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United States District Court, W.D. Missouri, Western Division.

Kalima JENKINS, et al., Plaintiffs,  
v.  
STATE of MISSOURI, et al., Defendants.

No. 77-0420-CV-W-4.

|  
Jan. 3, 1989.

**Attorneys and Law Firms**

Arthur A. Benson, II, Benson & McKay, Kansas City, Mo., and Russell E. Lovell, Des Moines, Iowa, for plaintiffs.

Shirley Keeler, Blackwell, Sanders, Matheny, Weary & Lombardi, Kansas City, Mo., and Allen R. Snyder, Hogan & Hartson, Washington, D.C., for KCMUSD.

Bartow Farr, III, Onek, Klein & Farr, Washington, D.C. and Michael Fields, Asst. Atty. Gen., Jefferson City, Mo., for State of Missouri.

Michael Gordon, Jolley, Walsh, Hager & Gordon, Kansas City, Mo., for intervenor Amer. Fed. of Teachers.

*ORDER*

RUSSELL G. CLARK, District Judge.

\*1 Before the Court are intervenors' motion to recover full refund of Court-ordered income tax surcharge and plaintiffs' motion for full refund of income tax surcharge. Intervenors' and plaintiffs' motions will be granted. The Missouri Department of Revenue's proposed surcharge refund process will be approved as modified in this order and the Missouri Department of Revenue shall complete the surcharge refund process within 120 days from the date of this order, with the exception of requests received thereafter. Also before the Court is the KCMUSD's motion for approval of a revised drawdown procedure and the State's motion for modification of program account and for KCMUSD refund of tax proceeds. The KCMUSD's motion will be granted as modified in this order and the State's motion will be granted in part as modified in this order and denied in part. Additionally, before the Court is the KCMUSD's motion for approval of a maximum property tax levy rate. The KCMUSD's motion will be denied without prejudice.

To enable the KCMUSD to meet its share of the costs of the desegregation plan, this Court imposed a 1.5% income tax surcharge on "salaries, wages, commissions and all other compensation and income subject to the Missouri State Income Tax for work done, services rendered and business or other activities conducted within the KCMUSD." *Jenkins v. State of Missouri*, 672 F.Supp. 400, 412 (W.D.Mo.1987). However, the Eighth Circuit reversed this Court's imposition of the income tax surcharge and stated that "[a]ny unexpended collections must be refunded and the district court is directed to take such action as it deems appropriate with respect to any further refunds." *Jenkins v. State of Missouri*, 855 F.2d 1295, 1316 (8th Cir.1988). Subsequent to the Eighth Circuit's reversal, taxpayers Eleanor Graham, et al., were granted leave to intervene and filed a motion to recover full refund of the income tax surcharge. Additionally, plaintiffs filed a motion for full refund of the income tax surcharge. A hearing was held regarding the income tax surcharge refund on December 8, 1988. The KCMUSD and the State did not oppose a full refund of the income tax surcharge. The Court is convinced that all income tax surcharge collections should be fully refunded. Therefore, intervenor's motion to recover full refund of Court-ordered income tax surcharge and plaintiffs' motion for full refund of income tax surcharge will be granted.

The mechanics of an income tax surcharge refund were discussed at the December 8 hearing. All parties have deferred to the

Missouri Department of Revenue to determine the most efficient method of making the surcharge refund. At the December 8 hearing, the Court stated that “it is going to be pretty much the responsibility of the Department of Revenue, their expertise and responsibility, to get the refund made, and certainly [they] have some experience in collecting the tax as well as making the refunds” and “[t]he Court certainly is inclined to approve whatever they want to make a refund.” (Tr. at 27, 30). Subsequently, the State filed a proposed refund procedure recommended by the Missouri Department of Revenue. The Court will approve the proposed refund procedure as modified below.

\*2 Refunds for 1987 surcharge collections will be issued directly to individual and corporate taxpayers whose net amount of income tax surcharge paid can be verified by the Missouri Department of Revenue from records in its possession by reference to the KC-1 (individual) or KC-2 (corporate) form filed by the taxpayer.

Taxpayers who did not file a 1987 KC-1 form with the Missouri Department of Revenue will be issued a refund upon filing the KC-1 form with the Missouri Department of Revenue with a copy of the taxpayer’s 1987 W-2 form attached for withholding verification. In order to inform taxpayers who did not file a KC-1 or KC-2 form for 1987 of the right to a refund of surcharge collections, the Missouri Department of Revenue shall give legal notice by publication as required by Missouri statutory law of the refund and the refund process. Additionally, the Court strongly encourages the Missouri Department of Revenue to take any other actions reasonably necessary to give notice of the right to a refund to taxpayers who did not file a KC-1 or KC-2 form for 1987. Such actions may consist of press releases, published advertisements containing a KC-1 or KC-2 form for 1987 that can be sent to the Department of Revenue to obtain a refund or sending a copy of the 1987 KC-1 and KC-2 forms with tax refunds.

All surcharge amounts withheld for employees by employers during 1988 will be refunded by check mailed to the employer for the total amount withheld by that employer for all employees. Employers will make the refund payment directly to the employees. These amounts will be determined from records in the possession of the Missouri Department of Revenue.

Individuals who have made quarterly surcharge payments for 1988 will receive the amount remitted via a refund check mailed directly to the taxpayer. The Missouri Department of Revenue will determine these amounts from its records. Individuals who make estimated payments and are also employees subject to withholding will receive two separate payments, one by check from the Missouri Department of Revenue for the estimated declaration payments and one payment from their employer for the amount withheld by the employer. Refunds to corporations for estimated declarations paid as determined by Missouri Department of Revenue records will be accomplished by refund check mailed from the Missouri Department of Revenue to the corporate taxpayer.

All refund checks returned to the Missouri Department of Revenue by the postal system will be handled by the Department of Revenue in the same manner as the Missouri State Income Tax postal return refund checks.

The Missouri Department of Revenue has indicated that the refund process could be completed within 120 days of its initiation, with the exception of requests for refunds that are received thereafter, and has requested that the refund process be implemented after January 1, 1989. Therefore, the Missouri Department of Revenue shall complete the income tax surcharge refund process within 120 days from the date of this order, with the exception of requests received thereafter.

\*3 The KCMSD filed a motion for approval of a revised drawdown procedure arguing that the Eighth Circuit’s reversal of the income tax surcharge imposed by this Court has caused the current drawdown procedure to become inadequate. The State countered with a motion for modification of program account and for KCMSD refund of tax proceeds. Although the Eighth Circuit reversed this Court’s imposition of the 1.5% income tax surcharge, the Eighth Circuit continued by stating: “We caution that the constitutional violations must be remedied and the remedies fully funded. Any refund orders must be crafted recognizing this fundamental principle.” *Jenkins*, 855 F.2d at 1316. Recognizing that the constitutional violation remedies must be fully funded, the Court will modify the existing program account and drawdown procedures as set forth below.

The cap on the existing program account will be increased to \$11 million, without regard to the KCMSD’s desegregation revenues, and the State will be required to meet this cap on or before January 15, 1989, and on the first day of each month thereafter. The KCMSD shall pay all Court-ordered desegregation expenses as incurred with all available desegregation revenues and the State will be required to pay the balance of the remaining expenses from the program account as a jointly and severally liable party. Once the KCMSD’s desegregation funds available during a given month have been depleted as expenditures occur, including funds needed to satisfy desegregation expenses to be funded 100% by the KCMSD, the KCMSD will draw from the program account to cover the remaining expenditures for that month. Interest on any unused money in the account will be credited to the State.

On or before the 15th day of each month, beginning in February of 1989, the KCMSD shall develop a reconciliation statement identifying actual expenditures from the account and interest on the account accrued to the State for the prior month, which will set the amount of the State's deposit on or before the first day of the next month in order to reinstate the \$11 million cap. In addition, on or before the 15th day of each month beginning in February of 1989, the KCMSD shall provide the State with a statement of the KCMSD's desegregation revenues actually received and all Court-ordered desegregation expenses actually incurred in the prior month. In any case in which the KCMSD anticipates that the following month's expenditures from the account will exceed the balance in that account, the KCMSD shall provide written notification of such to the State on or before the 15th day of the prior month. Absent further Court order to the contrary, the State shall deposit the amount necessary to fund such additional costs on or before the first day of the month in which they are projected to occur.

The State filed a motion seeking to require the KCMSD to contribute \$5,274,962.00 toward the full refund of the income tax surcharge collections. Apparently the KCMSD is willing to contribute \$21,642,147.00 toward the refund, which is the amount of unexpended desegregation revenues from both the income tax surcharge and the Court-ordered increase in the property tax levy rate the KCMSD had available on August 19, 1988. However, the KCMSD is willing to make such a contribution only so long as a revised drawdown procedure is approved by the Court which includes State funding of the amount necessary to cover desegregation expenditures incurred after August 18, 1988. The KCMSD has been using the \$21,642,147.00 of unexpended desegregation revenues to fund desegregation expenditures incurred after August 18, 1988. Ordinarily the Court would require the KCMSD to contribute \$21,642,147.00 to the income tax surcharge refund. However, in the current situation such a requirement would actually consist of only accounting entries. The KCMSD has used the desegregation revenues to fund desegregation expenditures subsequent to August 18, 1988. If the KCMSD was ordered to contribute such funds to the State for the surcharge refunds, the KCMSD would have no funds with which to pay the desegregation costs. Due to the joint and several liability of the KCMSD and the State for desegregation expenditures, the State would have to fund all desegregation costs the KCMSD cannot pay through the modified program account and revised drawdown procedure previously set forth in this order. Therefore, it would be useless for the Court to order the KCMSD to make a contribution to the State for the surcharge refund. The KCMSD shall use any currently unexpended portions of the \$21,642,147.00 of desegregation revenues to fund desegregation costs prior to the implementation of the modified program account and revised drawdown procedure required on or before January 15, 1989. Any unexpended portions remaining at the date of the implementation of the modified program account and revised drawdown procedure shall be treated by the KCMSD the same as any other KCMSD desegregation revenues.

\*4 The KCMSD filed a motion for approval of a maximum property tax levy rate of \$4.23 per \$100 of assessed valuation pursuant to the Eighth Circuit's opinion in *Jenkins*, 855 F.2d at 1308-1315. Plaintiffs and the State did not oppose the KCMSD's motion. An *amicus curiae* brief was filed in opposition to the KCMSD's motion by a group of rural Missouri school districts. The Court is convinced that the property tax rate for 1988 should not be increased from \$4.00 to \$4.23. Such action would require supplemental billing by Jackson County, Missouri, that would lead to increased taxpayer resentment and also be time consuming and expensive. Nonetheless, in the alternative, the KCMSD has urged the Court to approve a \$4.23 property tax levy rate for 1989. However, the Court believes that current approval of a \$4.23 property tax rate for 1989 would be premature. The 1989 property tax levy rate should be set at a later date when the KCMSD's financial picture for the 1989-1990 school year is much clearer. Therefore, the KCMSD's motion for approval of a maximum property tax levy rate will be denied without prejudice. The KCMSD School Board should approve a property tax levy rate for 1989 at a later date when financial calculations for the 1989-1990 school year are clear and submit the proposed levy rate to the Court for approval at that time.

Accordingly, it is hereby

ORDERED that intervenor's motion to recover full refund of Court-ordered income tax surcharge and plaintiffs' motion for full refund of income tax surcharge are granted; and it is further

ORDERED that the Missouri Department of Revenue's proposed surcharge refund process is approved as modified in this order and the Missouri Department of Revenue shall complete the surcharge refund process within 120 days from the date of this order, with the exception of requests received thereafter; and it is further

ORDERED that the KCMSD's motion for approval of a revised drawdown procedure is granted as modified in this order; and it is further

ORDERED that the State's motion for modification of program account and for KCMSD refund of tax proceeds is granted in part as modified in this order and denied in part; and it is further

ORDERED that the KCMSD's motion for approval of a maximum property tax levy rate is denied without prejudice.

**All Citations**

Not Reported in F.Supp., 1989 WL 299246

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