

MICHAEL J. HOLZHEID,
1126 Sea Spray Ave.
Delray Beach, FL 33483,

On behalf of himself and all others similarly
situated,

Plaintiff,

v.

COMPTROLLER OF THE TREASURY OF
MARYLAND,

Serve On:

Peter Franchot
Comptroller of Maryland
80 Calvert Street
P.O. Box 466
Annapolis, MD 21404-0466

and

THE STATE OF MARYLAND,

Serve On:

Brian Frosh
Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

Defendants.

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
Case No.: _____

CIVIL DIVISION

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CLASS ACTION COMPLAINT

Michael J. Holzheid (hereinafter, "Plaintiff"), on behalf of himself and a class of all others similarly situated, files this complaint against the Comptroller of the Treasury of the State of Maryland (hereinafter, "Defendant Comptroller") and the State of Maryland.

INTRODUCTION

1. In 1988, the State of Maryland chose to statutorily create a right to interest on income tax refunds due to taxpayers in the State. Md. Code Ann. Tax-Gen. § 13-603(a).

Pursuant to Md. Code Ann. Tax-Gen. § 13-603(a), when the State owes a Maryland taxpayer a refund, that refund accrues interest, beginning 45 days after the taxpayer has filed a refund request, should the refund still be outstanding at that time. Until June 1, 2014, all refund claims accrued interest at the greater of 13% or three percentage points above the Federal Reserve Bank's average prime interest rate.

2. By virtue of this statute, Maryland taxpayers have a vested property interest in any and all interest that accrues on tax refunds.

3. Faced with the possibility of significant liability for interest on refunds requested during the pendency of litigation against Defendant Comptroller in *Comptroller of the Treasury of Maryland v. Wynne*, 135 S.Ct. 1787 (2015), in 2014, the State enacted a lower interest rate applicable only to *Wynne* claimants -- one that purports to apply retroactively to those *Wynne* claimants who had petitioned for refunds before the enactment of this newer, lower interest rate. As a result, Plaintiff and all other similarly situated Maryland taxpayers have been deprived of their property right in interest that accrued on their refund requests at a higher rate prior to the enactment of the lower interest rate.

4. Defendant Comptroller intends to apply this unlawful, retroactive interest rate to the refund due Mr. Holzheid and all other similarly situated Maryland taxpayers who filed for refunds pursuant to *Wynne* before the effective date of the new rate. If permitted to proceed, Defendant's actions would constitute an unlawful taking of a vested property interest for public use, without due process or just compensation.

5. The Court should therefore (a) declare that Defendant's application of a retroactive interest rate that applies only to *Wynne* claimants is unconstitutional, pursuant to the Fourteenth Amendment to the Federal Constitution, (b) enjoin Defendant Comptroller from applying anything but the generally applicable statutory interest rate to refunds due Plaintiff and

all others similarly situated; and (c) award plaintiff class members who have already received *Wynne* refunds damages sufficient to compensate them for the interest lost.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this action pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 1-501 and 4-401, because the amount in controversy exceeds \$30,000.

7. This Court has jurisdiction over Defendants pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 6-102 and 6-103, because Defendants maintain their principal place of business in the State, and the actions complained of herein arose in the State.

8. Venue is proper in Baltimore City pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201, because Defendants carry on regular business in the City.

PARTIES

9. Plaintiff Michael J. Holzheid is a resident of the state of Florida and a former resident of Maryland. In 2009, while residing in Maryland, Mr. Holzheid earned income from sources within the State of Maryland as well as from sources outside the State.

10. Mr. Holzheid brings this action pursuant to Maryland Rule 2-231 as a class action on his own behalf and on behalf of the entire class of people similarly situated.

11. Defendant Comptroller of the Treasury of Maryland is a Maryland state agency responsible for collecting revenues, enforcing laws related to those revenues, paying the State's bills, and keeping the State's accounts. Peter Franchot is the current Comptroller, and has served in that position since 2007. He is sued in both his individual and official capacity.

FACTUAL ALLEGATIONS

The *Wynne* Litigation

12. Maryland, like many other states, requires that those who live and work in the State pay income tax. However, unlike many other states, for many years Maryland did not offer

its residents a full credit against their Maryland income taxes for the income taxes they paid to other states on income earned in those states.

13. In 2006, Brian and Karen Wynne (“the Wynnes”), residents of Howard County, Maryland, reported certain income on their Maryland tax return that had been earned out of state. Because the income had been earned and taxed elsewhere, the Wynnes claimed the income taxes paid in other states as a credit against their 2006 Maryland individual income taxes.

14. The Comptroller issued an assessment indicating a deficiency in the taxes owed by the Wynnes. The Wynnes appealed, and their case eventually made its way to the United States Supreme Court.

15. On May 18, 2015, the Supreme Court held that Maryland’s personal income tax scheme violated the federal Constitution by failing to give residents full credit for taxes paid in other states on income earned in those states. *Comptroller of the Treasury of Maryland v. Wynne*, 135 S.Ct. 1787 (2015).

The Result of the *Wynne* Litigation

16. During the pendency of the *Wynne* litigation, many Maryland residents who had paid taxes to other states on income earned in those states and who had not received credit against their Maryland taxes for those payments filed protective claims, requesting a refund from Maryland.

17. Normally, if a taxpayer is owed and files for a refund, interest begins accruing on said refund from the 45th day after the claim is filed. Md. Code Ann. Tax-Gen. § 13-603(a). The Maryland tax code mandates that the interest rate applied to tax refunds is the greater of 13% or three percentage points above the Federal Reserve Bank’s average prime rate of interest. *Id.* § 13-604(b).

18. Recognizing that if the Supreme Court held in favor of the taxpayers in the *Wynne* litigation the State would owe millions of dollars in interest to persons who had filed protective claims for refunds during the pendency of *Wynne*, the General Assembly included a provision in the 2014 Budget Reconciliation and Financing Act of 2014 (“the 2014 BRFA”) mandating that the interest rate for *Wynne* refunds¹ would be the average prime rate of interest during 2015, rather than the rate normally applied to tax refunds pursuant to Md. Code Ann. Tax-Gen. § 13-604(b). *See* 2014 Md. Laws Ch. 464 § 16. The average prime rate of interest for 2015 has thus far been 3.25%.² The Fiscal and Policy Note for the 2014 BRFA estimated that the “savings” to the State from this enactment would total \$38.4 million. Fiscal Note for SB 172, at 8 (2014).

19. Section 16 of the 2014 BRFA took effect on June 1, 2014. *See id.* § 24.

20. After the Supreme Court issued its decision in *Wynne*, holding that the State’s tax scheme violates the Constitution, Defendant Comptroller began the process of issuing refunds to Maryland taxpayers who filed protective claims between 2011 and 2014 for refunds on income taxes paid in other states for income earned in those states, and for which they did not receive full credit in Maryland.³ Pursuant to the 2014 BRFA, the interest rate applied to such refunds is 3.25%.

Plaintiff Michael Holzheid’s 2009 Maryland Taxes

21. In 2009, Plaintiff Michael Holzheid was a resident of Maryland. Accordingly, in early 2010, he filed an income tax return for the year 2009.

22. In his 2009 return, Mr. Holzheid reported and paid taxes to the State of Maryland for that year for income earned out of state.

¹ The revised interest rate applies to tax refunds attributable to tax years between December 31, 2005 and January 1, 2015. *See* 2014 Md. Laws Ch 464 § 20.

² *See* <http://www.federalreserve.gov/releases/h15/current/> (last visited Oct. 27, 2015).

³ *See* <http://governor.maryland.gov/you-may-be-owed-a-tax-refund/> (last visited Oct. 27, 2015).

23. On or about September 5, 2013, based on the ongoing *Wynne* litigation, Mr. Holzheid filed an amended 2009 tax return with a protective claim requesting a refund of \$1,806 as a credit against his total Maryland income taxes based on income taxes paid in other states on income earned in those states.

24. Defendant Comptroller acknowledged receipt of Mr. Holzheid's protective claim on December 11, 2013.

25. Thus, interest has been accruing on Mr. Holzheid's claim for a refund since at least October 20, 2013, or 45 days after its filing date of September 5, 2013.

Defendant's Application of the Revised Interest Rate Unlawfully Deprives Plaintiff and Other Similarly Situated Taxpayers of a Vested Property Interest

26. Maryland law mandates that, should the State grant a tax refund, the appropriate interest rate to be applied to such refund is either 13% or three percentage points above the average prime rate of interest, whichever rate is higher.

27. The State admits that, as a result of the Supreme Court's decision in *Wynne*, it must provide refunds to residents who did not receive credit against their full Maryland income taxes for income taxes paid to other states on income earned in those states in certain years.

28. Despite the clear mandate under Maryland law that the appropriate interest rate to be applied to such refunds is either 13% or three percentage points above the average prime rate of interest, whichever rate is higher, Defendant Comptroller intends to apply a retroactively implemented interest rate of 3.25% to these claims for the entire term of their pendency, rather than from June 1, 2014 forward (the effective date of Section 16 of the BRFA). Upon information and belief, Defendant Comptroller has already begun to issue *Wynne* refunds, and is retroactively applying the 3.25% interest rate to the entire term that the refund has been pending.

29. Defendant's retroactive application of a lower interest rate applicable only to *Wynne* claims is an unconstitutional taking, and deprives Plaintiff and all other similarly situated

Maryland taxpayers of their vested property right in interest that accrued on their refund requests prior to the enactment of the lower interest rate, without due process or just compensation.

30. Specifically, as of the filing of this Complaint, Plaintiff would be due approximately \$297.66 in interest between the filing date of his protective claim and June 1, 2014 under the statutory rate of 13%⁴, but only approximately \$165.74 under the 3.25% rate applicable only to *Wynne* claimants. Thus, Defendant's application of an unlawful, retroactive interest rate would deprive Plaintiff of approximately \$131.92.

31. It is anticipated that Plaintiff's *Wynne* refund claim will be paid by Defendant Comptroller any day, and that Defendant Comptroller will apply the unlawful, retroactive interest rate mandated by Section 16 of the BRFA to the entire pendency of Plaintiff's claim.

CLASS ALLEGATIONS

32. Plaintiff files this Complaint as a class action pursuant to Maryland Rule 2-231.

33. The members of Plaintiff's class are so numerous that their joinder is impracticable. Plaintiff's class is estimated to encompass as many as 55,000 Maryland taxpayers who paid income tax in both Maryland and other states on income earned in those state in tax years between December 31, 20015 and January 1, 2015, who did not receive full credit against their Maryland income taxes for the income taxes paid elsewhere, and who filed protective claims for refunds in Maryland while the *Wynne* litigation was pending.

34. There are questions of law or fact in this action that are common to the class, i.e., whether Section 16 of the 2014 BRFA is unconstitutional on its face, and whether Defendant Comptroller's enforcement of an unlawful, retroactive interest rate on income tax refunds resulting from the *Wynne* litigation violates the Federal Constitution, because it deprives class

⁴ Plaintiff is due 13%, since that rate is greater than 6.25%, or three percentage points above the prime rate of interest. *See* Md. Code Ann. Tax-Gen. § 13-604(b).

members of their vested property rights in interest that accrued on their refund requests prior to the enactment of the lower interest rate, without due process or just compensation.

35. The claims of Michael Holzheid as a representative party are typical of the claims of the class. Mr. Holzheid will fairly and adequately protect the interests of the class.

36. This action is properly maintained as a class action under Maryland Rule 2-231(b)(1)(A) in that separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendants.

37. This action also is properly maintained as a class action pursuant to Maryland Rule 2-231(b)(1)(B) in that separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of other members not party to the adjudications, or would substantially impair or impede their ability to protect themselves.

38. This action also is properly maintained as a class action under Maryland Rule 2-231(b)(2) because Defendants' actions, as more specifically alleged *supra*, are generally applicable to the class, and thus final injunctive relief, and corresponding declaratory relief, are appropriate with respect to the entire class.

39. This action also is properly maintained as a class action under Maryland Rule 2-231(b)(3) in that questions of law or fact common to members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy between the class and Defendant.

40. The commonality of issues of law and fact substantially diminishes the interest of members of the class in individually controlling the prosecution of separate actions. Many of the

members of Plaintiff's class may be unaware of their right to prosecute claims against Defendants. Plaintiff is unaware of any litigation already commenced by members of the class to determine the question presented herein. It is desirable that the claims be concentrated in this forum due to its centrality in the State. This class action can be managed without undue difficulty because Plaintiff will vigorously pursue the interest of the class by virtue of the loss he stands to incur of a vested property interest, should Defendant Comptroller be permitted to apply an unlawful, retroactive interest rate to the entire pendency of the refund due Plaintiff on his 2009 Maryland income tax.

COUNT ONE
Fourteenth Amendment to the U.S. Constitution
Facial Challenge to Section 16 of the 2014 Budget Reconciliation and Financing Act of 2014

41. Plaintiff incorporates by reference the allegations of all preceding paragraphs as if set out again.

42. This Count is brought by Plaintiff, and all other Maryland taxpayers similarly situated, against Defendant the State of Maryland.

43. The 2014 BRFA is unconstitutional on its face as a violation of the Fourteenth Amendment to the U.S. Constitution, because it permits a governmental taking of private property without due process or just compensation, and there is no possible constitutional application of the law.

COUNT TWO
42 U.S.C. § 1983
Violation of Fourteenth Amendment
Unconstitutional Taking without Due Process and Just Compensation

44. Plaintiff incorporates by reference the allegations of all preceding paragraphs as if set out again.

45. This Count is brought by Plaintiff and the class against Defendant Comptroller in his individual capacity. In addition, Defendant Comptroller is sued in his official capacity for declaratory and injunctive prospective relief. Defendant Comptroller is therefore a “person” within the meaning of 42 U.S.C. § 1983.

46. The interest that accrues on *Wynne* refund requests filed by Plaintiff, and all other Maryland taxpayers similarly situated, is private property protected from arbitrary and unreasonable governmental action.

47. Defendant Comptroller’s application of an unlawful, retroactive interest rate for the entire pendency of *Wynne* refund claims deprives Plaintiff, and all other Maryland taxpayers similarly situated, of a vested property right in interest that accrued on *Wynne* refund requests prior to the enactment of the lower interest rate on June 1, 2014, without due process and just compensation.

48. Defendant Comptroller’s actions thus deprive Plaintiff, and all other Maryland taxpayers similarly situated, of their rights under the Fourteenth Amendment to the United States Constitution not to be deprived of property without due process and just compensation (as guaranteed by the Fifth Amendment, which has been incorporated to apply to the State through the Fourteenth Amendment).

49. Defendant Comptroller will continue to cause similar constitutional deprivations by implementing this unlawful retroactive interest rate in the future, as *Wynne* refund claims are processed and paid.

50. It is clearly established that Defendant Comptroller’s taking of private property without due process or just compensation violates the Fourteenth Amendment to the U.S. Constitution.

51. As a direct and proximate result of Defendant Comptroller's actions, class members have suffered damages.

52. In addition, because Defendant Comptroller's actions are ongoing, it is likely that Plaintiff and class members will continue to suffer damages as a result of similar unconstitutional conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court certify this action as a class action and set this matter for trial, and prays for judgment as follows:

53. A permanent injunction enjoining Defendant Comptroller from applying Section 16 of the Budget Reconciliation and Fairness Act of 2014 to Plaintiff or any member of this class;

54. A declaration that Section 16 of the Budget Reconciliation and Fairness Act of 2014 is unconstitutional on its face, in violation of the Fourteenth Amendment;

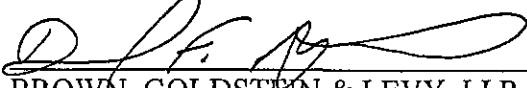
55. A declaration that application of Section 16 of the Budget Reconciliation and Fairness Act of 2014's interest rate prior to June 1, 2014 to timely filed protective claims for *Wynne* refund requests constitutes a taking of a vested property interest without due process or just compensation, in violation of the Fourteenth Amendment to the United States Constitution;

56. An award of damages to Plaintiff and all other Maryland taxpayers similarly situated against Defendant Comptroller that fully compensates them for the interest that accrued on their *Wynne* refund requests prior to June 1, 2014;

57. An order awarding Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

58. Such other and further relief as the Court deems just and proper.

DATED: November 13, 2015



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