

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION**

**ILLINOIS RETAIL MERCHANTS)
ASSOCIATION; BERKOT, LTD. D/B/A)
BERKOT SUPER FOODS; FAIRPLAY, INC.)
D/B/A FAIRPLAY FOODS; CHIQUITA)
FOOD MARKET, INC. D/B/A FOOD)
MARKET LA CHIQUITA & TAQUERIA;)
LEAMINGTON FOODS, INC.; TONY’S)
FINER FOODS ENTERPRISES, INC. D/B/A)
TONY’S FRESH MARKET; VALLI)
PRODUCE, INC.; and WALT’S LAGESTEE,)
INC. D/B/A WALT’S FOOD CENTERS,)**

Plaintiffs,

v.

No. 17 L 50596

**THE COOK COUNTY DEPARTMENT OF)
REVENUE; ZAHRA ALI, as Director of the)
Cook County Department of Revenue; and)
the COUNTY OF COOK,)**

Defendants.

OPINION and ORDER

I. OPINION

This matter is before the Court on Plaintiff’s Emergency Motion for Temporary Restraining Order and Preliminary Injunction. For the following reasons, Plaintiff’s motion for a temporary restraining order is granted.

DISCUSSION

A temporary restraining order (“TRO”) is an emergency remedy issued to maintain the *status quo* while the court is hearing evidence to determine whether a preliminary injunction should issue. *Delgado v. Bd. of Election Comm’rs*, 224 Ill. 2d 481, 483 (2007). It is an extraordinary remedy which is applicable only to situations where an extreme emergency exists and serious harm would result if it is not issued. *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 386 (1985). A party seeking a temporary restraining order must establish that (1) a clearly ascertained right in need of protection exists; (2) there is no adequate remedy at law for the injury; (3) irreparable harm will occur without the injunction; and (4) success on the merits is likely. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 156 (1992). In addition, if the movant

establishes a *prima facie* case, the court may also consider whether the balance of harms favors the grant or denial of injunctive relief. *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 12. In balancing the equities, the court should also consider the effect of the injunction on the public. *Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009).

A. Ascertainable Claim for Relief

Plaintiff's pleadings must clearly establish an ascertainable right in need of protection. This requires a determination that the party seeking relief has pled a recognized legal or equitable claim. *Hartlein*, 151 Ill. 2d at 159-68. The failure to do so obviates the need to go further. *Id.* at 167. Here, Plaintiffs have established a protectable interest in this matter sufficient to establish standing. Plaintiffs make retail sales of sweetened beverages in Cook County and are required to collect the Sweetened Beverage Tax. In order to do so, Plaintiff will be required to undertake administrative tasks of implementing new systems to comply with the collection and display requirements of the tax. Therefore, Plaintiff have a clear and ascertainable right to relief.

B. No Adequate Remedy at Law

An adequate remedy at law is a remedy that is clear and complete and that would provide the same practical and efficient resolution as an injunction would provide. *Tamalunis v. Georgetown*, 185 Ill. App. 3d 173, 189-90 (4th Dist. 1989). An interlocutory injunction should not issue if there is a legal remedy that will make the plaintiff whole after trial. *Kanter & Eisenberg v. Madison Associates*, 116 Ill. 2d 506, 510-11 (1987). The ability to obtain money damages usually precludes the issuance of an injunction unless it is impossible to determine the amount of damages. *Wilson v. Wilson*, 217 Ill. App. 3d 844, 856-60 (1st Dist. 1991). Here, Plaintiffs have no adequate remedy at law. Defendants' proposal for the refund of taxes in the event Plaintiffs should prevail does not provide a reasonable procedure to return the collected money to the taxpayers.

C. Irreparable Harm or Damage

The harm that Plaintiff seeks to enjoin must be expected with reasonable certainty and not merely possible. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry.*, 195 Ill. 2d 356, 372-73 (2001). This prong can also be satisfied by a showing that the harm is of a continuing nature. *Lucas v. Peters*, 318 Ill. App. 3d 1, 15-16 (1st Dist. 2000). Here, Plaintiffs will be irreparably harmed if the tax goes into effect and is subsequently found unlawful. Plaintiff will suffer from greatly increased administrative and overhead costs which could not be recouped.

D. Likelihood of Success on the Merits

To establish a likelihood of success on the merits, it is not necessary that a plaintiff make out a case that in all events will warrant the required relief at the final hearing. *Tie Systems, Inc. v. Telcom Midwest, Inc.*, 203 Ill. App. 3d 142, 150 (1st Dist. 1990). It is only necessary that the plaintiff's complaint raises a "fair question" as to the likelihood of success on the merits. *Buzz*

Barton & Associates, 108 Ill. 2d at 382. Here, Plaintiffs have persuaded the Court that a fair question exists as to the constitutionality of the Sweetened Beverage Tax.

CONCLUSION

In fully considering the written and oral arguments presented, the Court has taken into account the balance of hardships between the parties and the effect on the public's interest. In balancing the equities, the Court is fully aware of the importance of the tax to Defendant's budget. However, the Court believes it is necessary to maintain the *status quo* in order to protect the interests of all consumers, all taxpayers, and the effected merchants.

II. ORDER

This matter having been fully briefed, and the Court being fully apprised of the facts, law, and premises contained herein, it is ordered as follows:

- A. Plaintiff's Emergency Motion for Temporary Restraining Order is hereby granted.
- B. Defendants are temporarily enjoined from imposing and enforcing the Cook County Sweetened Beverage Tax until a hearing can be held on the request for a preliminary injunction.
- C. The Temporary Restraining Order is effective immediately and no bond is required.
- D. An evidentiary hearing on Plaintiff's request for a preliminary injunction is scheduled for _____, 2017 at _____ a.m./p.m. in courtroom _____.

Date: June 30, 2017

Judge Daniel J. Kubasiak
JUN 30 2017
Circuit Court-2072

ENTERED: _____
Judge Daniel J. Kubasiak #2072

Judge Daniel J. Kubasiak
Circuit Court of Cook County
Law Division Tax and Miscellaneous Section
50 West Washington, Room 2607
Chicago, Illinois 60602