

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

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JOHN HART, JR.,
Plaintiff,

v.

Case No. _____

COUNTY OF ALBEMARLE,
VIRGINIA,

and

WILLIAM LETTERI, in his official
capacity as Chief Financial Officer,
Defendants.

SERVE:
COUNTY OF ALBEMARLE
401 McIntire Road
Charlottesville, VA 22902

SERVE:
WILLIAM LETTERI, in his official
Capacity as Chief Financial Officer
401 McIntire Road
Charlottesville, VA 22902

**COMPLAINT AND APPLICATION FOR RELIEF
FROM BUSINESS-LICENSE TAX ASSESSMENT**

Plaintiff John Hart, Jr., brings this Complaint and Application for Relief From Business-License Tax Assessment against Defendants County of Albemarle, Virginia ("County") and William Letteri, in his official capacity as the County's Chief Financial Officer ("County CFO"), and states as follows:

INTRODUCTION

1. This civil-rights lawsuit challenges Albemarle County's unconstitutional assessment of business-license taxes against Plaintiff John Hart, Jr. Hart is a novelist who lives and works in the County. A former lawyer and stockbroker, Hart has been writing for a living full time since 2005.

2. In January 2019, Hart unexpectedly received an assessment from the County Department of Finance for unpaid business-license taxes dating back to 2013, even though Hart offers no business services to the public. He has no storefront and no customers. Instead, Hart writes novels for a living from home and while traveling.

3. After receiving this assessment, Hart researched the tax and spoke to members of Charlottesville's large community of freelance writers. He was surprised to discover that the County does not apply the tax evenhandedly. Not all freelance writers have been taxed, and many speakers (including newspapers, magazines, other periodicals, radio, and television) are exempt.

4. Taxing freelance writers while exempting the institutional press is speaker-based discrimination that violates the First Amendment to the U.S. Constitution. Moreover, the County's business-license tax ordinance violates the Fourteenth Amendment to the U.S. Constitution because the tax's vague provisions do not give the public notice of what businesses are covered and vest County officials with unconstrained discretion to decide who must pay. This lawsuit seeks a refund of Hart's business-license taxes and a declaration that the County's business-license tax is unconstitutional as applied to Hart.

JURISDICTION AND VENUE

5. This case arises from a tax assessment issued by Albemarle County's Department of Finance to Hart under Chapter 8 of the Albemarle County Code, which covers business-license fees and taxes ("Business-License Ordinance").

6. This Court has original jurisdiction over taxpayer appeals of tax assessments made by the County under the Business-License Ordinance pursuant to Va. Code Ann. § 58.1-3984(A).

7. In addition, this Court has original and general jurisdiction over all civil cases arising under federal law and the U.S. Constitution, Va. Code Ann. § 17.1-513, and jurisdiction over cases in which a declaratory judgment is sought, *id.* § 8.01-184.

8. Venue lies in this Court pursuant to Va. Code Ann. § 58.1-3984(A) (requiring venue in "the circuit court of the county or city wherein [the tax] assessment was made").

THE PARTIES

9. Plaintiff Hart is a U.S. citizen and resident of Albemarle County, Virginia.

10. Defendant County of Albemarle, Virginia, is a municipality chartered by the Commonwealth of Virginia and is authorized to impose business-license taxes upon certain persons and entities doing business within its boundaries, as provided by Va. Code Ann. §§ 58.1-3700, *et seq.* ("the Enabling Statute").

11. Defendant William Letteri is the County's Chief Financial Officer. He is the ministerial agent charged by the County with the duty of issuing and enforcing tax assessments under the Business-License Ordinance. The County CFO is sued in his official capacity only.

FACTUAL ALLEGATIONS

Hart Begins His Writing Career and Moves to Albemarle County.

12. Hart graduated from the Franklin Pierce Law Center (now the University of New Hampshire Franklin Pierce School of Law) in 1998. He clerked for a judge, practiced law in North Carolina for two years, and then became a stockbroker for three years.

13. Hart began writing full time in October 2005.

14. Hart has resided in the County since 2011. He moved there to live in a college town and to be part of the Charlottesville area's large community of freelance writers.

15. Since October 2005, Hart has published six novels, all of which have been *New York Times* bestsellers. His novels have been translated into thirty languages and can be found in over seventy countries.

16. Hart's novels are character-driven "literary thrillers" in Southern gothic settings.

17. Hart is currently writing another novel.

18. Since late 2005, all of Hart's income has derived from his writing, whether from advances and royalties from publishers or speaking and promotional work connected to his books.

19. In accordance with the advice of his tax advisor, Hart has included all such income on Schedule C of his federal tax returns.

20. Hart has never had any employees, never offered any goods or services for sale in the County or elsewhere, and never advertised his presence in the County.

21. Hart has, however, worked from his home in the County.

After Working as a Writer for Years, Hart Is Surprised by the County's Tax Assessment.

22. Before 2016, Hart did not believe that business licenses were required of authors who offer no goods or services for sale in the County.

23. Hart is acquainted with numerous novelists and authors in the Charlottesville area. At no point before 2016 did he hear of an author being required to obtain a business license or pay business-license taxes.

24. In 2016, the County sent Hart a letter, asserting that he might be subject to the business-license tax because he included income on Schedule C of his federal tax return.

25. The County requested that Hart confirm that such income arose from writing activity in the County and, if so, provide information about his business.

26. Hart sent the County an email asking questions and stating that he did not feel the tax should apply to him, but he never received a response.

27. Hart received another letter from the County in November 2018 and, in December 2018, he received a "Second Notice."

28. In early January 2019, Hart received another letter that threatened assessment if he did not provide the County with information about his gross receipts by January 18, 2019. Hart provided the information, and, on January 22, he was assessed at the rate of \$0.36 per \$100 in gross receipts for tax years 2013, 2014, 2015, 2016, 2017, and 2018, for \$9,471.50 ("Assessment"), which included \$2,040.94 in penalties and interest. A copy of the Assessment, redacted of all confidential tax information, is attached as Exhibit A.

29. While believing the Assessment to be illegal and unconstitutional, but wishing to avoid additional penalties and interest, Hart paid the County \$9,471.50.

30. In April 2019, in response to a letter, Hart also paid the County \$1,524.00 (comprised of \$1,386.00 in business-license taxes and \$138.00 in penalties and interest) in taxes assessed on his gross receipts for 2018.

The County's Business-License Tax Has Injured Hart and Will Continue to Do So.

31. In January 2019, Hart paid \$9,471.50 in business-license taxes dating back to 2013. The \$9,471.50 comprised \$7,430.56 in taxes and \$2,040.94 in penalties and interest.

32. In April 2019, Hart also paid \$1,524.00 in business-license taxes for 2018. The \$1,524.00 comprised \$1,386.00 in taxes and \$138.00 in penalties and interest.

33. In total, Hart has paid the County \$10,995.50, comprising \$8,816.56 in business-license taxes and \$2,178.94 in penalties and interest.

34. Hart paid these taxes, penalties, and interest under protest.

35. Hart believes that requiring freelance writers to pay business-license taxes while exempting other speakers such as newspapers, magazines, other periodicals, radio, and television is unconstitutional.

36. Hart wishes not to have to pay business-license taxes in the future.

37. Persons or businesses who fail to obtain a required business license are guilty of a Class Two misdemeanor. Albemarle County Code ("County Code") § 8-103(A). The County Code does not specify a penalty, but in Virginia, Class Two misdemeanors are punishable by up to six months imprisonment, a fine of up to \$1,000, or both. Va. Code Ann. § 18.2-11(b).

38. In addition to potential criminal prosecution, persons or businesses who fail to obtain a business license and pay the required taxes may be charged a ten percent penalty and interest at a rate not to exceed ten percent. County Code § 8-201(D)(1)–(E).

39. If Hart does not pay future business-license tax assessments, he could be subject to civil penalties, interest, and even criminal penalties such as fines or jail time.

40. Paying an unconstitutional business-license tax under protest has injured Hart, and having to pay the tax in the future would continue to injure him.

The County's Business-License Tax Exempts the Institutional Press.

41. The Enabling Statute requires the Commonwealth's municipalities to exempt certain speakers from their business-license fees and taxes:

No county, city, or town shall impose a license fee or levy any license tax . . . [u]pon the privilege or right of printing or publishing any **newspaper, magazine, newsletter or other publication issued daily or regularly** at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any **radio or television broadcasting station or service.**

Va. Code Ann. § 58.1-3703(C)(3) (emphasis added). The Enabling Statute does not mention writers, novelists, or other book authors.

42. Publishers of newspapers, magazines, and other periodicals, and radio and television operators are producers of speech.

43. Upon information and belief, the Commonwealth exempted them from business-license fees and taxes to protect their rights under the First Amendment to the U.S. Constitution.

44. Upon information and belief (and although the County Code does not specifically list them as exempt), the County does not impose business-license fees or taxes on newspapers, magazines, other periodicals, radio, or television operators.

45. Upon information and belief, the County exempts these speakers in order to protect their First Amendment rights.

46. Hart is a producer of speech just like newspapers, magazines, other periodicals, radio, and television operators.

47. However, the County has imposed business-license taxes upon Hart.

The County's Tax Officials Exploit the Business-License Tax's Vagueness to Sweep in Freelance Writers.

48. The County imposes a business-license tax or fee on the basis of a business's "gross receipts." County Code § 8-500. In accordance with the Enabling Statute, no percentage

tax may be imposed on any business with gross receipts less than \$100,000 per year. *Id.* Those smaller businesses pay an annual \$50 license fee. *Id.* § 8-501.

49. In all, the County's Business-License Ordinance contains 17 categories of businesses subject to licensure and/or taxation. Yet nowhere in the ordinance is any reference to "authors" or "writers." *See* County Code §§ 8-700–716.

50. Some members of the print and visual media are explicitly taxed by the County, including photographers and graphic designers. *Id.* § 8-712(B) (referring to 23 Va. Admin. Code 10-500-500).

51. The County's Business-License Ordinance contains a "catch-all" provision that, upon information and belief, was the basis for taxing Hart.

52. The County issued the Assessment to Hart under the classification "Repair, Personal and Business Services." *See* Exhibit A.

53. Under the "catch-all" provision, the Business-License Ordinance taxes "repair, personal, business, and other services" at a rate of \$0.36 per \$100 of gross receipts. County Code § 8-712.

54. The Business-License Ordinance defines "business" to mean "a course of dealing that requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit." County Code § 8-102 (referring to Va. Code Ann. § 58.1-3700).

55. The Business-License Ordinance defines "service" to mean "things purchased by a customer that do not have physical characteristics, or that are not goods, wares, or merchandise." County Code § 8-102 (referring to 23 Va. Admin. Code 10-500-10).

56. However, the Business-License Ordinance makes no attempt to define the terms “repair service,” “personal service,” “business service,” or “other service” in the catch-all provision.

57. Upon information and belief, in or around 2016, the County hired two business-tax auditors to identify potential targets for taxation.

58. According to a November 2, 2016 *C-Ville* article titled “Writer tax: County is all business in targeting freelancers,” as a result of those audits, local musicians and writers received tax bills. *See* <https://www.c-ville.com/writer-tax-county-business-targeting-freelancers/> (last visited July 22, 2019). In the article, then-Director of Finance Betty Burrell stated that even though writers do not appear in the County Code’s list of taxed occupations, they are still defined as a “business service.” *Id.*

CLAIMS FOR RELIEF

Count I

The County’s Business-License Tax, as Applied to Hart, Violates the First Amendment to the U.S. Constitution.

59. All preceding allegations are incorporated here as if set forth in full.

60. Hart, as a freelance writer, produces speech. The First Amendment to the U.S. Constitution (incorporated against Virginia via the Fourteenth Amendment) protects Hart’s right to free speech.

61. The County’s business-license tax burdens freelance writers like Hart while exempting other speakers such as newspapers, magazines, other periodicals, radio, and television. This constitutes impermissible speaker-based discrimination under the First Amendment.

62. Defendants do not have sufficient justification for discriminating against freelance writers in favor of newspapers, magazines, other periodicals, radio, and television.

63. Applying the County's business-license tax to freelance writers while exempting other speakers is not substantially related to any important government interest.

64. Upon information and belief, Defendants possess no evidence that applying the business-license tax to freelance writers while exempting other speakers is related to achieving any government interest.

65. Applying the County's business-license tax to freelance writers while exempting other speakers is not narrowly tailored to any compelling government interest.

66. Unless Defendants refund Hart's business-license taxes, penalties, and interest in the amount of \$10,995.50 and declare the business-license tax unconstitutional as applied to Hart, Hart will suffer continuing and irreparable harm.

Count II

The County's Business-License Tax Is Unconstitutionally Vague as Applied to Hart.

67. All preceding allegations are incorporated here as if set forth in full.

68. The Business-License Ordinance is impermissibly vague as applied to Hart in violation of the Fourteenth Amendment to the U.S. Constitution.

69. Knowledge of whether the Business-License Ordinance will be applied to a particular person or business depends on a proper understanding of the statutory definitions of "repair service," "business service," "personal service," and "other service."

70. The Business-License Ordinance does not define these terms, and the separate definitions of "business" and "service" are written in such a way that a reasonable person such as Hart cannot tell from the statute whether he will be taxed.

71. These definitions are so malleable and standardless that they authorize or encourage seriously discriminatory enforcement.

72. Unless Defendants refund Hart's business-license taxes, penalties, and interest in the amount of \$10,995.50 and declare the business-license tax unconstitutional as applied to Hart, Hart will suffer continuing and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. A refund of Plaintiff's business-license taxes, penalties, and interest in the amount of \$10,995.50;
- B. An entry of judgment declaring that Defendants' application of the Business-License Ordinance to Plaintiff violates the First Amendment to the U.S. Constitution;
- C. An entry of judgment declaring that the Business-License Ordinance is unconstitutionally vague under the Fourteenth Amendment to the U.S. Constitution as applied to Plaintiff;
- D. An award of Plaintiff's costs and expenses; and
- E. Such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 24th day of July, 2019,

JOHN HART, JR.,

by counsel.



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