who benefit from that fund must contribute proportionately to the costs. Petitioners request a percentage-of-the-fund approach, at a rate of 32%.

The District, in its Response filed November 3, 2025, did not object to Petitioners' request for attorneys' fees to be awarded on a common fund basis, nor for them to be paid from the total judgment, to the award being calculated at 32% of the judgment, or to the Service Award to the Class Representative. The District reserved its right to object to any future award impact by a

potential appeal.

Rule 23(h) of the District of Columbia Rules of Civil Procedure states that "in a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by parties' agreement." "In most situations, a reasonable fee is computed by first determining the so-called lodestar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate . . . ." *James G. Davis Constr. Corp. v. HRGM Corp.*, 147 A.3d 332, 346 (D.C. 2016) (citing *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 530 (D.C. 2003)). However, the Court agrees with the Petitioners that in this class-action matter, the common-fund doctrine and percentage-of-the-fund approach are more appropriate than the lodestar method. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (finding a litigant or lawyer who recovers from a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole) (citing *Mills v. Electric Auto-Lite Co*., 396 U.S. 375 (1970); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); cf. *Hall v. Cole*, 412 U.S. 1 (1973)); *see also Passtou, Inc. v. Spring Valley Center*, 501 A.2d 8, 11 (D.C. 1985) (finding that the common fund or benefit exception to the American Rule is fully recognized in the District of Columbia) (citing *District of Columbia v. Green*, 381 A.2d 578, 580 (D.C. 1977)).

The D.C. Circuit Court, which is not mandatory authority but can be persuasive, has found that fee awards in common fund cases may range from 15% to 45%. *See Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 230 (D.D.C. 2015) (citing *Advocate Health Care v. Mylan Labs. Inc. (In re Lorazepam & Clorazepate Antitrust Litig.)*, 2003 U.S. Dist. LEXIS 12344*, 2003 WL 22037741, at 8 (D.D.C. 2003). In evaluating these fee requests, a court may consider (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *Id.*

Petitioners stated that each Proof of Claim form advised each recipient that counsel will seek legal fees, potentially from the total amount of approved claims and not exceeding a one third percentage. The Court has not seen any objections from any claimants. The Court has no reason to question the skill and efficiency of counsel, nor the amount of time devoted to the case. The

Court finds the percentage amount of 32% reasonable in light of the range of percentages recognized by the District Court and the notice to claimants.

Petitioners also request expenses in the amount of $91,047.19 to $91,402.19 for expenses already incurred and projected fees and costs associated with distributing refunds to all approved claimants. The Court finds that Petitioners are entitled to a refund and finds this to be a reasonable amount for expenses incurred. *See Advocate Health Care*, 2003 U.S. Dist. LEXIS 12344 at 33 (The Court concurs with Class Counsel's submission that "the fact that petitioners were willing to expend their own money, as an investment whose reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary.").

Finally, on the Service Award, Petitioners seek a $10,000 incentive award to the class representative. The Court finds that this award is reasonable. *See Advocate Health Care*, 2003 U.S. Dist. LEXIS 12344 at 34 ("incentive awards to named plaintiffs are not uncommon in class action litigation, particularly where a common fund has been created for the benefit of the entire class."); *see also Shaffer v George Wash. Univ.*, 2024 U.S. Dist. LEXIS 118116 (D.D.C. 2024) (Courts routinely approve service awards to compensate named plaintiffs for their efforts during the course of class action litigation, and an award of $10,000 is in line with other awards that have been provided by courts in this Circuit.").

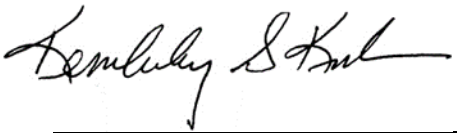
VI. Conclusion

Accordingly, it is this 4th day of November, 2025, hereby

ORDERED that Plaintiff's Motion to Require the District to Pay for the Costs of Providing Notice and Proof of Claim Forms to Potential Class Members, filed December 27, 2024, is **GRANTED**. It is further

ORDERED that Plaintiffs' Motion for Award of Attorneys' Fees and Expenses, and a Service Award, Filed October 17, 2025, is **GRANTED.** It is further

ORDERED that parties shall submit a joint proposed final judgment to this Court, and send a courtesy copy to judgeknowleschambers@dcsc.gov, in accordance with all findings made above **on or before December 1, 2025.** It is further



Kimberley S. Knowles
Associate Judge

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