

CARROLL INDEPENDENT FUEL CO.

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IN THE

vs.

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MARYLAND TAX COURT

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COMPTROLLER OF MARYLAND

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No. 16-MF-OO-1084 (1-2)

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MEMORANDUM AND ORDER

Carroll Independent Fuel Co., "Carroll", is appealing a Notice of Final Determination by the Comptroller of Maryland, "Comptroller", dated November 1, 2016, for the tax periods: 07/01/08-06/30/12. The tax being appealed, as Appeal No. 16-MF-OO-1084 (1), is motor fuel tax and the amount in controversy is \$65,431. Carroll is also appealing a Notice of Final Determination, dated November 1, 2016, for the tax periods: 07/01/08-06/30/12. The tax being appealed, as Appeal No. 16-MF-OO-1084 (2), is also motor fuel and the amount in controversy is \$256,568. The appeals were consolidated for trial and both parties have filed Motions for Summary Judgment and Oppositions.

Carroll contends that the assessments are erroneous, as the Comptroller incorrectly disallowed credits for taxes paid for during the audit period. Specifically, (1) Carroll argues that under the equitable doctrine of recoupment the aforementioned credits should be allowed; (2) the voluntary payment rule cited by the Respondent is "irrelevant;" (3) Carroll's petitions were voluntary, timely, and can be maintained. The Comptroller disagrees with Carroll's argument and states that: (1) Maryland's "voluntary payment rule" bars a taxpayer from recovering taxes, other than as authorized by express and specific legislative action; (2) the Tax Court, which functions as an adjudicatory administrative agency in the manner of a court of general jurisdiction, nevertheless lacks equitable powers to apply the doctrine

of equitable recoupment; (3) the doctrine of recoupment, whether defensive or equitable, is limited to setoffs of liabilities arising from the same transaction; and (4) the General Assembly has provided limited statutory authority for setoffs of franchise taxes and income taxes not arising from the same transactions, but has not provided such authority for any other tax levied in the Tax-General article. Additionally, the Comptroller argues that "Carroll Independent Fuel Co." did not exist at the time of filing petitions for this case.

The facts in this case are not in dispute. Carroll overpaid \$93,390.88 in gasoline taxes in 2008-2012 against a \$34,944.76 assessment, and overpaid \$186,993.21 in diesel taxes in 2008-2012 against a \$119,547.65 diesel tax assessment. Thus, the credits far exceed the assessment, thereby eliminating the assessment entirely, but still leaving the Comptroller with a \$125,891.68 windfall for the overpayments that exceed the assessments.

The Comptroller argues that Carroll Independent Fuel Co. merged with and into Carroll Independent Fuel, LLC on February 22, 2012, so that the Petitions of Appeal Carroll Independent Fuel Co. filed on November 22, 2016 are "nullities and should be dismissed." The Comptroller initiated an audit against Carroll Independent Fuel Co. in the fall of 2012 for the audit period 2008-2012. During almost the entirety of the audit period, Carroll Independent Fuel Co. was an existing and ongoing corporate entity. After multiple adjustments by the Comptroller, the Comptroller issued two notices of final determination on November 1, 2016 (one for gasoline and one for diesel) against Carroll Independent Fuel Co. As a result, Carroll Independent Fuel Co.- the entity against whom the notices of final determination were assessed – filed timely the Petitions of Appeal. The fact that

Carroll merged into Carroll LLC does not impact the assessment appeal against Carroll Independent Fuel Co.

The Comptroller also argues that Carroll should not be credited via recoupment for overpayments Carroll made because any recovery of "voluntary" tax payments must be based on a specific statute. The cases cited by the Comptroller are dissimilar to the present case. The taxpayer in each case affirmatively filed suit to recover taxes paid. See, e.g. Halle Dev. Inc., v. Anne Arundel County, 371, Md. 312 (2002) (taxpayer filed class action suit against taxing authority); White v. Prince George's County, 282 Md. 641 (1978) (taxpayer sued to collect same recordation taxes paid); Rapley v. Montgomery County, 261 Md. 98 (1971). In the present case, Carroll has not filed an affirmative suit against the Comptroller and is not seeking "affirmative" relief. Instead, Carroll is asking the Court to apply the equitable doctrine of defensive recoupment, which allows a "credit" or offset for the overpaid taxes during the same audit period.

The Maryland Tax Court has previously applied the doctrine of equitable recoupment or set off in Alarm Services Corporation, 1985 WL 6069 (Md. Tax Court 3/21/1985). The Court expressly ruled that it had the power and authority to "offset" an assessment "to the extent" certain taxes were improperly remitted. The Court shall apply the doctrine of equitable recoupment in this case as well. Just like the taxpayer in Alarm Services, Carroll here overpaid Maryland gasoline and diesel fuel taxes during the audit period but did not affirmatively request a refund. Consequently, because the taxes assessed and overpayments occurred during the same audit period, an equitable credit for the overpayments should offset the assessment.

The Comptroller also argues that the equitable doctrine of recoupment cannot involve a set off "across taxable periods." However, the audit period spans four years (7/1/08 – 6/30/12), and the taxes assessed during that four-year period are aggregated on the Notices of Final Determination. The fact that the audit period spanned four years is of no consequence – all that matters is that the credits were made in the same period and therefore relate to the same transaction. Here, the "transaction" is the assessment, and the overpayments were made during the exact same assessment period, so the taxes and overpayments are necessarily part of the same "transaction."

The Court finds that Carroll is merely seeking a recoupment or set off for overpayments made during the same time frame as the assessment. A "credit" or "offset" against the taxes assessed for overpayments made by Carroll during that same audit period is a practical and just remedy where a taxpayer is not seeking a refund.

Upon consideration of the Motion for Summary Judgment filed pursuant to Md. Rule 2-501 by Petitioner Carroll Independent Fuel Co. ("Carroll") and any Opposition thereto, and for the reasons stated herein, it is this 29th day of November, 2017, by the Maryland Tax Court, ORDERED that Carroll's Motion for Summary Judgment is **GRANTED**; and

IT IS FURTHER ORDERED that the Comptroller of Maryland (the "Comptroller") credit Carroll for the overpayments Carroll made on its gasoline account and on its diesel account during the audit period, eliminate the assessments for Maryland fuel tax due on the Carroll gasoline account and on its diesel account; and

IT IS FURTHER ORDERED that the Comptroller return the protective payments Carroll paid to the Comptroller on the gasoline account in the amount of \$65,431.56 and on the diesel account in the amount of \$256,568.89.

CC: Diane Festino Schmitt, Esq.
Brian L. Oliner, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

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.