RENDERED: OCTOBER 30, 2026; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1034-MR

JILL STAHL HUSTON; KAREN STRAYER; MONEY METALS EXCHANGE, LLC, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED; AND STACY EARL — APPELLANTS

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JAMES R. SCHRAND, II, JUDGE
ACTION NO. 25-CI-00550

COMMONWEALTH OF KENTUCKY; COMMISSIONER TOM MILLER, IN HIS OFFICIAL CAPACITY; AND KENTUCKY DEPARTMENT OF REVENUE — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, KAREM, AND McNEILL, JUDGES.

KAREM, JUDGE: In 2025, the General Assembly promulgated a method by which taxes paid on the purchase of currency and bullion in the Commonwealth could be refunded. Individuals Jill Stahl Huston ("Huston"), Karen Strayer ("Strayer"), and Stacy Earl ("Earl") (collectively, "Huston"), and retailer Money Metals Exchange LLC ("Money Metals") filed suit against the Department of Revenue and Commissioner Tom Miller, in his official capacity (collectively, "the DOR"), to obtain a tax refund pursuant to statute.[1]

The DOR motioned the Boone Circuit Court to dismiss the suit alleging: there was no justiciable case or controversy; the plaintiffs lacked standing; the plaintiffs failed to exhaust their administrative remedies; and the claims were moot. The trial court granted the motion to dismiss, and this appeal followed.[2] Having reviewed the facts and applicable law, we affirm.

FACTUAL AND PROCEDURAL HISTORY

1. Legislation

Sales and use taxes are imposed under Kentucky Revised Statutes ("KRS") Chapter 139. Specifically, KRS 139.200 governs the imposition of sales tax and KRS 139.310 governs the imposition of excise tax on the storage, use, or

[1] In addition to the Appellees, the claim originally named both Gov. Beshear and Sec. Johnson, in their official capacities. However, they were dismissed by Agreed Order and are not parties to this appeal.

[2] The Appellants also moved the trial court for class action certification. This motion was not ruled upon due to the dismissal of the underlying claims.

other consumption of specific property.[3] The retailer collects the tax from the purchaser and remits the tax monthly to the DOR. KRS 139.210, KRS 139.540, KRS 139.550, and 139.700. KRS 139.480 itemizes property which is to be exempt from the collection of sales or use tax. Claims for refunds are governed by KRS 139.770, which requires such claims to be on a form prescribed by the DOR and to contain such information as it may require. KRS 139.770 further requires such taxes to be refunded in the manner established under KRS 134.580.

Chapter 134 of the KRS is entitled "Payment, Collection, and Refund of Taxes." KRS 134.580 prescribes the administrative process for the DOR to authorize refunds to retailers for the overpayment or payment where no tax was due, including a claim for a refund of sales or use tax improperly collected.

The case *sub judice* revolves around the General Assembly's promulgation of legislation to add the purchase of bullion and currency as exempted products under KRS 139.480. And although only tangential to the issue at hand, a recitation of the facts related to the bills put forth by the General

[3] A use tax "is a tax supplemental to the retail sales tax on personal property used—for consumption, not for resale—inside the jurisdiction even though purchased outside it. *See Nat'l Geographic Soc. v. California Bd. of Equalization*, 430 U.S. 551, 555, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977) (addressing aspects of California's then version of the regime and noting that, generally, 'States that impose sales taxes also impose a corollary use tax on tangible property bought out of State to protect sales tax revenues and put local retailers subject to the sales tax on a competitive parity with out-of-state retailers exempt from the sales tax.')." *Commonwealth v. Interstate Gas Supply, Inc. for Use & Benefit of Tri-State Healthcare Laundry, Inc.*, 554 S.W.3d 831, 834 (Ky. 2018).

Assembly in 2024 and 2025 is necessary to understand the circumstances which underlie the case at bar.

During the Regular Session of the legislature in 2024, House Bill 8 ("24 RS HB 8") entitled, "An Act relating to fiscal matters, making an appropriation therefor, and declaring an emergency[,]" was passed by the General Assembly. 24 RS HB 8 sought to amend KRS 139.480 to exempt the purchase of currency and bullion made after August 1, 2024, from sales tax under KRS 139.200 and use tax under KRS 139.310. Governor Beshear subsequently issued a line-item veto for this provision.

The General Assembly did not vote to override the veto but obtained an opinion from the Attorney General designating the veto as invalid.[4] Thus, the Kentucky House ruled the Governor's veto invalid and delivered 24 RS HB 8 to the Kentucky Secretary of State without the Governor's signature but with the veto message attached. Subsequently, KRS 139.480[5] was amended to read as follows:

> **139.480 Property exempt**
>
> Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this

[4] "While we are not bound by opinions of the Attorney General; this court can, however, afford them great weight." *Louisville Metro Dep't of Corrections v. King*, 258 S.W.3d 419, 421-22 (Ky. App. 2007) (citation omitted).

[5] KRS 139.480 was once again revised during the 2025 Legislative Session and this exemption is currently found at KRS 139.480(36).

chapter, do not include the sale, use, storage, or other consumption of:

(37)(a) Currency or bullion.

(b) As used in this subsection:

1. “Bullion”:

a. Means bars, ingots, or coins, which are:

i. Made of gold, silver, platinum, palladium, or a combination of these metals;

ii. Valued based on the content of the metal and not its form; and

iii. Used, or have been used, as a medium of exchange, security, or commodity by any state, the United States government, or a foreign nation; and

b. Does not include medallions or coins that are incorporated into a pendant or other jewelry; and

2. “Currency”:

a. Means a coin or currency made of gold, silver, platinum, palladium, or other metal or paper money that is or has been used as legal tender and is sold based on its value as a collectible item rather than the value as a medium of exchange; and

b. Does not include a coin or currency that has been incorporated into jewelry.

KRS 139.480(37).

Notwithstanding this legislation, at the direction of the Governor, the DOR continued to collect sales and use taxes on purchases of gold and silver bullion or currency. In response, the General Assembly in the next legislative session enacted 2025 House Bill 2 ("25 RS HB 2"), which allowed any person who on or after August 1, 2024, paid sales tax under KRS 139.200 and use tax under KRS 139.310 on currency or bullion currency that is exempt from sales and use tax under KRS 139.480(37) to bring an action to seek a refund of those paid taxes. In addition, this bill included a provision for class action treatment, waived governmental and sovereign immunity, and provided certain other remedies. The Governor vetoed this legislation. However, the General Assembly voted to override the Governor's veto on March 27, 2025. Under its emergency clause, 25 RS HB 2 became effective on March 27, 2025, and was codified at KRS 139.4802.[6]

Following the passage of this legislation the Department of Revenue immediately provided notice of its position to refund collected taxes addressed in 25 RS HB 2. It provided instructions on its website for taxpayers to seek refunds

[6] These pieces of legislation, 24 RS HB 8 and 25 RS HB 2, and their associated vetoes, have remained unchallenged in the courts. Notably this Court is not tasked with deciding any legal question as to the validity of the legislation or vetoes; therefore, we will not speak to those issues unless and until they are properly brought before the Court.

for sales and use taxes they paid on currency and bullion currency after August 1, 2024, in accordance with KRS 139.770.

2. <u>Specific facts regarding Appellants</u>

On March 17, 2025, three days after initial passage of 25 RS HB 2, individuals Huston, Strayer, and Earl purchased silver bullion at $45.00 per ounce at Coins+ LLC ("Coins+").[7] They were charged $10.80, $5.40, and $10.80, respectively, in sales tax by Coins+ LLC. They did not allege they purchased bullion at any time between August 1, 2024, and March 17, 2025. Citing KRS 139.4802, they filed the underlying action in Boone Circuit Court asserting a claim for a refund on the same day 25 RS HB 2 took effect, March 27, 2025. They did not attempt to obtain a refund directly through the DOR.

Retailer Money Metals, is an Idaho limited liability company and is one of the largest online dealers of gold and silver bullion or currency in the United States. From August 1, 2024, it conducted sales and subsequently charged those customers sales and use taxes who had the gold or silver bullion or currency delivered into Kentucky. Money Metals then remitted the taxes to the DOR. Between August 1, 2024, and the date the complaint was filed, it remitted more than $55,000 in Kentucky sales and use taxes collected from more than 800 customers. After the passage of 25 RS HB 2, Money Metals elected to cease

[7] Coins+ was never made a party to the litigation.

collecting and remitting sales and use taxes to the DOR for gold or silver bullion or currency purchases. Money Metals, like Huston, chose to file suit on their own behalf, for all other dealers similarly situated, and on behalf of its customers, to collect a tax refund. They did not attempt to obtain a refund directly through the DOR.

The DOR filed both a Motion to Dismiss, under Kentucky Rule of Civil Procedure ("CR") 12.02, and an Answer requesting dismissal, arguing: there was no justiciable case or controversy; the plaintiffs lacked standing; the plaintiffs failed to exhaust their administrative remedies; the claims were moot; plaintiffs' counsel had "unclean hands"; and plaintiffs failed to join an indispensable party.

Huston and Money Metals countered that the plaintiffs had standing under 25 RS HB 2; there was no need to exhaust administrative remedies; Money Metals is a retailer, thus overcoming DOR's claim that plaintiffs failed to join an indispensable party; because plaintiffs were never refunded any taxes, their claims were not moot; and DOR's claims of ethical violations on the part of plaintiffs' counsel were baseless.

The trial court granted the DOR's motion to dismiss. This appeal followed.

ANALYSIS

Because "a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue de novo." *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). In the case *sub judice*, the question which must necessarily be answered before all other issues is whether the trial court had jurisdiction to hear the case. "The question of jurisdiction is ordinarily one of law, meaning that the standard of review to be applied is de novo." *Appalachian Regional Healthcare, Inc. v. Coleman*, 239 S.W.3d 49, 53-54 (Ky. 2007).

First, it must be noted that Huston, Strayer, and Earl are individuals who purchased currency from retailer Coins+. Coins+ collected and remitted sales and use taxes associated with the purchases to the DOR. Conversely, Money Metals, like Coins+, is a retailer who collected the sales and use taxes from individual purchasers like Huston and remitted those monies to the DOR. While both Huston and Money Metals seek the refund of taxes remitted to the DOR, the different and distinct points at which they each entered the stream of commerce associated with the sale of currency and bullion necessitate that we address their refund claims separately.

It is undisputed that Money Metals chose to forego the administrative remedy offered by the DOR to obtain a refund of sales and use taxes. In doing so, Money Metals did not argue that the administrative remedy available through the DOR was inadequate. Instead, they simply chose the option of filing suit to obtain their refund pursuant to KRS 139.4802. The DOR argues that taxpayers must first exhaust their administrative remedies before seeking judicial review. We agree.

In *Popplewell's Alligator Dock No. 1, Inc. v. Revenue Cabinet*, 133 S.W.3d 456, 459 (Ky. 2004), *as modified* (Jun. 3, 2004), the Supreme Court considered a consolidated appeal regarding the collection of sales and use taxes on businesses that rented houseboats to the public. The two appellants, Popplewell's Alligator Dock No. 1, Inc. ("Alligator Dock") and State Dock, Inc. ("State Dock") (collectively, "the Docks"), both claimed exemptions from sales and use taxes pursuant to KRS 139.483. The Docks, filing suit in Franklin Circuit Court, sought both a declaratory judgment that houseboat rentals are not subject to sales and use tax, and a permanent injunction enjoining the Revenue Cabinet (now known as the DOR) from assessing or attempting to collect such tax. 133 S.W.3d at 459. As in the case *sub judice*, the trial court dismissed the actions on jurisdictional grounds because it found the Docks were required to pursue their administrative remedies prior to seeking judicial review. *Id.* Following a reversal by a panel of this Court, the Supreme Court granted discretionary review.

Notably, the Docks made no claim that their administrative remedy was inadequate or would be futile. *Id.* at 467. Neither did they challenge the constitutionality of KRS 139.483. *Id.* at 470. Rather, the Docks maintained they had a right to seek direct declaratory and injunctive relief regardless of the administrative remedies available to them. *Id.* at 467. In response, the Revenue Cabinet contended "'that the administrative remedy must amount to an exercise in futility in order for that remedy to be disregarded and direct judicial relief allowed instead,' and [the Revenue Cabinet] submit[ed] that, because the Docks had an adequate administrative remedy available to them, they were required to pursue it." *Id.* at 468. The Supreme Court agreed with the Revenue Cabinet and opined on the importance of exhausting one's administrative remedies prior to seeking judicial review:

> Usually, a party is required to exhaust available administrative remedies before seeking judicial relief. "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may: (1) function efficiently and have an opportunity to correct its own errors; (2) afford the parties and the courts the benefit of its experience and expertise without the threat of litigious interruption; and (3) compile a record which is adequate for judicial review." "In addition, an agency has an interest in discouraging frequent and deliberate flouting of the administrative process." "[T]he exhaustion doctrine does not preclude, but rather defers, judicial review until after the expert administrative body has built a factual record and rendered a final decision." "By honoring the exhaustion doctrine, courts avoid interfering with the

> administrative process, and the initial reviewing court benefits from the specialized knowledge of the agency." With increasing case loads and demands upon the courts, it is important to note that "[t]he rule requiring exhaustion also promotes judicial economy by resolving issues within the agency, eliminating the unnecessary intervention of courts."

Id. at 471 (citations omitted).

In reversing this Court, the Supreme Court opined, "although the facts were undisputed, the Docks did not raise the issue of the facial validity or constitutionality of KRS 139.483, and an adequate administrative remedy was available. Thus, the Court of Appeals erred in reversing the Franklin Circuit Court judgment dismissing this action." *Id.* at 472. In making this determination, the Supreme Court cited its prior decision in *Commonwealth v. DLX, Inc.*, 42 S.W.3d 624, 627 (Ky. 2001), wherein it specifically held that DLX's failure to exhaust its administrative remedies deprived the trial court of subject-matter jurisdiction. *Id.* at 627.

As with both the Docks and DLX, Money Metals did not challenge the constitutionality of the statute nor argue the futility of seeking an administrative remedy. Rather, Money Metals chose to file suit rather than seek an available administrative remedy. However, the law is well-settled "that a court will not take jurisdiction to render a declaratory judgment where another statutory remedy has been especially provided for the character of case presented, nor where

the purpose is to affect proceedings which may be taken or pending before a public board which is vested with full power to act in the premises." *Black v. Utter*, 190 S.W.2d 541, 542 (Ky. 1945). *Sub judice*, as in *Popplewell's* and *DLX*, the trial court had no jurisdiction to hear the case, and Money Metals' claims were properly dismissed by the trial court.

Like Money Metals, Huston did not challenge the constitutionality of KRS 139.483. Instead, Huston argued that the futility exception to the rule of exhausting administrative remedies gave them the right to seek judicial review.

Huston acknowledged KRS 139.770 was inapplicable to their effort to seek a tax refund because the law restricts application for refunds to *retailers* who collected and remitted sales and use taxes to the DOR. Thus, any effort to utilize KRS 139.770 on Huston's part to obtain a refund would be futile. Indeed, KRS 139.770(3) specifically states:

> No taxpayer or certified service provider as provided by KRS 139.795 shall be entitled to a refund or credit of the taxes paid pursuant to the provisions of this chapter where the taxes have been collected from a purchaser as provided by KRS 139.210 and 139.340, unless the amount of taxes collected from the purchaser are refunded to the purchaser by the taxpayer or certified service provider as provided by KRS 139.795 who paid the taxes to the State Treasury.

When identifying the taxpayer to whom the statute refers, we turn to KRS 134.580(2) which provides, "When money has been paid into the State

Treasury in payment of any state taxes . . . the appropriate agency shall authorize refunds ***to the person who paid the tax*** . . . of any overpayment of tax and any payment where no tax was due." (Emphasis added.) In other words, KRS 139.770 directs that the individual purchaser must seek repayment of collected taxes from the retailer through which their purchase was made. *See, e.g.*, *Dep't of Revenue, Fin. & Admin. Cabinet v. Carriage Ford, Inc.*, 683 S.W.3d 659 (Ky. App. 2023) (Carriage Ford, as the entity that collected Kentucky state taxes from its customers and remitted the monies to the Revenue Cabinet, qualified as the taxpayer who could apply for a refund under KRS 134.580.).

We therefore agree with Huston that they cannot seek a refund pursuant to KRS 139.770. Rather, Coins+, as the retailer who sold currency to Huston, was the rightful applicant to obtain a refund and return the monies to Huston and other purchasers pursuant to KRS 139.770. Thus, as acknowledged by the Appellants themselves, Huston is precluded from receiving a tax refund directly from the DOR, and applying for one would therefore be futile.

Huston goes on to argue that the futility of applying for a refund through KRS 139.770 allows them to file suit as an exception to the rule that taxpayers must exhaust their administrative remedies. Huston is correct that exhaustion of administrative remedies is not required when continuation of an administrative process would amount to an exercise in futility. *Popplewell's*, 133

S.W.3d at 471. However, as outlined above, Huston is not the taxpayer. Huston is engaging in a circular argument and application of the statute to allow Huston to apply for a tax refund would result in the exception becoming the rule.

Moreover, KRS 139.770 would be rendered useless, as the courts labored to advance litigation in potentially a multitude of claims. Money Metals alone, from August 1, 2024, to the date the complaint was filed, remitted more than $55,000 in Kentucky sales and use taxes collected from more than 800 customers. Allowing Huston's claim to go forward would open the courts to a deluge of claims by similarly situated individuals with potentially disastrous effect. The courts would necessarily have the herculean task of ensuring that no individual purchaser was included in any refund requested by a retailer. To do otherwise could unjustly enrich one individual by potentially receiving refunds both directly from the DOR and from the retailer to the detriment of the citizens of the Commonwealth as a whole. It is a well-established principle of statutory construction that courts "should not . . . interpret [a] statute to provide an absurd result." *Commonwealth v. Reynolds*, 136 S.W.3d 442, 445 (Ky. 2004).

Huston makes the additional argument that KRS 139.4802 places them on the same footing as retailers when applying the statute. KRS 139.4802 states "*any person* who paid sales tax under KRS 139.200 or use tax under KRS 139.310 on currency or bullion currency that is exempt from sales and use tax

under KRS 139.480(37) may maintain an action for a refund of the tax paid." KRS 139.4802(2) (emphasis added). We disagree with their interpretation of the law. There is no mention of KRS 134.580 in KRS 139.4802. And the legislature is presumed to be aware of existing laws when enacting a new statute. *St. Clair v. Commonwealth*, 140 S.W.3d 510, 570 (Ky. 2004). Huston's interpretation of the law cannot harmonize with existing statute or case law to support their contention that they have an independent cause of action.

However, assuming, *arguendo*, that KRS 139.4802 places them on the same footing as retailers when applying the statute, the analysis simply leads us back to our initial discussion of subject-matter jurisdiction above. Should KRS 139.4802 apply to individuals in the same manner as it does to retailers, as argued by Huston, they would be precluded from filing suit prior to exhausting their administrative remedies and filing for a refund as provided by the DOR. From any perspective, Huston's claims cannot go forward and were properly dismissed by the trial court.

Therefore, we decline to accept Huston's argument and find they are precluded from both filing for a tax refund individually through KRS 139.770 and filing suit pursuant to KRS 139.4802. While litigants may argue this places Huston and other similarly situated purchasers in a vicious cycle of inapplicable laws, that is a misinterpretation of our Opinion. The appropriate and statutorily

permissible means by which Huston may obtain a tax refund is to request a refund from Coins+, the retailer permitted to request a refund on their behalf and obligated to then return those monies to their customers.

Because all claims were properly dismissed on jurisdictional grounds, all other issues are rendered moot.

CONCLUSION

Based on the foregoing, we affirm the Franklin Circuit Court's order dismissing Huston's and Money Metal's claims.

ALL CONCUR.

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