No. 23-CV-897

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

EAB GLOBAL, INC.,
APPELLANT,

V.

DISTRICT OF COLUMBIA,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

GRAHAM E. PHILLIPS
Deputy Solicitor General

*JEREMY R. GIRTON
Assistant Attorney General
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-2029
jeremy.girton@dc.gov

*Counsel expected to argue

TABLE OF CONTENTS

STATEMENT OF THE ISSUES....1

STATEMENT OF THE CASE....1

STATEMENT OF FACTS....2

1. Real Property Taxes In The District....2

2. The Tax Abatement Legislation....4

3. Procedural History....5

STANDARD OF REVIEW....7

SUMMARY OF ARGUMENT....7

ARGUMENT....10

I. The Superior Court Correctly Held That The Anti-Injunction Act Bars EAB's Suit....10

A. The Anti-Injunction Act applies because EAB challenges future tax assessment and collection....10

1. EAB's suit seeks to litigate tax abatements prior to assessment or collection....11

2. EAB's counterarguments are unpersuasive....16

B. EAB does not qualify for the Anti-Injunction Act's exception....24

II. If The Court Reaches The Joinder Issue, It Should Affirm In Part And Remand....28

CONCLUSION....30

TABLE OF AUTHORITIES*

Cases

Agbaraji v. Aldridge, 836 A.2d 567 (D.C. 2003) 7, 19

Alexander v. 'Ams. United' Inc., 416 U.S. 752 (1974).....14

Am. Bus Ass'n, Inc. v. District of Columbia, 2 A.3d 203 (D.C. 2010).....7, 11

**Barry v. Am. Tel. & Tel. Co.*, 563 A.2d 1069 (D.C. 1989)..... 10, 11, 12, 17, 20, 25

Bob Jones Univ. v. Simon, 416 U.S. 725 (1974).....14, 19

Bright v. Bechtel Petroleum, Inc., 780 F.2d 766 (9th Cir. 1986) 14

Bull v. United States, 295 U.S. 247 (1935).....10

CIC Servs., LLC v. Internal Revenue Serv., 593 U.S. 209 (2021).....18

Cohen v. United States, 650 F.3d 717 (D.C. Cir. 2011) 21

D.C. Dep't of Consumer & Regul. Affs. v. Stanford,
978 A.2d 196 (D.C. 2009) 10, 11

D.C. Redev. Land Agency v. Eleven Parcels of Land,
589 F.2d 628 (D.C. Cir. 1978).....2

**District of Columbia v. Craig*,
930 A.2d 946 (D.C. 2007) 12, 14, 20, 24, 25, 28

District of Columbia v. Keyes, 362 A.2d 729 (D.C. 1976).....20

District of Columbia v. United Jewish Appeal Fed'n of Greater Wash., Inc.,
672 A.2d 1075 (D.C. 1996) 13

EMC Mortg. Corp. v. Patton, 64 A.3d 182 (D.C. 2013) 7, 29

Franchise Tax Bd. v. Alcan Aluminium Ltd., 493 U.S. 331 (1990).....21

---

* Authorities upon which we chiefly rely are marked with asterisks.

Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943).....11

Hinton v. Hinton, 395 A.2d 7 (D.C. 1978) 2

**In re Borgman*, 698 F.3d 1255 (10th Cir. 2012).....3, 26

In re Zingale, 693 F.3d 704 (6th Cir. 2012) 3

Karas v. Katten Muchin Rosenman LLP,
No. 07-1545-CV, 2009 WL 38898 (2d Cir. Jan. 8, 2009).....14

Nat'l Tr. for Historic Pres. in U.S. v. District of Columbia,
498 A.2d 574 (D.C. 1985) 10, 22

Pardue v. Ctr. City Consortium Schs. of Archdiocese of Wash., Inc.,
875 A.2d 669 (D.C. 2005) 7

South Carolina v. Regan, 465 U.S. 367 (1984).....20, 21

Stuart v. District of Columbia, 694 A.2d 49 (D.C. 1997).....28

**Tolu v. District of Columbia*, 906 A.2d 265 (D.C. 2006).....10, 24

Tumulty v. District of Columbia, 102 F.2d 254 (D.C. Cir. 1939).....26

United States v. Hunter Eng'rs & Constructors, Inc.,
789 F.2d 1436 (9th Cir. 1986) 17

W. End Tenants Ass'n v. George Wash. Univ., 640 A.2d 718 (D.C. 1994) 16

Walker v. District of Columbia,
No. 28063, 1888 WL 11645 (D.C. Apr. 23, 1888).....17

Wash. Post Co. v. District of Columbia, 596 A.2d 517 (D.C. 1991).....3

Z St. v. Koskinen, 791 F.3d 24 (D.C. Cir. 2015).....21

Statutes and Regulations

D.C. Code § 47-811 2

D.C. Code § 47-811.02 .....3, 8, 15, 16, 23, 25

D.C. Code § 47-825.01a.....3, 16, 23

D.C. Code § 47-3307 .....1, 7, 10

D.C. Code § 47-4665.06 .....4, 12, 20, 25, 26, 27

Super. Ct. Civ. R. 19 .....29, 30

Legislative History

D.C. Council, Report on Bill 22-918 (Nov. 28, 2018) 27

D.C. Council, Report on Bill 23-504 (Nov. 19, 2019) 27

Other

Black's Law Dictionary (12th ed. 2024) 3

Mertens Law of Federal Income Taxation (2024).....25

Tax Credits for Individuals: What They Mean & How They Can Help Refunds, Internal Rev. Serv. (April 2023), https://tinyurl.com/385nbwmp 25

West's Tax Law Dictionary (2024) 17

STATEMENT OF THE ISSUES

The D.C. Council enacted a 10-year real property tax abatement of up to $2.1 million annually for the portion of the property leased by appellant EAB Global, Inc. In the first year of the abatement's operation, the District concluded that the relative tax liability for EAB's portion of the property was less than $2.1 million, so the abatement zeroed out EAB's effective tax obligations. EAB was dissatisfied with that result, believing it was entitled to a refund from the District for the remainder of the $2.1 million abatement, despite explicit statutory language stating that the abatement is nonrefundable. Rather than pursue a refund claim in conjunction with the property owner, however, EAB sued the District seeking declaratory relief about the property's tax liabilities. The questions presented are:

1. Whether the Superior Court correctly held that EAB's suit is barred by the Anti-Injunction Act, D.C. Code § 47-3307, because it seeks declaratory relief regarding the future assessment and collection of taxes.

2. If the Anti-Injunction Act does not apply, whether the Superior Court abused its discretion in dismissing EAB's complaint for failure to join the property owner as a necessary party.

STATEMENT OF THE CASE

EAB filed its complaint on October 20, 2022. JA 22. Over EAB's opposition, the District moved to transfer the action to the Tax Division, which was granted on

January 20, 2023. JA 17. The District moved to dismiss the action as barred by the Anti-Injunction Act, and the Superior Court granted the District's motion on October 2, 2023. JA 1. On October 25, 2023, EAB timely appealed to this Court. The parties cross-moved for summary disposition, and on October 17, 2024, the Court denied both motions.

STATEMENT OF FACTS

1. Real Property Taxes In The District.

In the District, real property taxes are assessed annually and must be paid in two installments, generally by March 31 and September 15 of each year. D.C. Code § 47-811(b). Like most jurisdictions, the District's real property taxes are *in rem*, meaning they "are levied against the property" itself. *D.C. Redev. Land Agency v. Eleven Parcels of Land*, 589 F.2d 628, 629 (D.C. Cir. 1978); *see* D.C. Code § 47-811(a) ("[T]here is hereby levied for each fiscal year a tax on the real property in the District of Columbia . . . ."). Although the property's owner is usually the one who pays the tax (because failing to do so may jeopardize their interest in the property), that is not strictly required. An *in rem* tax "does not impose a personal liability on the property owner," meaning it could be paid by anyone. *Hinton v. Hinton*, 395 A.2d 7, 9 (D.C. 1978).

A tax abatement is a "temporary reduction or exemption from taxes granted by a government to encourage economic activities such as industrial or retail

development." *Abatement*, Black's Law Dictionary (12th ed. 2024). In other words, in exchange for meeting certain conditions, the government agrees to reduce (abate) the taxes that the taxpayer would otherwise owe. An abatement is generally "nonrefundable," meaning "it can only reduce tax liability to the extent that tax liability exists." *In re Borgman*, 698 F.3d 1255, 1258 (10th Cir. 2012); *see In re Zingale*, 693 F.3d 704, 709 (6th Cir. 2012). If an abatement exceeds the amount of tax liability, the tax liability is reduced to zero. The government does not pay the taxpayer any remainder.

If a taxpayer believes that there has been an overpayment because the assessed amount of tax was incorrect, then the taxpayer may seek a refund from the Office of Tax and Revenue ("OTR") and may initiate suit if that administrative process is unsuccessful. *E.g.*, *Wash. Post Co. v. District of Columbia*, 596 A.2d 517, 518 (D.C. 1991) (refund suit by the Washington Post challenging "real property tax assessments levied against its property"). Most commonly, property tax challenges relate to a property's assessed value or classification and proceed under the specific provisions outlined in D.C. Code § 47-825.01a. But refund claims raising other issues may be brought under the catch-all provision in D.C. Code § 47-811.02. That statute allows "the person who made the [tax] payment" to seek a refund from OTR for various reasons, including if the "refund results from the grant of a real property tax exemption." D.C. Code § 47-811.02(b)(5).

2. The Tax Abatement Legislation.

In 2015, the Council enacted a 10-year performance-based real property tax abatement designed to benefit EAB's predecessor, the Advisory Board Company, in exchange for keeping its headquarters in the District. JA 27 ¶¶ 19-20. After EAB was spun off into a separate entity, the Council amended the statute to apply solely to property leased by EAB. JA 27-28 ¶¶ 20-22. As amended, the statute provides that "the real property taxes imposed by Chapter 8 of this title with respect to the Property shall be abated in an amount not to exceed $2.1 million per tax year during the abatement period" if EAB meets certain criteria. D.C. Code § 47-4665.06(b). Those criteria are memorialized in a separate Incentive Agreement, although the statute controls in the event of any conflict. D.C. Code § 47-4665.06(a)(5); JA 108 § 12. The "Property" subject to the abatement is defined as "a portion of the real property located at 2445 M Street, N.W., known for tax and assessment purposes as Lot 871 in Square 0024, that is subject to real property taxation under Chapter 8 of this title." D.C. Code § 47-4665.06(a)(13). The statute also provides that the "abatement shall be non-refundable and shall not be credited to other tax years." *Id.* § 47-4665.06(b).

As required by the Incentive Agreement, EAB entered into a 10-year lease for a portion of the building at 2445 M Street from the landlord, Beacon Capital Partners. JA 32 ¶ 36; JA 135-315. Per the terms of the lease, EAB rents 48.48% of

the building's total rentable area and is responsible for 48.48% of the building's real property taxes, which pass through Beacon. JA 24 ¶ 5; JA 33 ¶ 40; JA 121; JA 139.

3. Procedural History.

In December 2020, the Deputy Mayor for Planning and Economic Development certified that EAB had met the statutory criteria necessary to obtain the abatement for tax year 2021. *See* JA 119-20. The certification provided that the "portion of the building" leased by EAB from Beacon was "entitled to receive a real property tax abatement for tax year 2021 . . . in an amount of the real property tax proportionately and reasonably owed by the Eligible Property not to exceed $2,100,000." JA 119.

Beacon received 2445 M Street's tax bill for the first half of tax year 2021 in March 2021. JA 33 ¶ 40. The bill reflected that the portion of the building's property taxes attributable to EAB had been fully abated. JA 33 ¶ 40. Specifically, the estimated tax for the entire building was $2,598,239.89, and EAB's responsibility for its portion of the building was 48.48%, or $1,259,626.70. JA 35 ¶ 46. Because that amount was less than $2.1 million, all of EAB's effective tax liability was eliminated. *See* Br. 8 & n.5. The remaining $1,338,613.19 in property taxes assessed on the remainder of the building not leased by EAB was not abated. *Id.*

EAB believes that zeroing out its property tax bill was not sufficient and that it was entitled to an abatement of $2.1 million, even though this exceeded the real

property taxes assessed against the portion of 2445 M Street that it rented. Rather than pursue the ordinary tax refund process, however, EAB filed a two-count complaint in the Superior Court's Civil Division in October 2022. In the first count, EAB seeks a declaratory judgment that EAB is entitled to an abatement of $2.1 million for each year between tax year 2021 and tax year 2030, so long as it meets the statute's other criteria. JA 36-37 ¶¶ 47-55. In the second count, it asserts a claim for breach of contract for the District's failure to award it an abatement of $2.1 million for tax year 2021, for which it seeks $840,373.35 in damages, plus damages for future tax years. JA 37-38 ¶¶ 56-66. Beacon, EAB's landlord, was not joined as a party to the suit.

In addition to the District, EAB's suit named as defendants Mayor Muriel Bowser, Deputy Mayor John Falcicchio, and Chief Financial Officer Glen Lee, all in their official capacities. Because the District was also named as a party, the individual defendants moved to dismiss themselves as redundant. JA 17. After the case was transferred to the Tax Division over EAB's opposition, the District moved to dismiss the complaint for violating the Anti-Injunction Act. On September 28, 2023, the Superior Court granted that motion, finding that the Anti-Injunction Act barred EAB's suit. JA 1-12. Alternatively, and on its own initiative, the court held that EAB had failed to join Beacon as a necessary party. JA 12-13. Because it had

dismissed the entire suit for lack of jurisdiction, the court denied the motion to dismiss the individual defendants as moot. JA 13-14. This appeal followed.

STANDARD OF REVIEW

The Anti-Injunction Act, D.C. Code § 47-3307, is a limitation on the subject-matter jurisdiction of the Superior Court. *Am. Bus Ass'n, Inc. v. District of Columbia*, 2 A.3d 203, 208 n.11 (D.C. 2010). This Court reviews the Superior Court's grant of a motion to dismiss for lack of subject-matter jurisdiction de novo. *Pardue v. Ctr. City Consortium Schs. of Archdiocese of Wash., Inc.*, 875 A.2d 669, 674 (D.C. 2005). "In considering a motion to dismiss for lack of subject matter jurisdiction the trial court conducts an independent review of the evidence relevant to jurisdiction and is not obliged to assume the truthfulness of the factual allegations in the complaint." *Agbaraji v. Aldridge*, 836 A.2d 567, 569 (D.C. 2003). The Court reviews the Superior Court's joinder ruling for abuse of discretion. *EMC Mortg. Corp. v. Patton*, 64 A.3d 182, 186 (D.C. 2013).

SUMMARY OF ARGUMENT

1. The Anti-Injunction Act bars this suit because EAB seeks declaratory relief that would prevent the District from assessing or collecting future property taxes, and no statutory exception applies.

a. In its complaint, EAB seeks a declaration that the property tax abatement for its portion of 2445 M Street is a payment guarantee rather than a

traditional nonrefundable abatement. If successful, EAB's suit would require the District to adopt EAB's expansive (and atextual) reading of the abatement statute for future tax years that have not yet been paid. The Anti-Injunction Act prohibits such requests for declaratory relief because they interfere with collection efforts; the law requires any dispute about how much property taxes are owed to be litigated in a refund suit after the disputed taxes are paid.

EAB cannot avoid the Act's plain terms by asserting that one of its claims is for "breach of contract" and seeks only past damages. The Act applies irrespective of labels, and many courts have found the equivalent federal statute bars breach-of-contract actions. For any past tax years, EAB can pursue an administrative refund claim under D.C. Code § 47-811.02 in coordination with the property's owner, who paid the disputed amounts.

EAB's counterarguments at bottom amount to the implausible contention that this is not a tax case. It also maintains that it has no mechanism to pursue a tax refund because it would need to enlist the actual taxpayer to obtain one. But that is a commonsense requirement, and it does not mean that legal relief is unavailable to EAB.

b. EAB's suit does not meet either of the two independent requirements for an exception to the Anti-Injunction Act. It cannot show there is no adequate legal remedy available because it acknowledges that its landlord Beacon could

pursue a tax refund in the ordinary course. It also cannot show that there is "no possibility" that the District's interpretation will prevail. In essence, EAB's merits argument is that the Court should ignore the ordinary and settled meaning of a tax abatement as a *reduction* in potential tax liability. Instead, it contends that this abatement should operate as a refundable cash payment payable to EAB directly. That reading is plainly wrong because the statute states explicitly that the abatement is nonrefundable and can only reduce the taxes owed on EAB's "portion" of the property. EAB fails to offer any authority to support its competing interpretation of the statute, effectively conceding the point.

2. The Court does not need to reach the joinder issue because the Anti-Injunction Act means the Superior Court lacked jurisdiction. But if the Court concludes otherwise, it should affirm that there was no abuse of discretion in finding Beacon to be an indispensable party. EAB's suit essentially asks the Superior Court to award Beacon's tax refund to itself, so Beacon's participation is clearly required. However, the District agrees that the court should not have characterized this as an alternative basis for dismissal; it should have first analyzed whether Beacon could be joined and then dismissed only if joinder was infeasible. If the Court reaches this issue, it should remand for that analysis in the first instance.

ARGUMENT

I. The Superior Court Correctly Held That The Anti-Injunction Act Bars EAB's Suit.

A. The Anti-Injunction Act applies because EAB challenges future tax assessment and collection.

The Anti-Injunction Act states that "[n]o suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax." D.C. Code § 47-3307. Instead, "the legality of [a] tax" must ordinarily "be determined in a refund suit" or other statutorily provided administrative appeal process. *Tolu v. District of Columbia*, 906 A.2d 265, 267 (D.C. 2006). The law boils down to a simple command: "that taxes be paid before they are challenged." *Nat'l Tr. for Historic Pres. in U.S. v. District of Columbia*, 498 A.2d 574, 576 (D.C. 1985).

This requirement is designed "to eliminate, or minimize, disruptions to the collection, and assessment of taxes." *D.C. Dep't of Consumer & Regul. Affs. v. Stanford*, 978 A.2d 196, 199 (D.C. 2009). Taxes are "the lifeblood of government," and their "prompt and certain availability" is "an imperious need." *Bull v. United States*, 295 U.S. 247, 259 (1935). Timely collection is necessary to ensure "the provision of essential public services." *Barry v. Am. Tel. & Tel. Co.*, 563 A.2d 1069, 1073 (D.C. 1989). The law therefore acknowledges that "[a]ny departure from the principle of 'pay first and litigate later' threatens an essential safeguard to the orderly

functioning of government." *Stanford*, 978 A.2d at 199 (quoting *Barry*, 563 A.2d at 1073 n.10).

For this reason, the Anti-Injunction Act's prohibition "applies with equal force" to suits for "declaratory relief." *Barry*, 563 A.2d at 1074; *see Am. Bus Ass'n*, 2 A.3d at 208. "[D]eclaratory relief 'may in every practical sense operate to suspend collection of the state taxes until the litigation is ended' in the very same manner that an injunction would." *Barry*, 563 A.2d at 1073 (D.C. 1989) (quoting *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299 (1943)). The Act prohibits declaratory judgments about future tax liabilities because they are "merely . . . another form of anticipatory relief that would effectively enjoin the collection of taxes by the District and subvert the purpose for which the Anti-Injunction Act was created." *Stanford*, 978 A.2d at 199.

1. EAB's suit seeks to litigate tax abatements prior to assessment or collection.

EAB's suit is an effort to enjoin the assessment or collection of a tax and thus is barred by the Anti-Injunction Act. The primary relief sought in the complaint is a declaratory judgment regarding how the tax abatement should be calculated in future, unpaid tax years for the property at 2445 M Street. *See* JA 36-40. Specifically, EAB wants a "judgment declaring that" for each year between 2021 and 2030, "EAB is entitled to a real property tax abatement equal to $2.1 million if it meets its hiring targets for that year and otherwise complied with the Agreements."

JA 37 ¶ 55; JA 39 ¶¶ 1, 4. It also seeks "[a]n order declaring" that the District "misinterpreted D.C. Code Section 47-4665.06," and that EAB's preferred interpretation applies instead. JA 39 ¶ 2. Lastly, it requests "[a]n order declaring" the District has failed "to upload the real property tax abatement to which EAB is entitled for Tax Year 2021, damaging EAB in an amount no less than $840,373.35, plus costs, interest, and fees." JA 39 ¶ 5.

All of these requests for declaratory relief are barred by the Act. *District of Columbia v. Craig*, 930 A.2d 946, 953 (D.C. 2007). Even though EAB avoids using the word "injunction" in its complaint, it seeks a declaratory order that would "effectively restrain[] the government's ability to assess and collect the tax in a manner that is just as coercive as an injunction." *Barry*, 563 A.2d at 1074. An order from the Superior Court "declaring" that EAB is entitled to a $2.1 million abatement each year—regardless of whether that amount exceeds EAB's tax liability—would prevent the District from assessing or collecting taxes on 2445 M Street in the amount that the District believes is correct. If, for example, the assessed value of 2445 M Street remains unchanged from 2021 and EAB continues to qualify for the full abatement, the District would ordinarily assess and collect approximately $1.34 million in property taxes each year. *See supra* p. 5 (describing 2021 calculations). This represents the approximately $2.6 million the property would owe without any abatement, minus EAB's portion of approximately $1.26 million. However, if the

District were subject to EAB's proposed declaratory judgment, the District could assess and collect only $500,000 ($2.6 million minus $2.1 million). The same would be true for each tax year until the abatement expires in 2030, meaning the District would be unable to collect millions of dollars in property taxes.

That EAB styled one of its claims as a "breach of contract" is irrelevant because the Anti-Injunction Act applies to any suit—however labeled—that runs afoul of its prohibition. For example, the Court applied the Act in *District of Columbia v. United Jewish Appeal Federation of Greater Washington, Inc.*, 672 A.2d 1075 (D.C. 1996), even though that was a quiet-title action initiated by the District concerning property it had acquired via tax sale. Many years into the litigation, the trial court rescinded all of the past due real estate taxes on the property as a discovery sanction. *Id.* at 1077. This Court vacated that order as "clearly" violating the Anti-Injunction Act, concluding that "the trial court was without jurisdiction to enjoin the taxes" even though it had jurisdiction over the quiet-title action. *Id.* at 1079. The Court explained that "the test of whether an action runs afoul of the Anti-Injunction Act is not whether the purpose of the suit is solely to question the liability of the party requesting the relief," but rather "whether, because of the action requested or taken, any assessment or collection of taxes will be prohibited." *Id.* (cleaned up).

Federal courts have applied the federal Anti-Injunction Act to a wide variety of claims, and this Court has identified those decisions as persuasive authority for interpreting the District's Anti-Injunction Act. *Craig*, 930 A.2d at 953 n.7. The Supreme Court has barred even constitutional claims, *e.g.*, *Bob Jones Univ. v. Simon*, 416 U.S. 725, 738 (1974), because the "nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act," *Alexander v. 'Ams. United' Inc.*, 416 U.S. 752, 759 (1974). For this reason, many courts have found the federal act bars claims for breach of contract. In *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766 (9th Cir. 1986), for instance, an employee brought a breach of contract action against his employer based on its withholding of federal income tax from his compensation. The court held that the suit was barred by the federal Anti-Injunction Act because it could "be viewed as one to restrain collection (through withholding) of federal income tax." *Id.* at 770; *see also Karas v. Katten Muchin Rosenman LLP*, No. 07-1545-CV, 2009 WL 38898, at *1 (2d Cir. Jan. 8, 2009) ("As to Karas's breach of contract claim, to the extent that it seeks an order restraining Katten from future withholding of federal and state taxes, the Anti-Injunction Act . . . deprive[s] the federal courts of jurisdiction . . . .").

The Superior Court's holding that EAB's suit is barred by the Act does not leave EAB without recourse. As with any ordinary tax dispute, "the legal right to the disputed sums [may] be determined in a suit for refund." *Craig*, 930 A.2d at 953

n.7 (cleaned up). There is a well-established procedure to challenge real property tax assessments: an administrative refund claim (and, if necessary, a refund suit) under D.C. Code § 47-811.02. *See supra* p. 3. EAB readily acknowledges that "the taxpayer must first pay the assessed taxes, and then challenge the assessment or collection after the fact, seeking a refund." Br. 15.

It is true that D.C. Code § 47-811.02(b) requires a property tax refund be sought by "the person who made the payment" in the first place. That commonsense limitation prevents individuals from seeking refunds belonging to someone else. EAB acknowledges that it contracted to have its portion of 2445 M Street's taxes pass through its landlord, Beacon, making Beacon the taxpayer capable of pursuing a refund. Br. 10 ("[T]he Landlord pays the taxes every year."), 16 ("[T]he Landlord, as the owner, pays the taxes on the Leased Property and passes any abatements on to EAB pursuant to a contractual arrangement spelled out in the Lease."); *see* JA 33 ¶ 40. That contractual choice was EAB's. If EAB elected to pay the taxes directly, it would have been empowered to pursue a refund instead. But because it chose to have Beacon act as a pass-through entity, it was obligated to enlist Beacon to pursue any refund suit to challenge the property taxes against 2445 M Street. That should come as no surprise; it is why EAB's lease "specifically contemplates the manner in which the tax abatement will be conferred from the owner of the property to EAB." JA 32 ¶ 36.

This circumstance is not unusual. A standard "triple-net lease" obligates the commercial tenant to pay its portion of real property taxes (along with insurance and utilities). *W. End Tenants Ass'n v. George Wash. Univ.*, 640 A.2d 718, 728 (D.C. 1994). If the tenant decides to have those taxes pass through the building's owner rather than pay them directly, then the owner is the party entitled to pursue a tax refund in the event of an overpayment. *See* D.C. Code § 47-811.02(b). If the tenant wants to challenge an assessment, it must enlist the owner to do so. *See also id.* § 47-825.01a(d), (e), (g) (challenges to a property's proposed assessed value or classification must be brought by the property's "owner"). Because EAB opted to use the pass-through option, it must work with Beacon to dispute any aspects of the property tax assessment, including the amount of the statutory abatement, through the refund process. EAB's current suit essentially asks to receive someone else's tax refund—outside of the administrative refund process and without that other party's participation. That is not permissible.

2. EAB's counterarguments are unpersuasive.

EAB raises three arguments for why the Anti-Injunction Act does not apply to its suit, but each fails to persuade.

First, EAB contends that this suit does not raise an assessment or collection issue and thus falls outside the Act's terms. EAB asserts that the amount of taxes owed on 2445 M Street "is not in dispute," so there is no "assessment" issue. Br.

15. Not so. The amount of taxes owed on 2445 M Street is very much disputed. For 2021, EAB asserts that only about $500,000 in taxes should have been assessed, whereas the District believes that the figure was correctly assessed at approximately $1.34 million. *See supra* p. 5. The only way EAB's argument makes sense is if the term "assessment" is understood to *exclude* the calculation of tax abatements, which is plainly wrong. An abatement is a "reduction in the assessment of [a] tax," so it is part of the assessment process. *Abatement*, West's Tax Law Dictionary § A30 (2024); *see also Walker v. District of Columbia*, No. 28063, 1888 WL 11645, at *3 (D.C. Apr. 23, 1888) ("The assessment is the official ascertainment of the amount of the tax to be charged upon the property."); *United States v. Hunter Eng'rs & Constructors, Inc.*, 789 F.2d 1436, 1436 n.1 (9th Cir. 1986) ("Assessment of a tax is no more than the ascertainment of the amount due . . . ." (cleaned up)).[1]

EAB likewise argues that this case does not involve a "collection" issue because its landlord Beacon pays the taxes on 2445 M Street and EAB's suit would not interfere with that collection. Br. 16. That is again incorrect. If EAB's suit were

[1] EAB previously argued that "assessment" carries an even narrower meaning limited to "the estimated market value that the District assigns to a property," citing the definition of a "property assessment" from OTR's website. Mot. for Summ. Reversal 3 & n.2. It has abandoned that argument, but in any event, "assessment" is not limited to real property valuations because the Anti-Injunction Act applies to all forms of taxes, including those that do not require estimating the market value of real property. *See, e.g.*, *Barry*, 563 A.2d at 1074 (concluding that a suit challenging the "assessment" of a gross receipts tax was prohibited by the Anti-Injunction Act).

to succeed, the District would be unable to collect millions of dollars in real property taxes against 2445 M Street between now and 2030. *Supra* pp. 12-13. It is simply not true that the District collects "the full assessed value" of the tax from Beacon and then remits the abatement amount to EAB directly, Br. 17, a contention that is at odds with EAB's own complaint, *see* JA 33 ¶ 40. Rather, the District reduces ("abates") the amount of taxes to be collected against the property at the outset. JA 33 ¶ 40. Beacon, as the property owner, passes that savings on to EAB per the terms of their lease; the District does not pay EAB anything directly. Br. 20 ("The tax abatement issued by the District flows through [Beacon] to EAB."). That means that a court order requiring the District to calculate the abatement differently would prevent those taxes from being collected in the first place.

Second, EAB argues that its breach-of-contract count merely seeks "to litigate past actions," not future assessments or collections. Br. 17. That is also false. The complaint mainly seeks a declaratory judgment about how the abatement should be calculated going forward, which the Anti-Injunction Act prohibits. *See CIC Servs., LLC v. Internal Revenue Serv.*, 593 U.S. 209, 217 (2021) (in assessing whether a suit seeks to enjoin tax collection or assessment, courts should look to "the action's objective aim—essentially, the relief the suit requests"). For instance, EAB seeks an order declaring "that *hereafter* EAB is entitled to the full annual $2,100,000 real property tax abatement each year so long as it complies with all conditions of the

Incentive Agreement and Community Benefits Agreement for that given tax year." JA 39 ¶ 4 (emphasis added). Even within the breach-of-contract count itself, EAB asserts that it has been "damaged in the amount of $840,373.30 for the 2021 Tax Year, and may be damaged *each year going forward* for the duration of the ten-year term, aggregating to millions of dollars." JA 38 ¶ 66 (emphasis added). The Court cannot ignore these requests; a suit does not escape the Anti-Injunction Act bar just because the court might not issue the injunctive or declaratory relief sought by the plaintiff. So long as "a primary purpose" of the lawsuit is to prevent the assessment or collection of taxes, the suit is barred. *Bob Jones Univ.*, 416 U.S. at 738.

But even if one bypassed all the requests for forward-looking relief littered throughout the complaint, this case cannot be recharacterized as a refund suit for tax year 2021. Tax refund suits must follow particular procedures that EAB has not complied with here. *See Agbaraji*, 836 A.2d at 569-70. As EAB acknowledges many times over, it was not the taxpayer for 2445 M Street's real property taxes in that year; its landlord Beacon was. *E.g.*, Br. 10, 16, 17. Any refund suit would need to be initiated by Beacon, not EAB alone, and Beacon would need to exhaust administrative remedies. Br. 14 (acknowledging that Beacon "is the necessary party to pursue an OTR administrative remedy"). Any refund would then pass from Beacon to EAB only because that is what their lease provides—not because anything in the abatement statute requires it. Br. 6. The statute speaks only of the taxes

assessed against the property *in rem*. D.C. Code § 47-4665.06(b); *see supra* pp. 2-3. Ordering the District to pay a refund to EAB directly, Br. 20-21, would violate one of the primary purposes of the Anti-Injunction Act, which is to ensure that the ordinary administrative refund procedures are "not circumvented." *Barry*, 563 A.2d at 1073. As this Court has long made clear, "to maintain a refund suit, a taxpayer must follow the specific, statutorily-prescribed procedures governing such suits." *Craig*, 930 A.2d at 954; *see also District of Columbia v. Keyes*, 362 A.2d 729, 732 (D.C. 1976) (tax refund suits prohibited at common law and are permitted only by statute).

Third, EAB argues that the Anti-Injunction Act does not apply because it has no other available remedy, invoking *South Carolina v. Regan*, 465 U.S. 367 (1984). This argument misreads *South Carolina* and its progeny, and it would swallow the well-established exception to the Anti-Injunction Act, discussed *infra* pp. 24-30. *South Carolina* was an original jurisdiction suit brought directly in the Supreme Court to challenge the elimination of a federal income tax exemption for interest earned on state bearer bonds. 465 U.S. at 370-72. South Carolina contended that the elimination of the exemption violated the Tenth Amendment and the doctrine of intergovernmental tax immunity because it would indirectly force the state to issue its bonds in registered form or else pay higher interest rates on bearer bonds. *Id.* In a closely divided opinion, the Supreme Court held that the suit was not barred by the

federal Anti-Injunction Act because the state lacked any "alternative avenue" to raise its constitutional claims, which did not seek any form of tax refund for the state itself. *Id.* at 381.

South Carolina thus stands for the narrow proposition that the Anti-Injunction Act does not apply to cases where the litigant seeks a non-refund remedy and there is no other legal avenue to obtain it. It is not a mechanism to undercut the Act where a refund-like remedy is available. For instance, individual taxpayers cannot form "organizations to litigate their tax claims" because "taxpayers have alternative remedies"—like refund suits—available to them, even if the organizations would not. *Id.* at 381 n.19. Likewise, the Court has refused to extend *South Carolina* to cases where the litigants have control over entities that could pursue refunds. *Franchise Tax Bd. v. Alcan Aluminium Ltd.*, 493 U.S. 331, 339 (1990). And in the other cases EAB cites, the D.C. Circuit applied the *South Carolina* exception to cases that did not seek any form of tax refund. *See Z St. v. Koskinen*, 791 F.3d 24, 31 (D.C. Cir. 2015) (challenging alleged IRS policy of delaying consideration of an organization's 501(c)(3) application based on the organization's political views); *Cohen v. United States*, 650 F.3d 717, 725 (D.C. Cir. 2011) (en banc) (challenging validity of IRS procedures for returning taxpayer funds). EAB identifies no case where *South Carolina* has ever been applied to a suit seeking a refund-like remedy.

Here, EAB seeks a tax refund outside the normal procedure for obtaining one. As the complaint makes clear, EAB believes that the District calculated the 2021 tax abatement for 2445 M Street incorrectly. JA 39 ¶ 2. In its view, that resulted in the property being overcharged in real property taxes by $840,373.35. JA 39 ¶ 5. That overcharged amount was paid by EAB's landlord Beacon, and Beacon is statutorily entitled to pursue a refund claim. Br. 10, 16, 17. EAB's suit tries to short-circuit the refund process by demanding that the District take the refund allegedly owed to Beacon and give it to EAB instead. Notably, EAB appears to admit that the District could be exposed to double recovery if EAB prevails in its suit because Beacon could independently pursue a tax refund for the same amount. Br. 14 (acknowledging that Beacon could still pursue an administrative refund). *South Carolina* does not require this anomalous result.

Further, EAB identifies no barrier that would prevent it from working with Beacon to pursue a refund in the ordinary course, meaning "there is an adequate remedy at law" available and *South Carolina* is inapplicable. *Nat'l Tr. for Historic Pres.*, 498 A.2d at 576. EAB highlights that its contractual agreement with Beacon does not obligate Beacon to initiate a refund claim, Br. 13, but this is a contract of EAB's own making, and one that could be amended. As noted *supra* p. 16, commercial triple-net leases are common, and lessees and landlords frequently must work together if they believe property taxes were overcharged. EAB chose to have

its abatement pass through Beacon, so it must pursue any refund through Beacon as well.

EAB is also simply incorrect that the statute allows only property owners to pursue refund claims. Br. 14. EAB cites D.C. Code § 47-825.01a(d), which governs the procedures for an owner to challenge "the real property's assessed value or its classification." But D.C. Code § 47-811.02(b) allows any "person who made the payment" to seek a tax refund for other reasons, including to claim a tax exemption. That provision is not limited to property owners; it could include a lessee that made a tax payment directly. Thus, if EAB did not want to rely on Beacon to pursue refund claims on its behalf, it could have chosen to pay the taxes itself.

At bottom, all of EAB's arguments reduce to the proposition that this is not a tax case. EAB is wrong. In its complaint, EAB mentions taxes more than 100 times and acknowledges from the start that this dispute centers on the interpretation of "a real property tax abatement statute." JA 23 ¶ 1. The complaint recognizes that the contracts it alleges the District breached merely "memorialized" the terms of the tax statute. JA 23 ¶ 2. That is reflected in the Incentive Agreement explicitly, which states that it is "[s]ubject to the terms of the Act," JA 103 § 3, that "the terms of the Act shall control" in the event of any conflict with the agreement, and that the "District shall have no liability to the Company, the owner of the Property, or any other party if the Act is not approved by [the] Council or if the Act so approved is in

conflict with the terms of this Incentive Agreement," JA 108 § 12. And as EAB admits on appeal, its desired outcome of this suit is for the court to "award the full $2.1 million to EAB in the form of an abatement." Br. 17. This is a tax suit through and through.

B. EAB does not qualify for the Anti-Injunction Act's exception.

This Court has recognized that the Anti-Injunction Act does not prohibit suits in the "exceptional" and "extraordinary" circumstance where (1) "there is no adequate legal remedy," and (2) "under no circumstances could the Government ultimately prevail." *Craig*, 930 A.2d at 953, 957 n.14 (cleaned up). As EAB admits, for the exception to apply, both requirements must be satisfied. Br. 18; *see Tolu*, 906 A.2d at 277. EAB's suit satisfies neither.

First, as discussed *supra* pp. 14-16, 21-23, there is an adequate legal remedy available: an administrative refund claim—and if necessary, suit—under D.C. Code § 47-811.02. Even if availing itself of this remedy would require the participation of its landlord Beacon, EAB provides no explanation for why it could not work with its landlord to travel this well-worn path to seeking a refund. EAB asserts without further explanation that Beacon "would likely be barred" from pursuing EAB's claims because it "is not a party to the contract." Br. 14. But this is not a barrier to pursuing a tax refund based on a claim that a property tax was assessed incorrectly, which is governed by statute. Beacon—as the party "who made the payment" with

respect to 2445 M Street for 2021—is entitled to pursue a refund, and the District, by law, cannot refund it to someone else. D.C. Code § 47-811.02(b).

Second, and independently, EAB cannot show that there is "no possibility" that the District would prevail. *Craig*, 930 A.2d at 959. This standard requires EAB to "show at the time of the suit that the government[,] under the most liberal view of the law and the facts, cannot establish its claim." *Barry*, 563 A.2d at 1076 (cleaned up). EAB bears the heavy burden of showing that the District had "no chance of success"; if the issue is even "debatable," the exception to the Anti-Injunction Act does not apply. *Craig*, 930 A.2d at 960.

It is not merely possible but *exceedingly likely* that the District would prevail on the underlying merits because EAB's interpretation of the abatement statute is wrong. The statute at issue here explicitly makes the abatement nonrefundable and not creditable toward future tax years. D.C. Code § 47-4665.06(b). That means that if the abatement exceeds the tax liability, the tax liability reduces to zero and the District will not pay back ("refund") any excess. *Supra* pp. 2-3; *see also* 8 Mertens Law of Federal Income Taxation § 32:26 (2024) (explaining, in the context of tax credits, that "[n]onrefundable" means something "reduce[s] tax liability, but not below zero; any credit remaining after tax liability is reduced to zero is wasted unless it may be carried over to another tax year"); *Tax Credits for Individuals: What They Mean & How They Can Help Refunds*, Internal Rev. Serv. (April 2023),

https://tinyurl.com/385nbwmp ("For nonrefundable tax credits, once a taxpayer's liability is zero, the taxpayer won't get any leftover amount back as a refund.").

Several features of D.C. Code § 47-4665.06 confirm this reading. The first clue is that the statute uses the term "abatement," as opposed to "credit" or some other form of benefit that could potentially be refundable. D.C. Code § 47-4665.06(b), (c), (d), (f). Subsection (b) also makes clear that it is a reduction of taxes that would otherwise be levied on a piece of property, not a cash payment from the government to EAB itself: "the real property taxes imposed by Chapter 8 of this title with respect to the Property shall be abated in an amount not to exceed $2.1 million per tax year." *Id.* § 47-4665.06(b). This is further verified by the next sentence, which states that the abatement is "*non-refundable* and shall not be credited to other tax years." *Id.* (emphasis added). The Council could hardly have been clearer that if the abatement exceeds the property's tax liability in a particular year, EAB does not get a payout. *See In re Borgman*, 698 F.3d at 1257-58.

This is also made plain in the statute's definition of the relevant "Property" subject to the abatement. The statute states that it is the *property*, not its owner or lessee, that receives the tax abatement, consistent with how all property taxes are assessed. *See* D.C. Code § 47-4665.06(b); *Tumulty v. District of Columbia*, 102 F.2d 254, 259 (D.C. Cir. 1939) ("[A] real property tax is a definite charge against the property itself."). And rather than specify that *all* of 2445 M Street is eligible for

the abatement, the statute defines the "Property" affected to mean "a *portion* of the real property located at 2445 M Street, N.W." D.C. Code § 47-4665.06(a)(13) (emphasis added). This means that the statute contemplates reducing the tax liability only with respect to the portion of the building that EAB occupies. *See id.* § 47-4665.06(e) (clarifying that the "Property" means the portion of the building subject to EAB's lease). The remainder of the building is not subject to the abatement at all because it is not part of the "Property" that is covered by the abatement. This makes sense because there is no indication that the Council intended the abatement to benefit the building's other tenants.

Although the statutory text is clear on its face, this understanding is confirmed by the relevant legislative history. The Council deliberately changed the definition of the "Property" to include only a "portion" to "identify the specific EAB Global, Inc. real property receiving [the] tax abatement." D.C. Council, Report on Bill 23-504, at 5 (Nov. 19, 2019). That is consistent with the Council's original intent in establishing the abatement, which was to "provide an abatement of real property taxes on real property leased by EAB Global Inc.," not a cash payment to EAB directly or an abatement of the tax on property leased by others. D.C. Council, Report on Bill 22-918, at 1 (Nov. 28, 2018).

EAB does not actually offer any argument about why the District's reading of the statute is wrong. Its entire argument on this prong of the exception consists of

two sentences where it asserts that the exception applies only if the government prevailing would "result[] in money owed to the Government." Br. 18-19. This argument makes little sense and, unsurprisingly, EAB cites no authority supporting this additional requirement. As this Court's cases make plain, the question is whether the government has any possibility of prevailing on the merits of the underlying tax dispute. *See Craig*, 930 A.2d at 958-59. But even under EAB's understanding of the exception, the outcome of this suit *could* result in more money being owed to the District. EAB seeks to adjudicate the application of the abatement to future tax years that have not yet been paid. If the District were to prevail in its interpretation of the abatement, the property would be subject to more real property taxes than EAB contends. *See supra* pp. 12-13. Thus, even under EAB's definition of the exception, its argument fails.

II. If The Court Reaches The Joinder Issue, It Should Affirm In Part And Remand.

If the Court concludes that the Anti-Injunction Act bars EAB's suit, then it must affirm the judgment of dismissal and it need not reach the joinder question—which the parties did not brief below. *See Stuart v. District of Columbia*, 694 A.2d 49, 51 (D.C. 1997) (remanding to determine whether joinder was proper is not necessary if "there is no suit to join"). If the Court addresses joinder, it should hold that the Superior Court did not abuse its discretion in concluding that Beacon was a

necessary and indispensable party, but it should remand for consideration of whether joinder is feasible.

Rule 19 requires the joinder of a party who would not deprive the court of jurisdiction if, in the party's absence, "the court cannot accord complete relief among existing parties," the proceeding would "as a practical matter impair or impede" the absent party's ability to protect their interests, or if an existing party would be "subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." Super. Ct. Civ. R. 19(a)(1). If joinder of a necessary party is not feasible, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Super. Ct. Civ. R. 19(b). The rule "precludes a trial court from granting relief in the absence of an indispensable person." *EMC Mortg. Corp.*, 64 A.3d at 188.

Here, the Superior Court did not abuse its discretion in concluding that, if this suit were not barred, Beacon would be a necessary and indispensable party. Properly framed as a tax dispute, this case seeks a tax refund that would legally be owed to Beacon, the property owner and original taxpayer. *Supra* pp. 22-23. EAB concedes that Beacon would be a necessary party to any tax refund action. Br. 14. Beacon would have at least some property interest in the tax refund, even if EAB is correct that Beacon would be obligated to pass any proceeds on to EAB per their lease agreement. Moreover, as noted above, EAB appears to acknowledge that this suit

could expose the District to the risk of conflicting obligations because it recognizes that Beacon *could* initiate its own refund suit. *See* Br. 14. Thus, rendering judgment for EAB in the absence of Beacon would potentially prejudice both the District and Beacon, which makes Beacon indispensable. Super. Ct. Civ. R. 19(b)(1).

EAB's only argument for why Beacon's participation would not be required is its continued insistence that this is not a tax case, but rather merely a dispute over a contract to which Beacon is not a party. Br. 20. That is wrong for the reasons already discussed. *Supra* pp. 23-24. And even if framed as a contract case, EAB acknowledges that the abatement would flow through Beacon, making Beacon an indispensable party to afford complete relief and avoid the risk of conflicting judgments.

Nonetheless, EAB is correct that the Superior Court did not independently analyze whether Beacon's joinder was feasible before dismissing this action. Br. 21. If the Court concludes this action is not barred by the Anti-Injunction Act, it should affirm the Superior Court's conclusion that Beacon is an indispensable party and remand for a determination of whether joinder is feasible.

CONCLUSION

For the foregoing reasons, the Court should affirm the Superior Court's judgment of dismissal.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

GRAHAM E. PHILLIPS
Deputy Solicitor General

/s/ Jeremy R. Girton
JEREMY R. GIRTON
Assistant Attorney General
Bar Number 888304147
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-2029
(202) 741-8786 (fax)
jeremy.girton@dc.gov

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CERTIFICATE OF SERVICE

I certify that on January 17, 2025, this brief was served through this Court's electronic filing system to:

Philip T. Evans
Cynthia A. Gierhart

/s/ Jeremy R. Girton
JEREMY R. GIRTON