



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

LARRY D. BLANKENSHIP,	) No. ED108824
	)
Appellant,	) Appeal from the Circuit Court of
	) Franklin County
vs.	)
	)
FRANKLIN COUNTY COLLECTOR,	) Honorable Daniel G. Pelikan
ET AL.,	)
	)
Respondent.	) Filed: March 2, 2021

Introduction

Larry Blankenship, individually and on behalf of a certified class of owners of real estate and personal property (collectively, “Taxpayers”) in the Strain-Japan R-XVI (R-16) School District (“District”), sued to challenge the District’s operating funds tax levies for 2013, 2014, 2015, 2016, 2017, and 2018. Taxpayers alleged the District erroneously determined the highest rate of tax it could levy without additional voter approval in each of those years. Specifically, Taxpayers contended the tax levies for those years were improperly adjusted using section 137.073.5(2).¹ Taxpayers argued a tax levy calculated under section 137.073.5(2) may be used only if it is lower than the tax levy authorized by article X, section 22(a) of the Missouri Constitution (the “Hancock Amendment”).

¹ All statutory references are to RSMo (2017), unless otherwise indicated.

Taxpayers requested an order declaring the District's levies for 2013, 2014, 2015, 2016, 2017, and 2018 unlawful; enjoining the District from collecting taxes under the unlawful levies; refunding to Taxpayers any sums paid over the amount due on each Taxpayer's respective tax bills when the lawful levy is used to compute the 2013, 2014, 2015, 2016, 2017, and 2018 tax bills; and awarding Taxpayers their costs and attorney's fees. The trial court found the District did not violate section 22(a) of the Hancock Amendment or section 137.073 and Taxpayers were entitled to no refunds. The trial court entered judgment for the District.

Taxpayers appeal. In Point I, Taxpayers argue the trial court erred in determining the District's levies did not violate section 22(a) of the Hancock Amendment. In Point II, Taxpayers argue the trial court erred in determining the District's levies complied with section 137.073 because, although section 137.073.5(2) provides a method for the District to increase its levies in accordance with the consumer price index ("CPI") to allow for inflationary assessment growth, section 137.073.4(2) requires the District to use the lowest tax levy ceiling calculated by section 137.073.5(2) or section 22(a) of the Hancock Amendment, which the District failed to do. In Point III, Taxpayers argue the trial court erred in determining they were not entitled to refunds on their 2013, 2014, 2015, 2016, 2017, and 2018 tax bills under section 137.073.9. In Point IV, Taxpayers argue the trial court erred in determining they were not entitled to refunds on their 2013, 2014, 2015, 2016, 2017, and 2018 tax bills under article X, section 23 of the Hancock Amendment. In Point V, Taxpayers argue the trial court erred in determining all class members had to comply with section 139.031.1-2 to be entitled to refunds under section 137.073.9, section 23 of the Hancock Amendment, or section 139.031.1. In Point VI, Taxpayers argue the trial court erred in determining they were not entitled to costs and attorney's fees under section 23 of

the Hancock Amendment. In Point VII, Taxpayers argue the trial court erred in determining they were not entitled to costs and attorney's fees under section 137.073.8.

"We must first address the issue of our jurisdiction because Article V, Section 3 of the Missouri Constitution grants exclusive appellate jurisdiction to the Missouri Supreme Court of all cases involving the constructions of revenue laws of the state." *Maryville Props., L.P. v. Nelson*, 83 S.W.3d 608, 610 (Mo. App. W.D. 2002). Where an appeal involves the application of revenue laws already construed by the Missouri Supreme Court, jurisdiction lies with our Court and we are bound to apply the Missouri Supreme Court's precedent. *A.P. Green Refractories Co. v. State Tax Comm'n of Missouri*, 621 S.W.2d, 340, 345 (Mo. App. W.D. 1981). The questions in this appeal have been resolved by prior decisions of the Missouri Supreme Court. See *Franklin Cty. ex rel. Parks v. Franklin Cty. Comm'n*, 269 S.W.3d 26 (Mo. banc 2008); *State ex rel. Indus. Servs. Contractors, Inc. v. Cty. Comm'n of Johnson Cty.*, 918 S.W.2d 256 (Mo. banc 1996); *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278 (Mo. banc 2000); *Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223 (Mo. banc 2013); *Fort Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918 (Mo. banc 1995). Because this case involves the application of revenue laws already authoritatively construed, we determine jurisdiction is properly vested in this Court. *Stout Indus., Inc. v. Leachman*, 699 S.W.2d 129, 130 (Mo. App. E.D. 1985).

The trial court's judgment is reversed and remanded for further proceedings consistent with this opinion.

Factual and Procedural Background

The facts are undisputed. The District is a political subdivision of the State of Missouri with authority to set an operating funds tax levy and assess taxes against real and personal property within its boundaries. As of November 4, 1980, the District calculated its tax levy

ceiling at \$3.50 per \$100 of assessed valuation. On November 6, 2012, the voters approved an increase of the District's tax levy ceiling to \$3.5342 per \$100 of assessed valuation.² The voters have not approved an increase to the District's tax levy ceiling since November 6, 2012.

The District used the Missouri Auditor's office online tax form and tax rate calculators to determine its tax levies for 2012, 2013, 2014, 2015, 2016, 2017, and 2018. The District's tax levies per \$100 of assessed valuation for those years were:

2012	\$3.1842
2013	\$3.8393
2014	\$3.8393
2015	\$3.8393
2016	\$3.7770
2017	\$3.7540
2018	\$3.7798

The District's tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 exceeded the District's November 4, 1980 tax levy of \$3.50 and the District's November 6, 2012 voter-approved tax levy of \$3.5342. The District increased its tax levies in 2013, 2014, 2015, 2016, 2017, and 2018 using the method of adjustment provided in section 137.073.5(2). Section 137.073.5(2) provides the tax levy ceiling:

shall be adjusted such that when applied to the current total assessed valuation of the political subdivision, excluding new construction and improvements since the date of the election approving such increase, the revenue derived from the adjusted tax rate ceiling is equal to the sum of: the amount of revenue which

² The District's ballot initiative presented to and passed by the voters on November 6, 2012, read:

Shall Strain-Japan R-XVI of Franklin County, Missouri, be authorized to increase the operating tax levy ceiling of the District to \$3.5342 per one hundred dollars of assessed valuation for general operating purposes? If this proposition is approved, the adjusted operating levy of the District will increase by \$0.3500 from \$3.1842 currently to \$3.5342 per one hundred dollars of assessed valuation.

would have been derived by applying the voter-approved increased tax rate ceiling to total assessed valuation of the political subdivision, as most recently certified by the city or county clerk on or before the date of the election in which such increase is approved, increased by the percentage increase in the [CPI], as provided by law.

The District's assessed valuations, including real and personal property, for 2012, 2013, 2014, 2015, 2016, 2017, and 2018 were:

2012	\$11,206,793
2013	\$10,818,937
2014	\$10,865,691
2015	\$11,101,202
2016	\$11,339,918
2017	\$11,947,844
2018	\$12,266,283

The District's adjusted valuations, i.e., the total assessed valuation excluding new construction and improvements, for 2012, 2013, 2014, 2015, 2016, 2017, and 2018 were:

2012	\$10,970,495
2013	\$10,491,537
2014	\$10,747,326
2015	\$10,852,436
2016	\$11,122,098
2017	\$11,780,331
2018	\$12,862,824

The increases in the general price level as measured by the CPI in 2012, 2013, 2014, 2015, 2016, 2017, and 2018 for each of the preceding twelve-month periods were:

2012	3.0%
2013	1.7%
2014	1.5%
2015	0.8%
2016	0.7%
2017	2.1%
2018	2.1%

The percentage changes in the District's assessed valuation of property as finally equalized, excluding the value of new construction and improvements, for 2013, 2014, 2015, 2016, 2017, and 2018 were:

2013	-6.3823% from 2012
2014	-0.6619% from 2013
2015	-0.1220% from 2014
2016	+0.1882% from 2015
2017	+3.8837% from 2016
2018	-0.7116% from 2017

The District's tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 yielded additional revenue to the District exceeding the revenue the District would have realized had the November 6, 2012 voter-approved rate of \$3.5342 per \$100 of assessed valuation been levied in 2012. Specifically, the District's levies resulted in \$33,008 of additional revenue in 2013; \$33,150 of additional revenue in 2014; \$33,869 of additional revenue in 2015; \$27,533 of additional revenue in 2016; \$26,261 of additional revenue in 2017; and \$30,126 of additional revenue in 2018.

Blankenship paid his 2013, 2014, 2015, and 2016 taxes but did not do so under protest. He paid his 2017 and 2018 taxes under protest and submitted a written statement explaining the grounds on which his protests were based. Blankenship made a formal complaint with the prosecuting attorney of Franklin County on November 30, 2017, challenging the District's 2013, 2014, 2015, 2016, and 2017 tax levies. The prosecutor failed to bring an action within ten days of November 30, 2017.

On December 22, 2017, Taxpayers filed their Petition against the District and Linda Emmons, the Collector of Franklin County. Their Petition alleged the District "improperly calculated its tax rate for the year 2013, which resulted in its collection of excess tax revenue in 2013, 2014, 2015, 2016 and 2017." On October 8, 2018, Blankenship made another formal complaint with the prosecuting attorney of Franklin County, challenging the District's 2018 tax levy. The prosecutor failed to bring an action within ten days of October 8, 2018. On October 31, 2018, Taxpayers filed their Second Amended Petition, alleging the District "improperly calculated its tax rate for the years 2013 through 2018, which resulted in its collection of excess tax revenue in each year 2013 through 2017 and anticipated collection of excess tax revenue in 2018." Taxpayers alleged the highest lawful levy for the District should have been \$3.5342 per \$100 of assessed valuation—the highest voter-approved tax levy rate ceiling passed on November 6, 2012—in 2013, 2014, 2015, 2016, 2017, and 2018. Taxpayers alleged the method of adjustment provided by section 137.073.5(2) and engaged in by the District in 2013, 2014, 2015, 2016, 2017, and 2018 was unconstitutional under section 22(a) of the Hancock Amendment because it resulted in a higher tax levy than the maximum tax levy authorized by section 22(a) of the Hancock Amendment.

Taxpayers requested the trial court declare the District's tax levies in 2013, 2014, 2015, 2016, 2017, and 2018 violated section 22(a) of the Hancock Amendment. Taxpayers also requested the trial court declare section 137.073.5(2) is unconstitutional because it violates section 22(a) of the Hancock Amendment to the extent it would permit a higher tax levy than permitted by section 22(a) of the Hancock Amendment. Taxpayers requested the trial court order the District to refund the excessive funds collected in 2013, 2014, 2015, 2016, 2017, and 2018 under section 139.031.5 and section 137.073.9 and enjoin the same. Taxpayers further requested they be awarded costs and attorney's fees under section 23 of the Hancock Amendment and section 137.073.8.

The District asserted its levies imposed in 2013, 2014, 2015, 2016, 2017, and 2018 represented the highest lawful levy in each year. The District argued section 137.073.5(2) is constitutional and permits it to increase the tax levy above the highest voter-approved tax levy ceiling when the assessed valuation of property decreases to ensure the District realizes the same tax revenue approved by the voters on November 6, 2012, as increased by the percentage increase in the CPI. The District argued this method of adjustment violates neither section 22(a) of Hancock Amendment nor section 137.073 and Taxpayers were entitled to no refunds, costs, or attorney's fees.

The trial court found no violation of section 22(a) of the Hancock Amendment and entered judgment for the District. The trial court found the term "levy" as used in section 22(a) means an amount of tax revenue and not a rate of taxation. The trial court held:

Section 22 of the Hancock Amendment is not invoked unless there is first an increase in the amount of tax revenue which a political subdivision assesses. Because of this limitation, adjustments to tax rates in the name of maintaining revenue neutrality do not trigger the Hancock Amendment unless those adjustments result in an increase in taxes. Because the District's increased tax rates did not generate additional tax revenue above the amount approved by voters

in 2012, it is clear the District's rates complied with the Hancock Amendment, and Section 137.073 RSMo. is constitutional.

The trial court also found "the District at all times complied with the terms of section 137.073 in setting its tax rates" for 2013, 2014, 2015, 2016, 2017, and 2018. The trial court found Taxpayers were entitled to no refunds under either section 23 of the Hancock Amendment or sections 139.031.1, 139.031.5, and 137.073.9. The trial court did not award Taxpayers any costs or attorney's fees.

This appeal follows.

Standard of Review

"Questions of law, including those of statutory and constitutional interpretation, are reviewed *de novo*." *St. Louis Police Leadership Org. v. City of St. Louis*, 484 S.W.3d 882, 888 (Mo. App. E.D. 2016). Where, as here, the parties submitted a joint stipulation of material facts, "the only question before [us] is whether the trial court drew the proper legal conclusions from the facts stipulated." *Schroeder v. Horack*, 592 S.W.2d 742, 744 (Mo. banc 1979).

Discussion

Point I:

The District's 2013 through 2018 Tax Levies Were Improperly Increased

In Point I, Taxpayers argue the trial court erred in determining the District's tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 did not violate section 22(a) of the Hancock Amendment. Taxpayers argue the trial court's finding that the term "levy" as used in section 22(a) means the amount of tax revenue and not the rate of taxation is erroneous. Taxpayers also argue the trial court's conclusion that "Section 22 of the Hancock Amendment is not invoked unless there is first an increase in the amount of tax revenue which a political subdivision assesses" is erroneous. Taxpayers argue section 22(a) prohibits the District from increasing its

tax levy above \$3.5342, which is the highest tax levy approved by the voters. Because each of the District's tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 exceeded \$3.5342 Taxpayers contend the trial court erred in determining the District did not violate the Hancock Amendment in setting its tax levies for those years.

The Hancock Amendment was approved by Missouri voters in 1980 and "is aimed at erecting a comprehensive, constitutionally-rooted shield to protect taxpayers from government's ability to increase the tax burden above that borne by the taxpayers on November 4, 1980." *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 826 (Mo. banc 2013) (internal quotations and alterations omitted); MO. CONST. art. x, §§ 16-24. "The Hancock Amendment is intended as a tax and spending lid for state government, as its purpose is to limit taxes by establishing tax and revenue limits and expenditure limits for the state and other political subdivisions which may not be exceeded without voter approval." *Breitenfeld*, 399 S.W.3d at 826 (internal quotations omitted).

"To help achieve the amendment's purpose of reining in governmental taxation and spending, section 22(a) of the Hancock Amendment imposes limitations on a political subdivision's ability to increase a tax." *Rohrer v. Emmons*, 289 S.W.3d 600, 604 (Mo. App. E.D. 2009). Section 22(a) of the Hancock Amendment provides:

(a) Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the

previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

In determining whether a political subdivision has violated section 22(a) of the Hancock Amendment, the “constitution’s prohibition is measured against the tax levy.” *Franklin Cty. ex rel. Parks*, 269 S.W.3d at 30.

We first address Taxpayers’ challenge to the trial court’s finding that the term “levy” as used in section 22(a) means the amount of tax revenue and not the rate of taxation. The term “levy” is not defined by section 22(a). However, the Missouri Supreme Court has defined a tax “levy” as a legislative declaration “that a tax of a certain amount, or a certain *percentage on value*, shall be imposed on persons and property subject thereto.” *State ex rel. Indus. Servs. Contractors, Inc.*, 918 S.W.2d at 256 (emphasis added) (quoting 84 C.J.S. *Taxation* § 349 (1954)). The Missouri Supreme Court has explained “the term ‘highest lawful levy’ . . . describe[s] that *rate* above which a school district may not levy, taking into account all relevant ceilings or lids under Missouri law. A tax levy is an amount owed for each \$100.00 of assessed property valuation.” *Green*, 13 S.W.3d at 280 (emphasis added).

“‘Revenue,’ as that term is used in the Hancock Amendment, by contrast, is ‘the annual or periodical yield of taxes, excises, customs, duties, and other sources of income that a nation, state or municipality collects and receives into the treasury for public use. . . .’” *Franklin Cty. ex rel. Parks*, 269 S.W.3d at 30. “One determines revenue by multiplying the levy by the assessed value of property; the words ‘levy’ and ‘revenue’ are not synonyms.” *Id.* Thus, the term “levy” as used in section 22(a) refers to a tax rate of a certain percentage on assessed valuation of property. *See State ex rel. Indus. Servs. Contractors*, 918 S.W.2d at 256; *Green*, 13 S.W.3d at

280. The trial court’s finding that the term “levy” as used in section 22(a) means the amount of tax revenue and not the rate of taxation is erroneous and contrary to Missouri law.

Given the trial court’s erroneous definition of the term “levy” as used in section 22(a), the trial court’s conclusion that “Section 22 of the Hancock Amendment is not invoked unless there is first an increase in the amount of tax revenue which a political subdivision assesses” is also erroneous. The plain language of section 22(a) shows the Hancock Amendment is violated when the current levy, or rate, of a tax exceeds the actual levy in effect when the Hancock Amendment was adopted or last approved by the voters. MO. CONST. art. X, sec. 22(a) (“Counties and other political subdivisions are hereby prohibited . . . from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon”); *Franklin Cty. ex rel. Parks*, 269 S.W.3d at 30; *Wenzlaff v. Lawton*, 653 S.W.2d 215, 216 (Mo. banc 1983); *Arbor Inv. Co., LLC v. City of Hermann*, 341 S.W.3d 673, 677 n.3 (Mo. banc 2011).

Here, the voters approved no increase to the District’s tax levy ceiling since November 6, 2012. It is undisputed the District’s tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 exceeded the District’s November 4, 1980 tax levy of \$3.50 *and* the District’s November 6, 2012 voter-approved tax levy of \$3.5342. The Hancock Amendment forbids such increases without voter approval.

The third sentence of section 22(a) “requires annual adjustments to the ‘maximum authorized current levy’ under certain circumstances, taking into account the finally equalized assessed valuation of property, the value of new construction and improvements, and the increase in the general price level.” However, this sentence in section 22(a) does not authorize

upward adjustments to the tax levy. To the contrary, it provides where the finally equalized assessed valuation of property in the political subdivision “*increases* by a larger percentage than the increase in the general price level from the previous year,” the tax levy rate should be “*reduced* to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.” This provision commands a rollback of the tax levy to stop political subdivisions from gaining a windfall because of higher assessed valuations. *Scholle v. Carrollton R-VII Sch. Dist.*, 771 S.W.2d 336, 336 (Mo. banc 1989).

Here, the finally equalized assessed valuation of property in the District *decreased* from the previous year in 2013, 2014, and 2015. Such decreases in the finally equalized assessed valuation of property require no decrease of the tax levy under section 22(a). Thus, in 2013, 2014, and 2015, the District’s tax levy ceiling should have remained at \$3.5342. In 2016, the finally equalized valuation of property in the District increased by 0.1882% from 2015. However, this percentage increase was not larger than the increase in the general price level as measured by the CPI that year, which was 2.1%. Increases in finally equalized assessed valuation of property require no decrease of the tax levy under section 22(a) so long as the increase is not by a percentage larger than the increase in the general price level as measured by the CPI. Thus, in 2016, the District’s tax levy rate ceiling should have remained at \$3.5342. In 2017, the finally equalized valuation of property in the District increased by 3.8837% from 2016. This percentage increase was larger than the increase in the general price level as measured by the CPI that year, which was 2.1%. Thus, in 2017, the District’s tax levy ceiling should have been reduced to \$3.4810. In 2018, the finally equalized assessed valuation of property in the District decreased from 2017. Because a decrease in the finally equalized assessed valuation of

property requires no decrease of the tax levy under section 22(a), the District's tax levy ceiling should have remained at \$3.5342 in 2018.³

The District's tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 violated section 22(a) of the Hancock Amendment.

Point I is granted.

*Point II:
The District's 2013 through 2018 Tax Levies Violated Section 137.073⁴*

In Point II, Taxpayers argue the trial court erred in determining the District's tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 complied with section 137.073 because, although section 137.073.5(2) provides a method for the District to increase its tax levy in accordance with the CPI to allow for inflationary assessment growth, section 137.073.4(2) required the District to use the lowest tax levy ceiling calculated by section 137.073.5(2) or section 22(a) of the Hancock Amendment, which the District failed to do. Taxpayers argue section 137.073

³ We appreciate the hardship this ruling imposes on the District in the unique situation presented by declining assessed valuation of taxable property. While reasonable minds can disagree on policy arguments presented by the implementation of the Hancock Amendment here, we cannot ignore the will of the people as expressed by the plain language of article X, section 22(a) of the Missouri Constitution. See *Cruzan by Cruzan v. Harmon*, 760 S.W.2d 408, 417 (Mo. banc 1988) ("Missouri's constitution must be interpreted according to its plain language and in a manner consistent with the understanding of the people who adopted it"); see also *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824, 828 (Mo. banc 1990) (holding the rationales for or against a particular result "must give way to the plain language and reasonable construction of the constitution [and other related] statutory provisions").

⁴ The District argues Taxpayers' second point relied on is not properly preserved for appeal. The District argues Taxpayers' "Second Amended Petition and trial briefing are both devoid of any claim that the District violated §137.073.4(2)" and Taxpayers' "only argument before the trial court regarding §137.073 was whether §137.073.5(2) was constitutional." Our review of the record reveals Taxpayers' second point relied on is properly preserved for appeal. Where the issue included in a point relied on has been "presented to or expressly decided by the trial court," it is properly preserved for appellate review. *In re Marriage of Harris*, 446 S.W.3d 320, 324 (Mo. App. S.D. 2014). Although Taxpayers' Second Amended Petition fails to explicitly reference section 137.073.4(2), it asks the trial court to enter an order declaring section 137.073.5(2) unconstitutional to the extent it would allow a higher levy than that authorized by section 22(a) of the Hancock Amendment. Taxpayers also made the exact argument raised in their second point relied on in their opposition to the District's motion for summary judgment, in their reply suggestions supporting their own motion for summary judgment, and orally during trial. Further, the trial court's judgment found "the District at all times complied with the terms of Section 137.073 in setting its tax rates" for 2013, 2014, 2015, 2016, 2017, and 2018. Because the argument Taxpayers raise in their second point relied on was presented to the trial court in their trial briefings and expressly decided by the trial court, it is preserved for appeal. See *id.*

cannot be used to increase the tax levy ceiling beyond that provided by section 22(a) of the Hancock Amendment.

Section 137.073.2 provides political subdivisions shall revise their tax levies based on changes to assessed valuation in order to:

produce from all taxable property, exclusive of new construction and improvements, substantially the same amount of tax revenue as was produced in the previous year for each subclass of real property, individually, and personal property, in the aggregate, *except that the rate shall not exceed the greater of the most recent voter-approved rate or the most recent voter-approved rate as adjusted under subdivision (2) of subsection 5 of this section.*

(emphasis added). Section 137.073.5(2) provides the method of calculating adjustments to the tax levy:

When voters approve an increase in the tax rate, the amount of the increase shall be added to the tax rate ceiling as calculated pursuant to this section to the extent the total rate does not exceed any maximum rate prescribed by law. If a ballot question presents a stated tax rate for approval rather than describing the amount of increase in the question, the stated tax rate approved shall be adjusted as provided in this section and, so adjusted, shall be the current tax rate ceiling. *The increased tax rate ceiling as approved shall be adjusted such that when applied to the current total assessed valuation of the political subdivision, excluding new construction and improvements since the date of the election approving such increase, the revenue derived from the adjusted tax rate ceiling is equal to the sum of: the amount of revenue which would have been derived by applying the voter-approved increased tax rate ceiling to total assessed valuation of the political subdivision, as most recently certified by the city or county clerk on or before the date of the election in which such increase is approved, increased by the percentage increase in the [CPI], as provided by law.*

(emphasis added). Section 137.073.4(2) provides:

Each political subdivision required to revise rates of levy pursuant to this section or Section 22 of Article X of the Constitution of Missouri shall calculate each tax rate it is authorized to levy and, in establishing each tax rate, shall consider each provision for tax rate revision provided in this section and Section 22 of Article X of the Constitution of Missouri, separately and without regard to annual tax rate reductions provided in section 67.505 and section 164.013. *Each political subdivision shall set each tax rate it is authorized to levy using the calculation that produces the lowest tax rate ceiling.*

(emphasis added). We must construe section 137.073 “strictly, in favor of the taxpayer and against the taxing authority.” *Asarco, Inc. v. McHenry*, 679 S.W.2d 863, 864 (Mo. banc 1984) (citing *Missouri Pac. R.R. Co. v. Campbell*, 502 S.W.2d 354, 358 (Mo. 1973)).

In *Green*, the Missouri Supreme Court explained section 22(a) and section 137.073 “serve two related but different purposes.” 13 S.W.3d at 285. “Article X, section 22(a) provides for a maximum authorized levy based on adjustments to the rate levied on November 4, 1980, unless the voters grant approval otherwise.” *Id.* at 285-86. “The computation under article X, section 22(a) establishes the maximum amount that *could have been collected* at the existing authorized levy on the prior assessed value.” *Id.* (alteration in original) (internal quotations omitted). “The tax rate ceiling under section 137.073, RSMo, meanwhile, is the amount that would produce from all taxable property . . . substantially the same amount of tax revenue *as was produced* in the previous year.” *Id.* (alteration in original) (internal quotations omitted).

Thus, “two distinct” tax rate ceilings may be established under section 22(a) and section 137.073. *Green*, 13 S.W.3d at 286. However, the District may not avail itself of the adjustment under section 137.073.5(2) without first experiencing an increase in assessed valuation of property within its boundaries. “Section 137.073 . . . was adopted to prevent windfalls to taxing authorities simply because of *increases* in assessed valuations of locally assessed property.” *Asarco, Inc.*, 679 S.W.2d at 864 (emphasis added); *see also Missouri Pac. R.R. Co.*, 482 S.W.2d at 509. To hold the purpose of section 137.073 is to ensure a taxing authority receives the same revenue each year despite experiencing a decrease in assessed valuation of property, as the District urges, would allow the District to realize higher revenues than the assessed valuation of property within its boundaries would otherwise produce.

A careful analysis of section 137.073 reveals the method for adjusting the tax levy ceiling under section 137.073 is *more* restrictive than section 22(a) of the Hancock Amendment. See Opp. Att. Gen. No. 122-85, Proffer, 12-6-82 (emphasis added) (“Section 137.073, RSMo Supp. 1982, does not violate the provisions of Article X, Section 22(a), Missouri Constitution, unless the operation of such statute is less restrictive than the operation of Article X, Section 22(a)”). The Missouri Supreme Court confirmed this interpretation of section 137.073 in *Green*: “Under the legislative scheme, computing a separate tax rate ceiling pursuant to section 137.073, RSMo, will not violate the terms of article X, section 22(a) because the section 137.073, RSMo, tax rate ceiling will be used only if it is *lower* than that required by article X, section 22.” 13 S.W.3d at 286 (emphasis added).⁵

In its judgment, the trial court found section 137.073 permits taxing authorities to revise tax levy rates to “protect[] . . . against revenue fluctuation.” In so finding, the trial court primarily relied on *Scholle*, 771 S.W.2d 336. However, the trial court’s judgment misunderstands the holding of *Scholle*. *Scholle* involved a school district’s use of section 137.073.3,⁶ which permits recoupment of lost revenue under narrow circumstances not present in this case. Under Section 137.073.3, a political subdivision may revise its tax rate ceiling to recoup any revenues it was entitled to receive if it experiences a reduction in the amount of assessed valuation relating to a prior year “due to decisions of the state tax commission or a court

⁵ At trial, Taxpayers argued section 137.073.5(2) was unconstitutional to the extent it would permit a higher tax levy than authorized by section 22(a) of the Hancock Amendment. Although Taxpayers do not challenge the constitutionality of section 137.073.5(2) on appeal, we note section 137.073.5(2) is constitutional for the reason stated by the Missouri Supreme Court in *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278 (Mo. banc 2000). When section 137.073.5(2) is correctly interpreted as permitting an adjusted levy ceiling to be used only where the adjusted ceiling “is *lower* than that required by article X, section 22,” section 137.073.5(2) harmonizes with section 22(a) of the Hancock Amendment. *Id.* at 286.

⁶ When *Scholle* was decided, the recoupment provision was located in subsection 4 of section 137.073. In 1992, the recoupment provision was moved to subsection 3 of section 137.073. The recoupment provision remains in subsection 3 of section 137.073 as of the date this opinion was authored.

pursuant to section 138.430 to 138.433, or due to clerical errors or corrections in the calculation or recordation of any assessed valuation.” § 137.073.3.

In *Scholle*, the school district used the assessed valuation of property within its boundaries to set its tax levy rate under section 22(a) and section 137.073 for 1985. *Id.* at 337. However, after the 1985 levy was certified and the 1985 tax bills were mailed to the taxpayers, the Missouri State Tax Commission informed the school district the valuations of certain properties within the school district had been lowered. *Id.* The school district returned the incorrect taxes to the taxpayers. *Id.* However, this correction in the calculation of assessed valuation for 1985 resulted in the school district receiving revenues that fell below the revenues received under the 1984 levy. *Id.* When setting its tax levy rate for 1986, the school district increased its levy under section 137.073.3 to recoup revenues it lost in 1985 due to the 1985 levy being calculated on incorrect property assessments. *Id.* at 337-38. Critically, in *Scholle*, the school district’s increase in the tax levy rate for recoupment never exceeded the tax levy rate ceiling under section 22(a). *Id.*

Here, neither party asserts the District increased its tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 to recoup revenues it was entitled to receive due to clerical errors or corrections in the calculation or recordation of any assessed valuation from prior years under section 137.073.3. *Scholle* does not stand for the proposition that a school district may ensure its revenues stay constant by increasing its tax levies beyond the tax levy ceiling provided in section 22(a) when it experiences a decrease in assessed valuations within its boundaries. The trial court’s determination to the contrary is erroneous.

The District violated section 137.073 in setting its tax levies for 2013, 2014, 2015, 2016, 2017, and 2018 by failing to use the calculation that produces the lowest tax levy ceiling, as required by section 137.073.4(2) and section 137.073.2.

Point II is granted.

*Point III:
Taxpayers Are Entitled to a Partial Refund Under Section 137.073.9*

In Point III, Taxpayers argue the trial court erred in determining they were not entitled to refunds of the unlawful taxes collected by the District in 2013, 2014, 2015, 2016, 2017, and 2018 under section 137.073.9.

Enforcement of the Hancock Amendment “is subject to the orderly procedures established by statute.” *Green*, 13 S.W.3d at 287 (Wolff, J., concurring). “The enforcement of the right to be free of increases in taxes that the voters do not approve in advance may be accomplished in [these] two ways”:

First, taxpayers may seek an injunction to enjoin the collection of a tax until its constitutionality is finally determined. Second, if a political subdivision increases a tax in violation of article X, section 22(a), and collects that tax prior to a final, appellate, judicial opinion approving the collection of the increase without voter approval, the constitutional right established by article X, section 22(a), may be enforced only by a *timely* action to seek a refund of the amount of the constitutionally-imposed increase.

Id. (alteration in original) (quoting *Ring v. Metro. St. Louis Sewer Dist.*, 969 S.W.2d 716, 718 (Mo. banc 1998)). “[A]n action for property tax refunds must conform to statutory requirements, and, specifically, the action must be timely.” *Id.*

Section 137.073.8 allows a taxpayer who has cause to believe a taxing authority has not complied with section 137.073 to challenge the tax levy by making a formal complaint with the prosecuting attorney of the county. If the prosecutor fails to bring an action within ten days of

the complaint's filing, section 137.073.8 states the taxpayer may bring a class action challenging the taxing authority's compliance with section 137.073.

However, "[t]he civil action contemplated by [section 137.073.8] is only for injunctive relief." *Id.* Section 137.073.9 provides:

If in any action, including a class action, *the court issues an order requiring a taxing authority to revise the tax rates as provided in this section or enjoins a taxing authority from the collection of a tax because of its failure to revise the rate of levy as provided in this section*, any taxpayer paying his or her taxes when an improper rate is applied has erroneously paid his or her taxes in part, *whether or not the taxes are paid under protest as provided in section 139.031, RSMo.* The part of the taxes paid erroneously is the difference in the amount produced by the original levy and the amount produced by the revised levy. The township or county collector of taxes or the collector of taxes in any city shall refund the amount of the tax erroneously paid. The taxing authority refusing to revise the rate of levy as provided in this section shall make available to the collector all funds necessary to make refunds under this subsection.

(emphasis added). Section 137.073.9 clarifies refunds of taxes erroneously paid are permitted only if injunctive action was timely instituted. *Koehr v. Emmons*, 55 S.W.3d 859, 863-64 (Mo. App. E.D. 2001); *Vogt v. Emmons*, 158 S.W.3d 243, 249-50 (Mo. App. E.D. 2005). Injunctive action is timely instituted if the taxpayers' lawsuit requesting injunctive relief was filed before the challenged taxes became payable, which is December 31 of the tax year. *Green*, 13 S.W.3d at 287 (Wolff, J., concurring).

Here, Blankenship made a formal complaint with the prosecuting attorney of Franklin County on November 30, 2017, challenging the District's 2013, 2014, 2015, 2016, and 2017 tax levies. The prosecutor failed to bring an action within ten days of November 30, 2017. On December 22, 2017, Blankenship, individually and on behalf of Taxpayers, filed a Petition against the District and the Collector of Franklin County requesting the District be enjoined from collecting taxes using the levies in 2013, 2014, 2015, 2016, and 2017. On October 8, 2018, Blankenship made another formal complaint with the prosecuting attorney of Franklin County,

challenging the District's 2018 tax levy. The prosecutor failed to bring an action within ten days of October 8, 2018. On October 31, 2018, Blankenship, individually and on behalf of Taxpayers, filed a Second Amended Petition against the District and Collector of Franklin County requesting the District be enjoined from collecting taxes using the 2018 tax levy in addition to the levies challenged in the Petition filed on December 22, 2017.

Because no action requesting injunctive relief regarding the District's tax levies for 2013, 2014, 2015, or 2016 was brought before December 31 in each of those years, Taxpayers may not have refunds of the amounts erroneously paid in 2013, 2014, 2015, or 2016 under section 137.073.9.⁷ Taxpayers cannot seek to enjoin taxes already collected. *Koehr*, 98 S.W.3d at 584. However, because a Petition challenging the District's 2017 tax levy and requesting injunctive relief was filed before December 31, 2017, and a Second Amended Petition challenging the District's 2018 tax levy and requesting injunctive relief was filed before December 31, 2018, injunctive action was timely instituted regarding the District's tax levies for 2017 and 2018. Under section 137.073.9, Taxpayers are entitled to a refund of the taxes they erroneously paid for 2017 and 2018.

On remand, we instruct the trial court to calculate the proper refunds due to Taxpayers for 2017 and 2018 under section 137.073.9 in accordance with this opinion.

Point III is granted in part and denied in part.

Point IV:

Taxpayers Are Not Entitled to a Refund Under Section 23 of the Hancock Amendment

In Point IV, Taxpayers argue the trial court erred in determining they were not entitled to refunds of the unlawful taxes collected by the District in 2013, 2014, 2015, 2016, 2017, and 2018 under section 23 of the Hancock Amendment.

⁷ During oral argument, Taxpayers conceded they are entitled to no refunds under section 137.073.9 for the taxes erroneously paid in 2013, 2014, 2015, and 2016.

Even though the District used a higher tax levy in 2013, 2014, 2015, 2016, 2017, and 2018 than that approved by the voters in 2012 in violation of section 22(a), section 23 of the Hancock Amendment is not a vehicle for Taxpayers to obtain the relief they seek. Section 23 of the Hancock Amendment provides:

[A]ny taxpayer ... shall have standing to bring suit ... to enforce the provisions of sections 15 through 22, inclusive, of this article and, if the suit is sustained, shall receive from the applicable unit of government his costs, including reasonable attorneys' fees incurred in maintaining such suit.

The Missouri Supreme Court has “unequivocally” held section 23 does not, “by itself, “authorize[] courts to award money damages in the form of refunds (or otherwise) as a remedy for a political subdivision levying a tax without the prior voter approval required by section 22(a).” *Zweig*, 412 S.W.3d at 248 (footnote omitted); *see also Taylor v. State*, 247 S.W.3d 546, 548 (Mo. banc 2008). “The principal relief authorized by section 23 is . . . declaratory and not remedial.” *Zweig*, 412 S.W.3d at 244. “By its plain language, the only monetary relief courts are authorized to give under section 23 is an award of expenses and attorney’s fees.” *Id.*; *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 923.

Section 23 has not been read by the Missouri Supreme Court to be a consent to suit for money judgment, as such consent is absent from its plain language and would have to be inferred or implied. *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 923. Further, allowing such suits for money judgment under section 23 would “thwart” one main purpose of the Hancock Amendment, which “is to limit expenditures by state and local government.” *Id.* Taxpayers are not entitled to refunds of the unlawful taxes collected by the District in 2013, 2014, 2015, 2016, 2017, and 2018 under section 23. Statutory authority for the refund of taxes is required. *Cnty. Fed. Sav. & Loan Ass’n v. Dir. of Revenue*, 752 S.W.2d 794, 797 (Mo. banc 1988) (“In the absence of *statutory*

authority, taxes voluntarily, although erroneously paid, . . . cannot be refunded”) (emphasis added).

Point IV is denied.

*Point V:
Refunds Under Section 139.031*

In Point V, Taxpayers argue the trial court erred in determining all class members were required to comply with section 139.031.1-2 to be entitled to refunds under section 137.073.9, section 23 of the Hancock Amendment, or section 139.031.1.

The trial court did not enter the ruling suggested by Taxpayers. Our review of the trial court’s conclusions of law shows Taxpayers misconstrue the substance of the trial court’s holding.

Taxpayers challenge paragraphs 57-59 of the trial court’s judgment, which state:

57. Mo. Rev. Stat. § 139.031.1 provides the exclusive remedy for taxpayers seeking refunds of taxes. B&D Investment Co. v. Schneider, 646 S.W.2d 759, 763-64 (Mo. 1983) (en banc); Adams v. Friganza, 344 S.W.3d 240, 247-48 (Mo. App. E.D. 2011); Metts v. City of Pine Lawn, 84 S.W.3d 106, 109 (Mo. App. E.D. 2002). The statutory procedures set out in Section 139.031.1 RSMo. must be followed even when the challenge is based on an assertion that the taxes were unconstitutionally assessed and collected. Westglen Village Associates v. Leachman, 654 S.W.2d 897, 900 (Mo. 1983) (en banc). Because Plaintiff and the class members have failed to comply with the mandatory prerequisites of Mo. Rev. Stat. § 139.031.1, this section also fails to provide them a basis for the claims for refund.

58. In order to seek a refund under Mo. Rev. Stat. § 139.031.1, a taxpayer must 1) pay the protested taxes in full, 2) submit a written statement setting forth the specific grounds on which the protest is based, and 3) within 90 days thereafter, file a petition against the collector to recover the taxes. Mo. Rev. Stat. §§ 139.031.1 and 139.031.2; Ackerman Buick v. St. Louis County, 771 S.W.2d 343, 344 n.1 (Mo. 1989) (en banc). Upon receipt of the protested tax payment, the collector is statutorily obligated to segregate and withhold the protested funds from the taxing authority until the protest is resolved. Id. These requirements serve to provide notice to the taxing authority of the taxpayer’s protest, so as to protect it against the grave financial hardship that could result if it is forced to refund taxes that have already been collected, disbursed to it, and in all likelihood,

spent. Adams, 344 S.W.3d at 248. “Mandating a refund of [taxes that have already been collected and disbursed] could create serious financial problems for the taxing authority.” B&D Investment Co., 646 S.W.2d at 762.

59. Plaintiff and the unnamed class members of the Certified Plaintiff Class have failed to comply with these mandatory requirements. Only Plaintiff paid his 2017 and 2018 taxes under protest, filed a written statement of objection as to those taxes with the Franklin County Collector, and filed suit to recover the protested taxes within 90 days after they were paid. None of the unnamed class members fulfilled these requirements, and Plaintiff failed to do so for his 2013 through 2016 taxes. As a result, the Franklin County Collector only set aside Plaintiff’s 2017 and 2018 tax payments into a segregated account, and the District had no notice of any other protested taxes. The remainder of the taxes at issue were disbursed to the District.

In these paragraphs of its judgment, the trial court did not hold all class members must comply with section 139.031.1-2 to be entitled to refunds under section 137.073.9, section 23 of the Hancock Amendment, *or* section 139.031.1. Instead, the trial court held all class members were required to comply with section 139.031.1-2 to be entitled to refunds under *section 139.031.1*. To the extent Taxpayers appeal the substance of a judgment the trial court did not make, their arguments are dismissed. *Green v. Lake Montowese Ass’n*, 387 S.W.3d 413, 416-17 (Mo. App. E.D. 2012).

To the extent Taxpayers appeal the trial court’s judgment holding all class members were required to comply with section 139.031.1-2 to be entitled to refunds under section 139.031.1,⁸ we find the trial court’s conclusion is correct as a matter of law. “Section 139.031.1-4 allows Missouri taxpayers to pay disputed taxes assessed for their property under protest and seek a refund of those taxes.” *Bd. of Educ. of City of St. Louis v. Daly*, 272 S.W.3d 228, 233 (Mo. App.

⁸ We note Taxpayers’ Second Amended Petition did not seek refunds of the taxes erroneously collected by the District for 2013, 2014, 2015, 2016, 2017, and 2018 under section 139.031.1. Rather, Taxpayers’ Second Amended Petition stated they sought refunds under section 139.031.5. “The provisions of subsections 1 to 4 and subsection 5 of section 139.031 are distinct and mutually exclusive.” *Lane v. Lensmeyer*, 158 S.W.3d 218, 222 n.7 (Mo. banc 2005). The parties, however, tried the case as if relief under section 139.031.1 was requested by Taxpayers. Thus, even if the question of whether Taxpayers could obtain refunds under section 139.031.1 was not within the scope of the pleadings, we treat the issue as if it was raised in the pleadings because it was tried. *In re Marriage of Brewer*, 592 S.W.2d 529, 532 (Mo. App. S.D. 1979).

E.D. 2008). The procedure for a taxpayer to protest taxes assessed against him or her established by section 139.031 applies to taxes challenged as violations of the Hancock Amendment. *Metts v. City of Pine Lawn*, 84 S.W.3d 106, 109 (Mo. App. S.D. 2002).

Section 139.031.1 requires that, before any refund will issue for any tax erroneously paid, “any taxpayer” shall pay the challenged tax under protest by filing a statement with the collector and submit a written statement setting forth the specific grounds on which the protest is based. § 139.031.1 (emphasis added). Section 139.031.2 further provides “every taxpayer protesting the payment of current taxes under subsection 1 of [section 139.031] shall file suit against the collector within ninety days in circuit court” and “[i]f any taxpayer so protesting his taxes under subsection 1 of [section 139.031] shall fail to commence an action in the circuit court for the recovery of the taxes protested within the time prescribed in this subsection, such protest shall become null and void and of no effect.” § 139.031.2 (emphasis added).

Here, it is undisputed Blankenship failed to pay his 2013, 2014, 2015, and 2016 taxes under protest. “Taxpayers who fail to protest property taxes under [section] 139.031 cannot obtain refunds.” *Metts*, 84 S.W.3d at 109. Therefore, Blankenship is not entitled to refunds of the unlawful taxes collected by the District in those years under section 139.031.1. It is also undisputed Blankenship paid his 2017 and 2018 taxes under protest, submitted a written statement explaining the grounds on which his protests were based, and sued within ninety days of filing his protest. Therefore, Blankenship is entitled to refunds of the unlawful taxes collected by the District in 2017 and 2018 under section 139.031.1.⁹

⁹ As discussed in Point III, Blankenship is also entitled to refunds of the unlawful taxes collected by the District in 2017 and 2018 under section 137.073.9. Blankenship was free to pursue the recovery of his taxes under both section 139.031 and section 137.073. *Ackerman Buick, Inc. v. St. Louis Cty.*, 771 S.W.2d 343, 345 (Mo. banc 1989) (“Section 139.031 does not preclude resort to other statutory provisions which provide available routes for the recovery of taxes”). However, a taxpayer’s recovery of refunds is limited to “the amount of the tax erroneously paid” under section 137.073.9 and “all or any part of the current taxes paid under protest” under section 139.031.4. Under either statute, Blankenship may not recover more than the amount of the tax he erroneously paid. *See id.*

The parties dispute whether the class members Blankenship represents are also entitled to refunds of the unlawful taxes collected by the District in 2017 and 2018 under section 139.031.1 by virtue of Blankenship's compliance with section 139.031.1-2's requirements. Taxpayers argue that, because no statute prohibits class actions under section 139.031, refunds may issue under section 139.031.1 on a class-wide basis so long as the class representative complied with its requirements. The District argues section 139.031.1 authorizes no such class-wide relief.

We agree with the District. The Missouri Supreme Court has noted "nothing in section 139.031 authorizes class refunds." *Lane v. Lensmeyer*, 158 S.W.3d 218, 222 n.7 (Mo. banc 2005). Instead, sections 139.031.1 and 139.031.2 mandate "*any taxpayer*" must pay the challenged taxes under protest and submit a written statement setting forth the grounds for such protest and "*every taxpayer*" must sue the collector within ninety days of paying such taxes under protest. Section 139.031 "must be meticulously followed." *Adcor Realty v. State Tax Comm'n*, 627 S.W.2d 604, 606 (Mo. banc 1982); *State ex rel. Nat. Inv. Corp. v. Leachman*, 613 S.W.2d 634, 635 (Mo. banc 1981) (holding "explicitly stated" statutory requirements, such as those included in section 139.031.1, "are to be strictly construed and enforced"); *Ford Motor Co. v. City of Hazelwood*, 155 S.W.3d 795, 798 (Mo. App. E.D. 2005) ("Section 139.031 must be strictly construed and enforced"). Section 139.031, construed strictly, does not authorize class refunds but only refunds for individual taxpayers who follow its procedures.

Therefore, the class members Blankenship represents are not entitled to refunds of the taxes they erroneously paid for 2017 and 2018 under section 139.031.1. The class members Blankenship represents are only entitled to refunds of the taxes they erroneously paid for 2017 and 2018 under section 137.073.9, as explained in Point III.

Point V is denied.

*Points VI and VII:
Taxpayers Are Entitled to Costs and Attorney's Fees Under Section 23 of the Hancock
Amendment or Section 137.073.8*

In Points VI and VII, Taxpayers argue the trial court erred in determining they were not entitled to costs and attorney's fees under section 23 of the Hancock Amendment or section 137.073.8.

Section 23 of the Hancock Amendment provides that, if a lawsuit to enforce the Hancock Amendment under section 23 is sustained, "[a]ny taxpayer . . . shall receive from the applicable unit of government his costs, including reasonable attorneys' fees incurred in maintaining such suit." Similarly, section 137.073.8 provides, "In any class action brought pursuant to this section, the court, in addition to the relief requested, shall assess against the taxing authority found to be in violation of this section the reasonable costs of bringing the action, including reasonable attorney's fees[.]" We hold the District violated section 22(a) of the Hancock Amendment and section 137.073 in setting its tax levies for 2013, 2014, 2015, 2016, 2017, and 2018. The trial court's holding to the contrary is erroneous. Accordingly, Taxpayers are entitled to reasonable costs and attorney's fees incurred pursuing the underlying action under either section 23 of the Hancock Amendment or section 137.073.8.

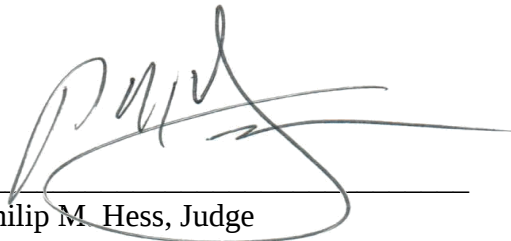
Before submission of this case on appeal, Taxpayers moved this Court to award attorney's fees and costs. The motion was taken with the case. "While 'appellate courts have the authority to allow and fix the amount of attorney's fees [and costs] on appeal, we exercise this power with caution, believing in most cases that the trial court is better equipped to hear evidence and argument on this issue and determine the reasonableness of the fee requested.'" *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425 (Mo. banc 2013) (quoting *Rosehill Gardens, Inc. v. Luttrell*, 67 S.W.3d 641, 648 (Mo. App. W.D. 2002)). The motion for attorney's

fees on appeal is granted. On remand, we instruct the trial court to calculate and include the reasonable costs and attorney's fees Taxpayers are entitled to on appeal.

Points VI and VII are granted.

Conclusion

The judgment of the trial court is reversed. We remand to the trial court with instructions to make specific findings and calculate the appropriate refunds due to Taxpayers for 2017 and 2018 under section 137.073.9 and to determine the reasonable costs and attorney's fees incurred by Taxpayers in maintaining this lawsuit in the trial court and on appeal under section 23 of the Hancock Amendment or section 137.073.8.



Philip M. Hess, Judge

Gary M. Gaertner, Jr., P.J. and
Michael E. Gardner, J. concur.