

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

DANIEL GARCIA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

WALGREEN CO. and WALGREEN EASTERN
CO., INC.,

Defendants.

Civil Action No. 2:21-cv-00457-MJH

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR REMAND**

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I. INTRODUCTION

Pending before the Court is Plaintiff's Motion For Remand. The Court should grant the motion pursuant to the Tax Injunction Act ("TIA") and principles of comity because state court provides a "plain, speedy, and efficient remedy" for Plaintiff's claims against Defendants and the claims are inextricably intertwined with Pennsylvania tax law.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

On March 11, 2021, Plaintiff sued Defendants in the Court of Common Pleas of Allegheny County, alleging that Defendants improperly overcharged Plaintiff on sales of protective face masks. (Doc. 1.) On April 9, 2021, Defendants removed the case to this Court. (*Id.*) On April 23, 2021, Plaintiff filed his First Amended Complaint. (Doc. 8.)

III. ARGUMENT

A. The Court Should Remand This Case Under The Tax Injunction Act.

The TIA prohibits district courts from "enjoin[ing], suspend[ing] or restrain[ing] the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in [state] courts[.]" 28 U.S.C. § 1341.

Plaintiff's claim directly implicates this rule. Plaintiff asks the Court to declare Defendants' collection of tax on face masks invalid and requests a statutory award for such overcharges. If granted, this relief will "enjoin, suspend or restrain the ... collection of [sales] tax under [Pennsylvania] law," 28 U.S.C. § 1341, because it will compel retailers to stop collecting sales tax on face masks or face a statutory penalty for doing so. This will stop collection of tax on face masks, as the Court will have ruled such tax collection is invalid, and as the

¹ Plaintiff recognizes the Court's March 17, 2021 Order in *Duranko et al v. Big Lots Inc. et al*, 2:20-cv-02000-MJH ("*Duranko*") denying a motion for remand based on TIA and comity. *Duranko* (Doc. 62) Plaintiff reasserts those arguments in this new action to preserve his right to appeal an order on this issue, if necessary and appropriate in the future.

Commonwealth's collection agents will risk ongoing liability for damages and attorneys' fees under the UTPCPL if they continue collecting sales tax on face masks. The plain language of the TIA prohibits the Court from exercising jurisdiction; nothing in the plain meaning of the statute compels a different result. *See Riccio v. Sentry Credit, Inc.*, 954 F.3d 582, 588 n.2 (3d Cir. 2020) ("To depart from a statute's plain meaning today, the text must dictate a result so unreasonable that it amounts to an absurdity.").

The Court should reject any attempt to manufacture exceptions to the TIA that Congress did not create. Specifically, Defendants may contend the TIA does not apply where the plaintiff isn't suing the state or one of its units for a tax refund. But this exception is found nowhere in the statute. Instead, the statute plainly states district courts "shall not enjoin, suspend or restrain the assessment, levy, or collection of any tax under State law[.]" 28 U.S.C. § 1341. As the Supreme Court recently instructed, there is no "such thing as a 'canon of donut holes,' in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule." *Bostock v. Clayton Cty.*, 140 S. Ct. 1747 (2020). This binding precedent requires application of the TIA so long as Plaintiff seeks an order that may "enjoin, suspend or restrain the assessment, levy, or collection of any tax," 28 U.S.C. § 1341, no matter if Plaintiff's claims seek damages or injunctive relief, or are against a private party, state actor, or an agent of the state. Because Plaintiff seeks such an order, the Court should apply the plain language of the TIA to Plaintiff's claims and remand this case to state court.

B. The Court Should Reject Jurisdiction Under Principles Of Comity.

Resolution of this case will interfere with the independence of Pennsylvania to administer the collection of state taxes such that the well-settled principle of comity, in addition to the text of the TIA, requires remand.

Most importantly, the Supreme Court already held that “the principle of comity bars federal courts from granting damages relief in [state tax cases].” *Fair Assessment in Real Estate Ass’n v. McNary*, 454 U.S. 100, 107 (1981). In doing so, the Court recognized suits for damages are just as disruptive as actions for injunctive or declaratory relief. *Id.* at 113. And, similar to the arguments Plaintiff makes with regard to state agents, the Court found that subjecting state officials to personal liability and the assessment of attorney’s fees “would in every practical sense operate to suspend collection of state taxes.” *Id.* at 115 (quoting *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943)). Ultimately, the Court denied jurisdiction because “damages actions, no less than actions for an injunction, would hale state officers into federal court every time a taxpayer alleged the requisite elements of a § 1983 claim.” *Id.* The holding in *Farneth v. Wal-Mart Stores, Inc.*, No. 2:13-cv-01062, 2013 U.S. Dist. LEXIS 181020 (W.D. Pa. Dec. 30, 2013) is consistent with *McNary* because it too recognizes some damage claims are “inseparable from assaults in federal court on the validity of state taxation.” *Farneth*, 2013 U.S. Dist. LEXIS 181020, *14 (quoting *Great Lakes*, 319 U.S. at 298).

Here, Plaintiff’s claims are no less disruptive to Pennsylvania’s tax system than damage claims brought under § 1983. Like *McNary* and *Farneth*, Plaintiff’s claims require the Court to rule on the legitimacy of Defendants’ revenue collection practices. And, like *McNary* and *Farneth*, Plaintiff is asking the Court to impose statutory damages for each attempt by Defendants to collect tax on face masks. If resolved in Plaintiff’s favor, the Court will effectively hold that the Commonwealth cannot collect sales tax through its retailer agents and that those agents are liable for statutory damages each time they attempt to collect tax for the Commonwealth. Such a holding “would in every practical sense operate to suspend collection of state taxes.” *McNary*, 454 U.S. at 107. Whether Plaintiff’s claims are packaged under § 1983 or

the UTPCPL, or whether they seek damages, or injunctive or declaratory relief, makes no difference to the Commonwealth. If successful, Plaintiff's claims (and any similar claims that seek to impose damages on state agents or officials for the collection or assessment of state tax) have the capacity to reduce state revenue and to prevent the state or its agents and officials from assessing or collecting tax. Accordingly, the policies that mandate noninterference with state tax administration require the Court to decline jurisdiction.

III. CONCLUSION

For the reasons explained herein, Plaintiff respectfully requests that the Court remand the action to the Court of Common Pleas of Allegheny County.

Dated: May 28, 2021

Respectfully Submitted,

/s/ Kevin W. Tucker

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CERTIFICATE OF SERVICE

I hereby certify that on this day, May 28, 2021, a true and correct copy of the foregoing Memorandum Of Law In Support Of Plaintiff's Motion For Remand was filed on the Court's CM/ECF system and will be served on all counsel record.

Respectfully Submitted,

Dated: May 28, 2021

/s/ Kevin W. Tucker

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