

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LISA KRAGNES (DOB 11/25/70), on behalf of herself and all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CITY OF DES MOINES, IOWA</p> <p>Defendant.</p>	<p>Case No. _____</p> <p>PETITION IN EQUITY</p> <p>POLK COUNTY IA CLERK DISTRICT COURT 04 JUL 27 PM 3:36</p>
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COMES NOW, the Plaintiff on behalf of herself and on behalf of all persons similarly situated, and states to the Court as follows:

1. The Plaintiff, Lisa Kragnes, at times material hereto, was and is an individual and resident of Des Moines, Polk County, Iowa.
2. The Defendant, City of Des Moines, Iowa ("City"), is a municipality located in Polk County, Iowa, and has the powers and duties of cities designated under Chapter 364, Code of Iowa.
3. The Plaintiff at all times material hereto was and is a customer of MidAmerican Energy Company for supplying of the utilities of gas and electric.
4. The Defendant City since before July 1, 1999, has charged as a "franchise fee" a sum of at least 1% of billings made by MidAmerican Energy to its customers.
5. The City has also imposed an increase in the "franchise fees" and imposed it on both gas and electric utilities provided to consumers within the city limits of Des Moines, Iowa, by MidAmerican Energy Company.
6. Said "franchise fees", which are, or are to be, charged and collected by the City through its franchise agreement with MidAmerican Energy constitutes a tax and revenue

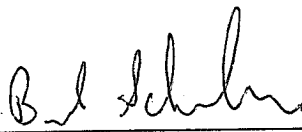
generating measure which has been or will be illegally imposed and collected from the Plaintiff and other members of the Class through the adoption of said ordinance and imposition of said "franchise fees".

7. Chapter 364.3(4) provides that a City may not levy a tax unless specifically authorized by a state law.
8. The Defendant has illegally exacted from the Plaintiff, and those similarly situated, illegal taxes as a revenue generating measure under the guise of the "franchise fees" and said exaction is illegal and void and should be refunded.
9. In addition thereto, the other members of the Class, as yet unnamed, have paid to the Defendant City these illegal monies in an amount as yet to be determined
10. Plaintiff brings this action pursuant to Rule 1.261 of the Iowa Rules of Civil Procedure as a Class Action for herself, and as a representative of and for and on behalf of all others similarly situated, to-wit: All persons or entities from whom the City has collected the above-described illegal monies during the five years preceding the filing of this action. Those persons for, and on whose behalf, this action is brought are herein referred to as "Class Members".
11. Plaintiff has been informed and believes, upon such information, that the Class Members number in excess of twenty-five (25) and reside throughout the City, and the joinder of all or even a majority of the Class Members herein is impracticable, if not impossible.
12. Adjudication with respect to the cause of action alleged in this Petition as a practical matter would be dispositive of the interests of the other members not parties to the adjudication, and would substantially impair or impede their ability to protect their interests in this matter.

13. There exists in this action questions of law and fact, namely: whether or not the tax is illegal, which would affect all class members individually, and adjudication of this issue by each of the other members of the Class would be impracticable or inefficient; and therefore, the class action offers the most appropriate means of adjudicating all the claims and defenses which are relevant to this class action.
14. The claims presented by Plaintiff as to the City of Des Moines and the program instituted and operated by said City, have not been the subject of a class action, governmental action, or other proceeding.
15. There is no other forum which would have jurisdiction to make a determination of the issues presented in Plaintiff's claims.
16. There is nothing regarding this class which would pose unusual difficulties in the management of a class, and there are no conflicts of law issues which would pose any unusual difficulties.
17. Plaintiff will thoroughly and adequately represent the interests of the entire class and the individual class members because, by reason of the similarity or identity of the claims of Plaintiffs and the individual class members, the successful assertion of Plaintiff's claim herein will necessarily establish determination of the fact in law adequate to prove the liability of the Defendant to each class member.
18. The question of law in fact common to the Plaintiff and class members against the Defendant and to the claims of all class members against the Defendant predominate over questions, if any, affecting only individual members and class action is superior to other available methods, if, in fact, any such other methods are available, which Plaintiff denies, for the fair and efficient adjudication of the matters alleged herein.

19. The Plaintiff and class members have no other plain, speedy, or adequate remedy in the ordinary course of the law.

WHEREFORE, Plaintiff seeks a declaratory judgment and/or order of mandamus ordering the Defendant to reimburse the Plaintiff and the other class members for all "franchise fees" a/k/a taxes illegally collected by the City, for an injunction prohibiting the City of Des Moines from enforcing and/or collecting such "franchise fee" a/k/a tax in the future until the requirements of law are met, for recovery of attorney fees, prejudgment interest from the time of the wrongful collection of such taxes and for such other and further relief as the Court may deem to be proper in the premises.

By:  7-27-04
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