

FRANK E. ACKERS

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IN THE

vs.

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MARYLAND TAX COURT

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COMPTROLLER OF THE TREASURY

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No. 10-IN-OO-1370

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MEMORANDUM AND ORDER

This case arises from the Petitioner's appeal of the Respondent's ("Comptroller") assessment of a State income tax payment deficiency arising from Internal Revenue Service ("IRS") adjustments to the Petitioner's 2005 Federal income tax return. For purposes of this Memorandum and Order, the Court incorporates both the Procedural Background and Facts as stated in the Respondent's Post Trial Memorandum of Law.

At the conclusion of the hearing, the Court raised two legal issues about which it was concerned. One, whether the Court could adjust the interest on the unpaid tax based upon a conclusion that the statutory rate was unduly high. And, two, whether the Court had authority to order Petitioner's payment of tax deficiencies alleged for the first time at the hearing before the Tax Court. The Court will initially address the issue regarding interest.

The Comptroller argues that "...[a] personal view that the General Assembly's enactment of a specific statutory interest rate in general is not 'reasonable cause...' " sufficient justify an interest abatement pursuant to TG § 13-606. The Court finds this argument persuasive and, accordingly, will not abate interest.

In *Frey v. Comptroller*, No. 62, September Term, 2009 (Md. Court of Appeals, September 29, 2011), the Court found that the Tax Court had authority to abate interest. But, in exercising this authority the Court observed that "...a tax collector's assessment of interest will

not be overturned unless the complaining party provides affirmative evidence demonstrating reasonable cause for the abatement...” In this case, no such reasonable cause has been presented. And, while the Court may feel the statutorily established interest rate is excessive, consistent with the authority cited by the Comptroller, that disagreement with a legislatively established policy cannot be the foundation for a finding of “reasonable cause.”

As noted in the Procedural Background, the appeal to the Tax Court was premised on the Petitioner’s stated disagreement with the State assessing a tax deficiency. That deficiency arose from the IRS’s elimination of the miscellaneous deductions claimed on Schedule A to the Petitioner’s Federal Income tax return. The amount of the State assessment arising from the IRS’s action was \$1140.88.

Pursuant to the applicable statute and regulations, the Petitioner appealed the assessment and an informal hearing was conducted. See TG §13-508(c) and COMAR 03.01.01.04. That hearing brought a final determination affirming the assessment, which was the subject of the appeal to the Tax Court.

It was only at the Tax Court hearing that additional tax liability was asserted, arising from alleged mistakes on the original 2005 Maryland income tax return. The additional tax liability for these alleged mistakes is \$385.12. The Court concludes it lacks jurisdiction to order the assessment of this additional tax.

The Tax Court’s jurisdiction to consider issues relating to income tax is founded in both statute and regulation. The statutory scheme envisions that a determination of tax liability emanates from an audit, from which follows a notice of assessment that is to be mailed. TG Article §§13-401& 410. As noted in *Dun & Bradstreet Corporation v. Comptroller*, 86 Md.

App. 258, 273 (1991) "...the purpose of the notice is to advise the taxpayer of an assessment." The federal precedent upon which the Court relied noted that the notice should afford the taxpayer "...a meaningful opportunity to litigate the claims." *Id.* at 272. This statutory scheme promotes the due process to which the Petitioner is entitled. See *Baltimore Street Parking Company v. Baltimore*, 194 Md. App. 569, 594 (2010)

In this case, consideration of the additional tax liability raised by Comptroller at the hearing would deny the taxpayer this "...meaningful opportunity to litigate the claims," particularly since the additional tax liability was not related to the assessment. See *Comptroller v. Science Applications*, 405 Md. 185, 195 (2008). And, while the informal hearing could result in an assessment of "...any additional tax, penalty, and interest," it is apparent that the Comptroller did not seek this recourse at the informal hearing insofar as to the additional tax liability. TG Article § 13-508(c)(1)(ii)(2)(B). So, the notice of "**final** determination [emphasis added]" arising from the informal hearing and required by statute did not address the additional tax liability at issue. *Id.* at § 13-508 (c) (2).

The Tax Court's has jurisdiction to hear appeals from a final decision. *Frey v. Comptroller*, supra. at 76 & TG Article § 3-103(a). No final decision on the additional tax liability was before the Court, so it lacks jurisdiction to issue an order regarding that asserted liability. And, by exercising jurisdiction the Petitioner would also be denied the "...meaningful opportunity to litigate the claims" to which he is entitled and which is envisioned by the notice requirements previously cited.

The Comptroller argues TG Article § 13-528(a) provides the Court the requisite authority to issue an order regarding the additional tax liability. While that section does provide the Tax

Court with broad adjudicatory authority, the exercise of that authority is limited to “any matter before it.” In this case, the matter of the additional tax liability was simply not before the Court as that matter was not addressed in the “final determination” from which the appeal was taken.

The Attorney General’s Opinion upon which the Comptroller relies is not germane. 70 Md. Op. Atty. Gen. 22 (1985). The circumstance considered in that opinion is distinguishable as there was clearly a final determination, in that instance a decision of the Property Tax Assessment Appeal Board, before the Tax Court. And, while arguably the Comptroller is not a person for purposes of the statutory exhaustion requirement, the issue before the Court is not exhaustion of remedies, but the basic statutory jurisdiction upon which the authority of the Tax Court is dependent. See TG Article § 13-514; *Abramson v. Montgomery County*, 328 Md. 721 (1992); *Frey v. Comptroller*, 184 Md. App 315, 330 (2009) affd. *Frey v. Comptroller, supra*. Also, the pre-trial discovery procedures the Comptroller cites would not have afforded the Petitioner relief as he could not be expected to inquire about an tax liability about which he did not have notice.

Accordingly, it is this 21st day of October, 2011, by the Maryland Tax Court ORDERED that the Final Determination from which the Petitioner appealed is

AFFIRMED.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

CC: Frank E. Ackers
Brian L. Oliner, Esq.

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.