

IN THE IOWA DISTRICT COURT  
FOR POLK COUNTY

LISA KRAGNES and all others )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITY OF DES MOINES, IOWA, )  
 )  
Defendant. )

Law No. CE 49273

MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON REFUND ISSUE  
BY DEFENDANT CITY OF  
DES MOINES

FILED  
POLK COUNTY IOWA  
06 OCT 22 PM 3:42  
CLERK DISTRICT COURT

COMES NOW the Defendant, the City of Des Moines, and for its motion for partial summary judgment on the Plaintiff's claim for a refund of franchise fees paid, states:

1. As a part of the relief they seek, Plaintiffs initially asked for the Court to refund the entire amount of the franchise fees they had paid claiming the same to be illegal taxes.
2. Now that the Iowa Supreme Court has determined that the franchise fees are not illegal taxes, the City assumes (although the Plaintiffs' Petition has not been amended) that the Plaintiffs are still seeking a refund, but now the refund they are seeking could only be the difference between the amount of the franchise fee the City is ultimately allowed to collect and the amount of the franchise fee the City actually collected. (NOTE – for purposes of this motion only, the City assumes that it will prove entitlement to less than it presently collects).
3. For nearly 150 years the law in Iowa has been that taxes and fees improvidently paid are not refundable with but two exceptions that do not apply.
4. There are no material factual disputes existing as to this issue.
5. This motion is supported by a statement of material facts not in dispute, and a Brief, all of which will be filed contemporaneously.

WHEREFORE, the City prays the Court grant its motion for partial summary judgment and find that no refund is due the Plaintiff class in any event, and for such other relief as is proper under the premises.



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CITY OF DES MOINES

Original Filed.

Copies to:

Honorable Don C. Nickerson  
Judge, 5th Judicial District

Mr. Brad Schroeder  
Hartung & Schroeder LLP  
Equitable Building, Suite 100  
608 Locust Street  
Des Moines, IA 50309  
ATTORNEY FOR PLAINTIFF

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses

disclosed on the pleadings on 10-2-06

By:  U.S. Mail       FAX  
 Hand Delivered       Overnight Courier  
 Federal Express       Other:

Signature Dorine Roscoe