[Cite as *Erie Island Carts, L.L.C. v. Put-in-Bay*, 2026-Ohio-4619.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Erie Island Carts, LLC, et al. Appellants v.	Court of Appeals No. OT-25-045 Trial Court No. 25 CV 0155
Village of Put-In-Bay, et al. Appellees	**DECISION AND JUDGMENT** Decided: November 20, 2026

* * * * *

Brodi J. Conover, Susan Keating Anderson, and Aaron Ross, for appellees.

Marc E. Dann, Andrew M. Engel, and Jeffrey A. Crossman, for appellants.

* * * * *

SULEK, J.

{¶ 1} Appellants Erie Island Carts, LLC and Island Bike Rental, LLC (collectively "Erie Island") appeal the judgment of the Ottawa County Court of Common Pleas, which granted appellees Village of Put-in-Bay's and Courtney Blumensaadt's (collectively "the

Village") motion to dismiss Erie Island's complaint. For the reasons that follow, the trial court's judgment is affirmed, in part, and reversed, in part.

I. Factual Background and Procedural History

{¶ 2} The village of Put-in-Bay is a popular tourist destination located on South Bass Island in Ottawa County, Ohio. The village comprises only a portion of the island, the remainder is Put-in-Bay Township. Golf carts are the prevailing mode of transportation on the island and numerous golf cart rental businesses exist to serve the tourists. Several such businesses are located within the village. Erie Island Carts and Island Bike Rental are located in Put-in-Bay Township, outside of the village.

{¶ 3} Traffic congestion and pedestrian safety have long been matters of concern due to the number of visitors the village receives. In response, the village has taken several steps to regulate the use of golf carts. Relevant here, it passed an ordinance that required "[o]wners of vehicles used for the transportation of persons or property, for hire and for use within the Village" to pay an annual "nontransferable vehicle license fee." Put-in-Bay Codified Ordinance ("C.O.") 858.01. Somewhat recently, that ordinance was challenged by golf cart rental businesses located within the village and was upheld by the Ohio Supreme Court in *Put-in-Bay v. Mathys*, 2020-Ohio-4421. *See also S.B. Carts, Inc. v. Put-in-Bay*, 2005-Ohio-3065 (6th Dist.) (upholding C.O. 858.01 as a legitimate exercise of the village's home rule taxing authority).

{¶ 4} Subsequently, on May 14, 2024, the village passed Ordinance No. 1440-24, which in effect expanded the reach of C.O. 858.01 to "any person, firm or corporation engaging in business activity described in this chapter *on South Bass Island*," thereby

imposing the vehicle license fee and other regulations on businesses located in the township outside of the village, such as Erie Island Carts and Island Bike Rental. (Emphasis added.)

{¶ 5} Within a few weeks after passing Ordinance No. 1440-24, the village sent written notice to Erie Island Carts and Island Bike Rental stating that they must obtain a Golf Cart Business License from the village and pay the vehicle license fee by June 28, 2024. The notice informed them that failure to do so would result in criminal or civil liability.

{¶ 6} On June 28, 2024, Island Bike Rental submitted the required paperwork along with a payment of $20,000, representing $100 for each of its 200 golf carts. It also included a letter protesting the fee as unlawful. Similarly, Erie Island Carts submitted its paperwork with a payment of $17,500 and a letter of protest. At the end of the year, both Erie Island Carts and Island Bike Rental also submitted a $175.00 business license renewal fee to the village for 2025.

{¶ 7} In April 2025, both Erie Island Carts and Island Bike Rental again paid the license fees under protest. This time, the accompanying letters of protest included a statement that both companies had commenced a lawsuit against the village regarding the fees.

{¶ 8} Indeed, Erie Island initiated the present matter when it filed its six-count complaint against the Village. In the subsequently amended complaint, Count One sought a declaratory judgment that the ordinance is an unconstitutional tax on businesses located outside of the jurisdiction of the village. Count Two sought a declaratory

judgment that the ordinance is unconstitutional in that it violates due process and the equal protection of the law. Count Three sought to enjoin the Village from levying and collecting the taxes imposed by the ordinance. Count Four sought a refund pursuant to R.C. 2723.03 of the amounts already paid. In the alternative, Count Five sought a refund of $50 per golf cart license fee paid in 2024 because the ordinance at that time imposed only a $50 fee, not a $100 fee. Finally, in Count Six, Erie Island asserted a 42 U.S.C. § 1983 claim for the unconstitutional taking of property without due process of law, seeking a refund of all the amounts paid to the village, as well as interest and attorney fees.

{¶ 9} The Village moved to dismiss the complaint pursuant to Civ.R. 12(B)(1) and 12(B)(6). It argued that the ordinance as amended does not exceed the village's home rule authority to levy taxes as alleged in Count One, and does not violate due process or equal protection as alleged in Count Two. It argued that the ordinance is not "illegal" and does not warrant an injunction or refund as alleged in Counts Three, Four, and Five. Further, it asserted that the ordinance does not violate any constitutional rights as alleged in Count Six.

{¶ 10} In addition to those arguments, the Village maintained that the trial court lacked subject matter jurisdiction over Counts Four and Five because Erie Island did not fully comply with the mandatory requirements of R.C. 2723.03 by failing to file a notice of intention to sue with their written protests. Relatedly, it argued that the trial court likewise lacked subject matter jurisdiction over Counts One and Two because a

declaratory judgment cannot be used to circumvent the statutory procedures for relief provided by R.C. Chapter 2723.

{¶ 11} After briefing by the parties, on December 1, 2025, the trial court granted the Village's motion to dismiss the amended complaint. It first found that Counts One and Two should be dismissed because declaratory relief was not available as R.C. Chapter 2723 provided the exclusive means for challenging the illegality of a tax or licensing fee. It next found that the tax was not an unconstitutional exercise of the village's home rule authority because it was taxing Erie Island for "the privilege of operating their rental vehicles on Village public roadways." The trial court also found that the tax did not violate equal protection because Erie Island was not similarly situated to residents who owned golf carts or other private individuals who transported their golf carts onto the island since those individuals did not rent their golf carts. Likewise, Erie Island was not similarly situated to golf-cart rental businesses located off the island because the village could rationally speculate that the additional ferry transport cost would result in few people renting golf carts from off-island businesses. Therefore, finding that the tax was not unconstitutional, the trial court determined that all the counts should be dismissed. Finally, the trial court additionally found that it lacked subject matter jurisdiction with respect to Counts Four and Five as to the 2024 and 2025 payments by Island Bike Rental and the 2024 payments by Erie Island Carts because the plaintiffs failed to include a notice of intention to sue with their protest letters.

II. Assignments of Error

{¶ 12} Erie Island timely appeals the judgment of the trial court, presenting five assignments of error for review:

> 1. The Trial Court Erred in Dismissing Counts 1 and 2 (Declaratory Judgment) on the Ground that Declaratory Relief Is Unavailable.
>
> 2. The Trial Court Erred in Dismissing Count 2 (Declaratory Judgment) on the Ground That The Ordinance Does Not Violate Appellants' Constitutional Rights.
>
> 3. The Trial Court Erred in Dismissing Appellants' Injunctive Relief Claim (Count 3).
>
> 4. The Trial Court Erred in Dismissing the Tax Refund Claims (Counts 4 and 5).
>
> 5. The Trial Court Erred in Dismissing the Takings Claim Under 42 U.S.C. § 1983 (Count 6).

III. Analysis

{¶ 13} The Village moved to dismiss Erie Island's complaint pursuant to Civ.R. 12(B)(1) and 12(B)(6). Civ.R. 12(B)(1) provides the defense of "[l]ack of jurisdiction over the subject matter." "The standard for dismissal under Civ.R. 12(B)(1) is whether the complaint raises 'any cause of action cognizable by the forum.'" *State ex rel. Kellys Island School Dist. Bd. of Edn. v. Ohio Dept. of Edn.*, 2024-Ohio-285, ¶ 20 (6th Dist.), quoting *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). Civ.R. 12(B)(6) states the defense of "[f]ailure to state a claim upon which relief can be granted." "To dismiss a complaint for failure to state a claim, 'it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought.'" *Veller v. K.B.*, 2025-Ohio-687, ¶ 18 (6th Dist.), quoting *Ohio Bur. of*

Workers' Comp. v. McKinley, 2011-Ohio-4432, ¶ 12. In both cases, this court reviews the trial court's decision de novo. *Kelleys Island* at ¶ 20; *Veller* at ¶ 18.

{¶ 14} The trial court's decision and this appeal raise issues of subject matter jurisdiction and the merits of the claims. Erie Island's first, third, and fourth assignments of error address the issue of subject matter jurisdiction, while its second and third assignments of error pertain to the merits of its claims. Finally, this court will separately address Erie Island's arguments relative to its 42 U.S.C. § 1983 claim in its fifth assignment of error.

A. Subject Matter Jurisdiction

{¶ 15} In its first, third, and fourth assignments of error, Erie Island argues that R.C. Chapter 2723 did not deprive the trial court of jurisdiction over its claims for declaratory relief in Counts One and Two, injunctive relief in Count 3, and the refund of the 2025 taxes.

{¶ 16} Article IV, Section 4(B) of the Ohio Constitution provides that "[t]he courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law."

{¶ 17} Relevant here, R.C. Chapter 2723 differentiates between actions to enjoin the illegal levy of taxes, actions to enjoin the collection of taxes, and actions to recover taxes and assessments. R.C. 2723.01 grants the court of common pleas subject matter jurisdiction over all three when it states, "Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions to recover them when

collected . . .." R.C. 2723.02 and 2723.03 then describe who must be sued in each action: "Actions to *enjoin the illegal levy* of taxes and assessments must be brought against the corporation or person for whose use and benefit the levy is made;" "Actions to *enjoin the collection* of taxes and assessments must be brought against the officer whose duty it is to collect them;" and "Actions to *recover* taxes and assessments must be brought against the officer who made the collection, or if he is dead, against his personal representative." (Emphasis added.)

{¶ 18} Additional requirements are placed on actions to recover taxes. R.C. 2723.01 requires that "no recovery shall be had unless the action is brought within one year after the taxes or assessments are collected." R.C. 2723.03 further specifies,

> If a plaintiff in an action to recover taxes or assessments, or both, alleges and proves that he or the corporation or deceased person whose estate he represents, at the time of paying such taxes or assessments, filed a written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality thereof, together with notice of his intention to sue under sections 2723.01 to 2723.05, inclusive, of the Revised Code, such action shall not be dismissed on the ground that the taxes or assessments, sought to be recovered, were voluntarily paid.

{¶ 19} Thus, unless an exception exists,[1] actions to recover taxes must be brought within one year after the taxes are collected, and the taxes must have been paid under written protest specifying the nature of the claimed illegality and including a notice of intention to sue. Those constraints, however, do not apply to actions to enjoin the illegal levy or collection of taxes.

[1] See, for example, R.C. 5715.22 applying to complaints "against the valuation or assessment of real property."

{¶ 20} On appeal, the parties do not present a dispute regarding whether the appropriate corporations, persons, or officers were named in the complaint. Instead, the parties argue whether (1) R.C. Chapter 2723 is the exclusive means of challenging the illegality of a tax, thereby precluding the declaratory relief sought in Counts One and Two, and (2) whether Erie Island complied with R.C. 2723.03's requirement to include notice of an intention to sue, thereby precluding the injunctive relief sought in Count Three and the recovery of taxes paid sought in Counts Four and Five. These issues are interrelated and will be addressed together.

{¶ 21} First, in this case, R.C. Chapter 2723 does not prevent Erie Island from pursuing a declaratory judgment that the Village's ordinance is unconstitutional. In general, "the common pleas court possess[es] basic statutory jurisdiction over actions for declaratory judgment and injunction." *State ex rel. Blackwell v. Crawford*, 2005-Ohio-5124, ¶ 22, citing R.C. 2721.02 and 2727.03. "But while 'declaratory judgment statutes provide an additional remedy which may be granted by a court . . . they do not extend the jurisdiction as to the subject matter upon which a court may act.'" *State ex rel. Ford v. Ruehlman*, 2016-Ohio-3529, ¶ 74, quoting *State ex rel. Foreman v. Bellefontaine Mun. Court*, 12 Ohio St.2d 26, 28 (1967); *Ryan v. Tracy*, 6 Ohio St.3d 363, 367 (1983). "For this reason, a common pleas court cannot use the declaratory-judgment statute to decide matters over which it otherwise has no jurisdiction." *Id.*, citing *Makowski v. Limbach*, 47 Ohio App.3d 129, 130 (10th Dist. 1988).

{¶ 22} Here, R.C. 2723.01 grants jurisdiction to the courts of common pleas to enjoin the illegal levy and collection of taxes. As part of this, the trial court must

necessarily have the authority to determine whether the levy and collection of taxes are, in fact, illegal. As a result, the declaratory judgment sought in Counts One and Two that the ordinance is unconstitutional is not extending the subject matter jurisdiction of the trial court.

{¶ 23} Arguing against this, the Village cites *Ryan v. Tracy*, 6 Ohio St.3d 363 (1983), for the proposition that declaratory relief is not available because R.C. Chapter 2723 is the exclusive means for challenging the illegality of a tax or licensing fee. *Ryan*, however, is distinguishable.

{¶ 24} In that case, Ryan filed a class action complaint seeking the recovery of overpaid property taxes. Ryan believed that the county auditor improperly failed to deduct from the property description acreage of land committed to public highway use. *Ryan* at 364. On appeal before the Ohio Supreme Court, the parties concurred that if R.C. 2723.01 and 2723.03 were applicable, the claim would be barred because Ryan had not complied with the statutes. *Id.* at 365.

{¶ 25} Ryan, however, maintained that his action was governed by R.C. 319.36, not R.C. Chapter 2723. *Id.* R.C. 319.36 provides that if the auditor discovers that erroneous taxes have been collected, he shall call it to the attention of the board of county commissioners. If the board of county commissioners finds that taxes have been erroneously charged or collected, it shall order the auditor to refund the full amount of the taxes so charged and collected. Ryan sought a declaratory judgment "in effect, to compel the county auditor to find that erroneous taxes have been collected, command the board to order the auditor to draw his warrant in appellant's favor without their first having

found an improper assessment to have been made, and to mandate that the auditor draw his warrant before the board has so instructed him." *Ryan* at 366.

{¶ 26} The Ohio Supreme Court rejected Ryan's "disingenuous" workaround. *Id.* It found that "R.C. 2723.01 *et seq.* provide the exclusive means by which a taxpayer may, with the approbation of the court, demand that the county auditor refund erroneously collected taxes." *Id.* R.C. 319.36, in contrast, "grants administrative prerogatives to both the auditor and the county commissioners *over which a taxpayer exerts no influence*." (Emphasis added.) *Id.* It reasoned that "to permit [Ryan] to achieve through one statute that which he is empowered to do only through another would be to ignore legislative intent and abrogate legislative prerogative." *Id.* Recognizing that the declaratory judgment statutes do not extend the subject matter jurisdiction of the trial court, the Ohio Supreme Court concluded that "[m]erely because [Ryan] requests declaratory rather than monetary or injunctive relief is of no moment in saving his action." *Id.* at 367.

{¶ 27} Unlike *Ryan*, Erie Island is not entirely foreclosed from seeking relief under R.C. Chapter 2723. In *Ryan*, the plaintiff sought to recover taxes that were already paid but could not do so under R.C. 2723.03 because he did not pay the taxes under protest and with a notice of intention to sue. Here, in contrast, in Counts One and Two Erie Island is seeking a declaration that the ordinance is unconstitutional. That declaration is germane to its efforts in Count Three to enjoin the levy and collection of the license fee as provided for in R.C. 2723.02 and 2723.03. As discussed above, the procedural requirements of written protest and notice of intent to sue apply only to actions to recover taxes. Therefore, because nothing in R.C. Chapter 2723 prevents Erie

Island from pursuing an action to enjoin the levy and collection of the license fee, which would require a determination that the license fee is illegal, a declaratory judgment that the ordinance is unconstitutional does not expand the subject matter jurisdiction of the trial court.

{¶ 28} Accordingly, the trial court has subject matter jurisdiction over Counts One, Two, and Three of Erie Island's amended complaint.

{¶ 29} Counts Four and Five present a separate issue as these counts seek to recover taxes that were already paid. Specifically, Count Four seeks to recover all the taxes paid in 2024 and 2025. Count Five alternatively seeks recovery of $50 per golf cart license fee paid in 2024.

{¶ 30} For the taxes paid in 2024, it is undisputed that although Erie Island Carts and Island Bike Rentals paid the taxes under written protest, they did not include a notice of intent to sue. "[T]he written protest and notice of intention to sue provisions of R.C. 2723.03 are mandatory and must be strictly adhered to if an action for the recovery of allegedly wrongfully collected taxes is to be maintained." *Ryan*, 6 Ohio St.3d at 365; *Shanahan v. Toledo*, 2009-Ohio-5991, ¶ 20 (6th Dist.); *Johnson v. Clark Cty. Auditor*, 2020-Ohio-3201, ¶ 73 (2d Dist.). Consequently, Erie Island is barred from seeking recovery of the 2024 taxes under R.C. 2723.03.

{¶ 31} For the taxes paid in 2025, Erie Island Carts included with its payment and written protest a notice that it had commenced suit against the Village for the 2024 license fee and "will seek recovery of the fees paid herewith in the lawsuit." A copy of that written protest was attached to the amended complaint as Exhibit F. The complaint, 12.

however, does not include a copy of Island Bike Rentals' protest letter. Nevertheless, it alleges in paragraph 24 of the amended complaint that Island Bike Rentals submitted a "letter substantially similar to that attached as Exhibit F," which "included language that the tax was being paid under protest and that Island Bike intended to seek recovery of the tax in this lawsuit." The complaint, therefore, alleges facts that satisfy the requirements of R.C. 2723.03, and the claims of Erie Island Carts and Island Bike Rentals for recovery of the 2025 license fees cannot be dismissed at the pleading stage on the grounds that those fees were voluntarily paid.

{¶ 32} In sum, the trial court had subject matter jurisdiction over Erie Island's claims for declaratory judgment in Counts One and Two, its claim for injunctive relief in Count Three, and its claim for recovery of the 2025 license fees in Count Four. The claim for recovery of the 2024 license fees, whether in whole as stated in Count Four or in part as stated in Count Five, must be dismissed on the grounds that they were voluntarily paid.

{¶ 33} Accordingly, Erie Island's first assignment of error is well-taken. Its third assignment of error is well-taken to the extent that it addresses the subject matter jurisdiction of the trial court to consider its claim for injunctive relief. Finally, its fourth assignment of error is well-taken with respect to the claim for recovery of the 2025 license fees, and not well-taken to the extent that it applies to the recovery of the 2024 license fees.

B. Constitutionality of the Ordinance

{¶ 34} In its second and third assignments of error, Erie Island challenges the trial court's Civ.R. 12(B)(6) dismissal for failure to state a claim upon which relief can be granted. At issue is (1) whether the ordinance is unconstitutional as violative of due process because it exceeds the village's home rule authority to tax, and (2) whether the ordinance is unconstitutional under the Equal Protection Clause because it treats similarly situated persons differently.

1. Home Rule Authority

{¶ 35} Erie Island argues that the village exceeded its home rule taxing authority when it expanded the license fee in C.O. 858.01 to businesses located outside the village.[2] The Village, on the other hand, argues that the ordinance is not an extraterritorial tax, but is instead the same tax on "the privilege of renting [golf carts] to others for use within the village" that was approved in *Mathys*, 2020-Ohio-4421, at ¶ 24.

{¶ 36} The Supreme Court of Ohio's reasoning in *Mathys* is critical to understanding the present issue before this court.

{¶ 37} In that case, Mathys owned a golf cart rental business located within the village limits. He challenged the license fee as exceeding the village's home rule authority, characterizing the fee as a license tax that was preempted by the State's

[2] Erie Island also argues that other regulations on its golf cart rental business similarly exceed the village's home rule authority, for example, regulations prohibiting golf cart rental businesses from sharing locations or expanding their fleet of golf carts. Because the village's authority to impose these regulations involve the same considerations as its authority to impose the license fee, this court will frame its analysis in terms of the license fee only.

vehicle-licensing tax scheme. *Id.* at ¶ 20. On the issue of preemption, the Ohio Supreme Court "largely agree[d]." *Id.*

{¶ 38} "Article XVIII, Section 3 of the Ohio Constitution, also known as the Home Rule Amendment, grants municipalities the authority to 'exercise all powers of local self-government.' Included within this broad grant of authority is the right of local governments to levy taxes." *Id.* at ¶ 12. "This right is not absolute, however. Article XVIII, Section 13, and Article XIII, Section 6 of the Ohio Constitution enable the General Assembly to pass laws that limit municipal taxing authority." *Id.* Because, however, "the rights conferred in the constitutional provisions exist on equal footing, . . . '[i]n the absence of an express statutory limitation demonstrating the exercise, by the General Assembly, of its constitutional power, acts of municipal taxation are valid,' even when a municipal tax occupies the same field as a state tax." *Id.* at ¶ 15, quoting *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 606 (1998).

{¶ 39} The Ohio Supreme Court determined that the State's vehicle licensing tax scheme constituted such an express limitation. It noted that "R.C. 4503.02 imposes an annual statewide license tax on the operation of motor vehicles on public roads and highways," and R.C. 4504.02 and 4504.06 allow county governments or municipalities to impose an additional $5 license tax. *Id.* at ¶ 21. It then recognized that "[b]y restricting how local governments may go about imposing a license tax on the operation of motor vehicles on public roads and by imposing a cap on how much they may tax, the General Assembly has expressly limited a municipality's authority to tax the operation of motor vehicles." *Id.* at ¶ 22.

{¶ 40} Nevertheless, the Ohio Supreme Court rejected Mathys's arguments, finding that they rested "on the flawed assumption that the municipal tax imposed by Section 858.01 is the same as, or similar to, the state license tax." *Id.* It reasoned,

> In contrast to the state vehicle-license tax imposed under R.C. 4503.02, and the additional local-government license taxes permitted by R.C. 4504.02 and 4504.06, Section 858.01 does not impose a license tax on the operation of motor vehicles on public highways. Rather, by its plain terms, Section 858.01 imposes a business tax on rental vehicles. . . .
>
> . . . Section 858.01's tax on rental vehicles does not interfere with the operation of vehicles in the village. The 'license fee' referred to in Section 858.01 does nothing to authorize or prohibit a motor vehicle, including the rental vehicles at issue here, from being operated on a public roadway within the village. And nothing in the ordinance requires that the license fee be paid for vehicles that are not rented out by the owner. Put another way, Mathys and Islander Inn may drive their golf carts in the village and may even let others use the carts without charging for their use. But if Mathys and Islander Inn want the privilege of renting those vehicles to others for use within the village, they are required to pay the tax imposed by the ordinance on their rental vehicles.

Id. at ¶ 23-24. Thus, as recognized in *Mathys*, C.O. 858.01 is a business tax "on the privilege of renting [golf carts] to others for use within the village."

{¶ 41} As an aside, the Village separately argues on appeal that C.O. 858.01 is authorized by R.C. 715.22, which permits a municipal corporation to "(A) Regulate the use of carts, drays, wagons, hackney coaches, omnibuses, automobiles, and carriages kept for hire or livery stable purposes," and "(B) License and regulate the use of the streets by persons who use vehicles, or solicit or transact business thereon." Courts that have examined C.O. 858.01, however, have always treated the ordinance as a tax imposed for the purpose of generating revenue, not a fee imposed pursuant to the village's power to license and regulate vehicles for hire. *See S.B. Carts, Inc. v. Put-in-Bay*, 2005-Ohio-16.

3065, ¶ 5-7 (6th Dist.); *Mathys* at ¶ 4, fn. 2. Indeed, the trial court in this case on page 11 of its judgment entry, also found that C.O. 858.01 "is not a fee imposed pursuant to the Village's power to license and regulate vehicles for higher (sic) but is rather a tax imposed for the purpose of generating revenue." This court likewise holds that C.O. 858.01 is a tax, not an exercise of the village's power under R.C. 715.22.

{¶ 42} The question then is whether the village has the authority to impose its tax on the privilege of renting golf carts on businesses located outside of its territorial jurisdiction. As a corollary, this court looks to the ability of a municipality to tax the income of nonresidents.

{¶ 43} The Due Process clause "requires a municipality to have jurisdiction before imposing a tax." *Willacy v. Cleveland Bd. of Income Tax Review*, 2020-Ohio-314, ¶ 21. It "establishes a 'twofold test' for determining whether a taxing authority exceeded its jurisdiction." *Id.* at ¶ 22. First, there must be "'some definite link, some minimum connection' between the local taxing authority 'and the person, property or transaction it seeks to tax.'" *Id.*, quoting *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 344-345 (1954). Second, there must be "a rational relationship between the income taxed by the jurisdiction and the income-producing activity or property within that jurisdiction." *Id.* "These inquiries involve distinct but related concerns: While the former focuses on the presence of either in personam jurisdiction over the taxpayer or in rem jurisdiction over her income or property, the latter focuses on how much of a nonresident's income the local taxing authority may fairly reach." *Id.*

{¶ 44} This case involves the first inquiry. "It is well established that regardless of the taxpayer's residency status, the first prong is satisfied when a state or locality imposes taxes on income arising from work performed within the jurisdiction. In such cases, there is a sufficient connection between the taxing entity and the taxed party." *Id.* at ¶ 23, citing *Hillenmeyer v. Cleveland Bd. of Review*, 2015-Ohio-1623, ¶ 42 ("Beyond in personam taxing jurisdiction over residents, local authorities may tax nonresidents only if theirs is the jurisdiction 'within which the income actually arises and whose authority over it operates *in rem*.'").

{¶ 45} The Village argues that its ordinance is not an extraterritorial tax because it only imposes a tax on activity that occurs within the village, namely the renting of golf carts that are used in the village. It cites *City of Cincinnati v. Reed*, 27 Ohio App.3d 115 (1st Dist. 1985), as an example of a valid ordinance taxing a towing business that was not located in its jurisdiction. In that case, the First District described that the Cincinnati municipal ordinance required that "anyone engaged in the business of offering towing services by use of a wrecker or other similar vehicle must obtain a license from the city treasurer before removing parked or disabled motor vehicles from any location within the city limits." *Reed* at 115. In finding that the ordinance was a legitimate exercise of local police powers, the First District noted that the ordinance was "strictly limited to those engaged in the business of towing or removing parked or disabled motor vehicles from any places within Cincinnati where they have been parked or disabled." *Id.* at 118. "The local government undeniably has a legitimate interest in protecting its citizens by

regulations that require those engaged in towing services within the city limits to be financially responsible and to operate in an orderly fashion with safe equipment." *Id.*

{¶ 46} The present situation differs from *Reed* in that, at least at this stage of the litigation, Erie Island's business activity does not occur within the village. The Village's position to the contrary misconstrues the activity that is being taxed. The Village, and the trial court below, frame the tax as being on the privilege of operating rented golf carts on village streets. *Mathys*, however, would not countenance such a tax. It recognized that the General Assembly has imposed a statewide license tax under R.C. 4503.02 "on the operation of motor vehicles on public roads and highways," and under R.C. 4504.02 and 4504.06 has expressly limited the authority of municipalities "to also impose a tax on the operation of motor vehicles on public roads and highways." *Mathys*, 2020-Ohio-4421, at ¶ 21. Indeed, C.O. 858.01 survived review because the Ohio Supreme Court directly found that it "[did] not impose a license tax on the operation of motor vehicles on public highways." *Id.* at ¶ 23. "The 'license fee' referred to in Section 858.01 does nothing to authorize or prohibit a motor vehicle, including the rental vehicles at issue here, from being operated on a public roadway within the village." *Id.* at ¶ 24. The taxed activity, therefore, cannot be the operation of rented golf carts on village streets.

{¶ 47} Instead, the taxed activity is the privilege of renting golf carts. *Id.* at ¶ 24 (Mathys must pay the tax if it wants "the *privilege of renting* those vehicles to others for use within the village." (Emphasis added.)). The operative inquiry then must identify where the business activity of renting the golf carts occurs. Due process requires that the

business activity must occur within the village for it to be subjected to the village's tax. *Hillenmeyer*, 2015-Ohio-1623, at ¶ 42.

{¶ 48} Here, it is undisputed that Erie Island Carts and Island Bike Rentals are located outside of the village's jurisdiction. Further, they allege in their complaint that "[n]either operates any portion of their business in the Village." At this stage of the proceedings, for purposes of a Civ.R. 12(B)(6) motion to dismiss, this court must accept that fact as true. *See Colt's Neck Homeowners Assn. v. Franklin Cty., Ohio Bd. of Commrs.*, 2026-Ohio-2751, ¶ 41 ("In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, we accept as true all factual allegations in the complaint.").

{¶ 49} This court holds, therefore, that Erie Island can prove a set of facts establishing that C.O. 858.01 exceeds the village's home rule authority to the extent that it imposes an unconstitutional extraterritorial tax in violation of due process. The trial court erred in granting the Village's Civ.R. 12(B)(6) motion to dismiss on that basis.

2. Equal Protection

{¶ 50} Separately, Erie Island argues that C.O. 858.01 is unconstitutional because it violates the Equal Protection Clause found in the 14th Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution. "Traditionally, the Equal Protection Clause of the Ohio Constitution has been treated as providing the same protection as the Equal Protection Clause of the United States Constitution." *Swiech v. Bd. of Edn. for Sylvania City School Dist.*, 2025-Ohio-405, ¶ 26 (6th Dist.), citing *Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray*, 2010-Ohio-4908, ¶ 17. Because Erie

Island does not argue that the Ohio Constitution affords greater protection than the United States Constitution, this court will apply the traditional equal protection analysis.

{¶ 51} "The purpose of the Equal Protection Clause 'is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Swiech* at ¶ 28, quoting *Kinzel v. Ebner*, 2023-Ohio-164, ¶ 79 (6th Dist.), quoting *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). "Simply stated, the Equal Protection Clauses require that individuals be treated in a manner similar to others in like circumstances." *Id.*, quoting *Taxiputinbay, LLC v. Put-In-Bay*, 2023-Ohio-1237, ¶ 33 (6th Dist.), quoting *Burnett v. Motorists Mut. Ins. Co.*, 2008-Ohio-2751, ¶ 30.

{¶ 52} "The touchstone is whether the comparators are similar in all relevant aspects." *Id.* at ¶ 29. "'Although citizens are entitled to equal protection under the law, governments are "free to draw distinctions in how they treat certain citizens."'" *Id.*, quoting *Ferguson v. State*, 2017-Ohio-7844, ¶ 30, quoting *Park Corp. v. Brook Park*, 2004-Ohio-2237, ¶ 19. "The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." *Id.*, quoting *Ferguson* at ¶ 30.

{¶ 53} In its amended complaint, Erie Island identifies several groups that it believes are similarly situated: (1) golf cart rental companies not located on South Bass Island; (2) privately owned golf carts or other motor vehicles; and (3) companies that rent cars or trucks that are used in the village. The parties do not dispute that this case does

not implicate a fundamental right or suspect classification and therefore the rational-basis test applies.

{¶ 54} The Ohio Supreme Court has described the well-established framework for the rational-basis test:

> The rational basis test involves a two-step analysis. We must first identify a valid state interest. Second, we must determine whether the method or means by which the state has chosen to advance that interest is rational. A statute will not be held to violate the Equal Protection Clause, and this court will not invalidate a plan of classification . . ., unless it is clearly arbitrary and unreasonable. Thus, provided that the statute is rationally related to a legitimate government interest, it will be upheld.

Sherman v. Ohio Public Employees Retirement System, 2020-Ohio-4960, ¶ 15, quoting *McCrone v. Bank One Corp.*, 2005-Ohio-6505, ¶ 9. "[A] State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Id.*, quoting *McCrone* at ¶ 8, quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

{¶ 55} "Under the rational-basis standard, a state has no obligation to produce evidence to sustain the rationality of a . . . classification." *Id.* at ¶ 16, quoting *Columbia Gas Transm. Corp. v. Levin*, 2008-Ohio-511, ¶ 91. "A state action may be based on 'rational speculation unsupported by evidence or empirical data." *Id.*, quoting *State v. Thompson*, 2002-Ohio-2124, ¶ 27, quoting *Fed. Communications Comm. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993). "The plaintiff 'bears the burden to

negate every conceivable basis that might support the [action].'" *Id.*, quoting *Columbia Gas* at ¶ 91.

{¶ 56} "When an equal-protection claim analyzed under the rational-basis test is reviewed on a motion to dismiss for failure to state a claim, it is important to remember that the motion-to-dismiss standard 'is procedural, and simply allows the plaintiff to progress beyond the pleadings and obtain discovery, while the rational basis standard is the substantive burden that the plaintiff will ultimately have to meet to prevail on an equal protection claim." *Id.* at ¶ 18, quoting *Wroblewski v. Washburn*, 965 F.2d 452, 459-460 (7th Cir. 1992). "[W]hile we . . . must take as true all of the complaint's allegations and reasonable inferences that follow, we apply the resulting 'facts' in light of the deferential rational basis standard." *Id.*, quoting *Wroblewski* at 460.

{¶ 57} Under the first step of the rational-basis standard, Erie Island concedes in its appellate brief that the Village has a legitimate governmental interest in attempting to reduce traffic congestion on its streets. It argues, however, that there is no rational basis to treat golf cart rental businesses in Put-in-Bay Township differently from private owners or off-island rental companies. Upon review, only one of the three groups identified by Erie Island is similarly situated to it.

{¶ 58} Private owners of golf carts are not similarly situated to Erie Island because they are not in the business of renting golf carts. As discussed above, the ordinance is not and cannot be a tax on the operation of carts on the village's streets. It is instead a tax on the business activity of renting golf carts. Private owners who do not rent their golf carts are, therefore, in a fundamentally different category from Erie Island.

{¶ 59} Rental companies who rent cars and trucks are likewise in a different category. Erie Island alleged in its complaint that golf carts are the popular mode of transportation on the island. Further, it identifies that the purpose of the ordinance is to address the traffic congestion caused by the increased use of rental golf carts. Companies that rent lesser-used cars and trucks do not contribute to the traffic congestion problem in the same way. Erie Island, therefore, is not similarly situated to those companies.

{¶ 60} In contrast, Erie Island is similarly situated to other golf cart rental companies whose carts are transported to and used in the village. In both cases, companies located outside of the village rent golf carts to visitors who then drive the carts into the village. As to these other, non-South-Bass-Island golf cart rental companies, Erie Island may ultimately be unable to negate every conceivable basis that might support treating them differently. But, at this stage of the litigation, it has alleged facts under which its claim of an equal protection violation could be granted.

{¶ 61} In sum, Erie Island has stated a claim for violation of the Equal Protection Clause in that the ordinance differentiates between companies located on South Bass Island that rent golf carts that are used in the village and off-island companies that rent golf carts that are used in the village. The trial court erred in granting the Village's Civ.R. 12(B)(6) motion on that basis.

{¶ 62} Accordingly, because Erie Island has stated claims for relief that the ordinance is an unconstitutional exercise of home rule authority and is violative of equal protection, its second and third assignments of error are well-taken.

C. 42 U.S.C. § 1983 Claim

{¶ 63} Finally, in its fifth assignment of error, Erie Island argues that the trial court erred in granting the Village's Civ.R. 12(B)(6) motion to dismiss its 42 U.S.C. § 1983 claim contained in Count Six. "[A] claim under 42 U.S.C. § 1983 requires proof that '(1) the conduct in controversy must be committed by a person acting under color of state law, and (2) the conduct must deprive the plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States.'" *Wallace v. Noel*, 2009-Ohio-6984, ¶ 26 (6th Dist.), quoting *1946 St. Clair Corp. v. Cleveland*, 49 Ohio St.3d 33, 34 (1990), citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).

{¶ 64} In Count Six of its amended complaint, Erie Island sought recovery of the 2024 and 2025 taxes that were paid under the ordinance. It alleged that the levy and collection of the taxes violated its due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. In its opposition to the Village's motion to dismiss, Erie Island more specifically argued that the Village's extraterritorial tax was a deprivation of property without due process of law. Relying on the Takings Clause of the Fifth Amendment—which provides, "[N]or shall private property be taken for public use, without just compensation"—Erie Island maintained that a § 1983 claim was the proper vehicle to recover private property that was taken for a public purpose. Erie Island presents an identical argument on appeal.

{¶ 65} Erie Island's argument fails, however, because "[i]t is beyond dispute that '[t]axes and user fees . . . are not "takings."'" *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013), quoting *Brown v. Legal Foundation of Washington*, 538
25.

U.S. 216, 243, n. 2 (2003) (Scalia, J., dissenting); *see also Laborde v. Gahanna*, 561 Fed.Appx. 476, 479 (6th Cir. 2014) (affirming dismissal of § 1983 takings claim based on overpayment of income taxes because "the Fifth Amendment takings clause is not implicated by the collection of taxes"); *Ocean City Taxpayers for Social Justice v. Mayor and City Council of Ocean City*, 2015 WL 7567722, *7 (D.Md. Nov. 25, 2015) (recognizing that "circuits have rejected takings claims based on a theory of illegal taxes"). Erie Island, therefore, has not alleged a deprivation of rights secured by the constitution or laws of the United States, and thus has not stated a claim upon which relief can be granted.

{¶ 66} Accordingly, the trial court did not err when it granted the Village's motion to dismiss as to Count Six. Erie Island's fifth assignment of error is not well-taken.

IV. Conclusion

{¶ 67} For the foregoing reasons, the trial court erred when it granted the Village's Civ.R. 12(B)(1) motion to dismiss Counts One and Two of the amended complaint, which sought declaratory relief that the ordinance is unconstitutional, and Count Three of the amended complaint, which sought to enjoin the Village from levying and collecting the taxes imposed by that ordinance. The trial court also erred when it granted the Village's Civ.R. 12(B)(6) motion to dismiss the amended complaint as to Counts One, Two, and Three, and also as to Count Four, but only to the extent that it presents a claim for recovery of the 2025 taxes. The trial court did not err when it granted the Civ.R. 12(B)(6) motion to dismiss with respect to Count Four, to the extent that it presents a claim for recovery of the 2024 taxes, as well as Counts Five and Six.

{¶ 68} The judgment of the Ottawa County Court of Common Pleas, therefore, is affirmed, in part, and reversed, in part. The judgment is affirmed as to the dismissal of Count Five, Count Six, and the claim for recovery of the 2024 taxes in Count Four. The judgment is reversed, and the matter is remanded for further proceedings consistent with this decision on Counts One, Two, and Three, and also on Count Four to the extent it seeks recovery of the 2025 taxes.

{¶ 69} The parties are ordered to share evenly the costs of this appeal pursuant to App.R. 24.

Judgment affirmed, in part, and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J. _____ JUDGE

Gene A Zmuda, J. _____ JUDGE

Charles E. Sulek, J. _____ JUDGE
CONCUR.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.