

RICHARD A. STEINWURTZEL, et al.

\*

IN THE

vs.

\*

MARYLAND TAX COURT

COMPTROLLER OF MARYLAND

\*

No. 18-IN-OO-0002

Thru 18-IN-OO-0004

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**ORDER**

The above entitled case having come on for hearing, testimony having been taken and the matter considered, it is this 14<sup>th</sup> day of July, 2022, by the Maryland Tax Court ORDERED, that the Comptroller's denials of the Petitioners refund claims for 2007, 2008, 2009 and 2010 are hereby **AFFIRMED**.

cc: Herman B. Rosenthal, 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.

RICHARD A. STEINWURTZEL, ET AL.,	*	IN THE
	*	
Petitioners,	*	MARYLAND TAX COURT
	*	
v.	*	APPEAL NOS. 18-IN-OO-0002
	*	18-IN-OO-0003
COMPTROLLER OF MARYLAND	*	18-IN-OO-0004
	*	
Respondent.	*	

**MEMORANDUM OF GROUNDS FOR DECISION**

Richard A. Steinwurtzel and Vicki L. Steinwurtzel, Petitioners, appealed the denial of refund claims for the tax years 2007, 2008, 2009 and 2010 (the "Years at Issue") by the Comptroller of Maryland, Respondent. The Petitioners appealed the Comptroller's denials to the Comptroller's Hearings and Appeals Division which affirmed the refund denials. The final decisions were consolidated on appeal to the Maryland Tax Court. The parties agreed to a stipulation of facts which were later supplemented at the request of the Court.

The relevant facts are not in dispute. Petitioners properly filed requests for extensions allowing them to file their Maryland Resident Income Tax Returns (Maryland Form 502): for the 2007 tax year, no later than October 15, 2008; for the 2008 tax year, no later than October 15, 2009; for the 2009 tax year, no later than October 15, 2010; and for the 2010 tax year, no later than October 15, 2011. Pursuant to the extensions, Petitioners filed original Maryland Form 502 for the 2007 tax year on September 8, 2008, for the 2008 tax year on September 8, 2009, for the 2009 tax year on August 30, 2010, and for the 2010 tax year on August 15, 2011.

Petitioners requested the refunds by the filing of Maryland Form 502X for each of the Years at Issue (the "Amended Returns"), in each case, more than three years after the filing of the original returns, but within three years of the respective extended due dates. Specifically,

Petitioners' Forms 502X were filed as follows: the 2007 Maryland Form 502X was filed after September 8, 2011, but on or before October 12, 2011; the 2008 Maryland Form 502X was filed after September 8, 2012, but on or before October 15, 2012; the 2009 Maryland Form 502X was filed after August 30, 2013, but on or before October 8, 2013; and the 2010 Maryland Form 502X was filed after August 15, 2014, but on or before September 10, 2014.

The Petitioners have raised two legal issues:

1. Did the Petitioners file timely refund claims pursuant to Md. Code Ann., Tax-General Article §13-1104(c)?
2. Are Petitioners entitled to relief on the theory of estoppel based on their reliance on Comptroller's published return instructions?

Petitioners tax accountant reviewed the Comptroller's instructions to Maryland Form 502X for each of the Years at Issue and determined that Form 502X must be filed within three years from the date the original return was due (including extensions) or filed. Petitioners argue that the instructions to Maryland Form 502 also support their position that a refund request is timely if it is filed within three years of the amended return due date. Generally, a claim for a refund or overpayment credit must be filed within three years from the date the original return was filed or within two years from the date the tax was paid, whichever is later.

Petitioners contend that the requests for refunds were timely because they were filed within three years of the extended due date. Otherwise, original returns filed early receive the benefit of the due date but original returns filed prior to the extended due date do not benefit from the later extended due date.

In denying the refunds, Comptroller relies on IRS §6513 which states in part: . . . “For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer.”

Petitioners claim that IRC §6513 is not incorporated into Maryland law, but IRC §6511, in contrast, is explicitly incorporated into Maryland law through Tax-General §13-1104(c)(3), “a refund or credit of overpayment allowed upon a claim filed under this subsection may not exceed the amount of the Maryland tax resulting from the application of the limits set forth in IRC §6511.” IRC §6511 does not address what happens when a return is filed before the original or extended due date. To address this matter, the Comptroller’s instructions to Form 502X clarify that “Form 502X must be filed within three years from the date the original return was due (including extensions) or filed.”

As support for its their position, Petitioners rely on *Comptroller v. Diebold, Inc.*, 279 Md. 401, 408 (1977). The Court of Appeals held that the three-year statute of limitations under Art. 81, §310 (the predecessor provision to Tax-General §13-1101), ran from the extended due date, which was “clearly contemplated” by the statutory language that “Any claim for refund made under and pursuant hereto . . . shall be filed within three years from the date the return was due to be filed. . . .” *Id.* (quoting Art. 81, §310(b)).

However, the Court in *Diebold* further explained that, “the Maryland income tax law is to be construed in a fashion conformable to the Internal Revenue Code to which it is inextricably keyed.” *Diebold* does not support Petitioners’ argument that their refund claims were timely filed. In *Diebold*, the Court of Appeals held that refund claims untimely filed within three years of the

extension date, which date appears to correspond with the date the amended returns were also actually filed. The facts in the present case are dissimilar.

Tax-General Article §13-1104(c)(1) provides a general statute of limitations for income tax refund claims that expressly incorporates the federal tax code's statute of limitations on refund claims, found at 26 U.S.C. ("IRC") §6511. *See Comptroller v. Mack Truck, Inc.*, 343 Md. 606, 613 (1996). IRC Section 6511 requires that a claim for refund be filed within three years of the time the return was filed, or if no return was filed, within two years of the time the tax was paid, whichever period expires later. *See United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 5 (2008). "For purposes of §6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on that last day. . . . For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer. . . ." 26 U.S.C. § 6513(a) (emphasis added).

The Court agrees with the Comptroller that by virtue of its adoption of federal law, Maryland law need not include separate definition provisions because the federal law will necessarily include such definitions of its provisions. Tax-General § 13-1104(c)(1) explicitly incorporates IRC §6511, and IRC §6511(i)(1) directs that IRC §6513 shall be referenced to determine when a return is deemed filed. IRC §6513 provides that, "[f]or purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. . . . For purposes of this subsection, the last day prescribed for filing the return. . . shall be determined without regard to any extension of time granted the taxpayer." The statute makes clear that a taxpayer has three years from the actual date a tax return on an approved extension is filed to make a claim for refund. In this case, the Petitioners had until September 8,

2011 to file a refund claim for 2007, until September 8, 2012 to file a refund claim for 2008, until August 30, 2013 to file a refund claim for 2009, and until August 15, 2014 to file a refund claim for 2010. Petitioners failed to file their claims for refunds within the respective time limits required pursuant to Md. Code Ann., Tax-General §13-1104(c).

The final issue for the Court to resolve is whether Petitioners are entitled to relief based on Comptroller's published return instructions. In the present case, the law is set forth in Tax-General § 13-1104(c) and IRC §6511 and §6513, as well as applicable case law which has been previously set forth in this Opinion. Petitioners contend that Comptroller's instructions in Form 502X are inconsistent with IRC §6513, and the Comptroller should be estopped from enforcing the law.

However, Comptroller's instructions were an attempt to recite the law rather than change the law. Although perhaps inartfully written, when the instructions are considered within the total context of the law, the instructions are consistent with IRC §6513. The instructions are not incorrect, and the Comptroller has not disavowed the instructions. Moreover, the Comptroller does not have the authority through its instructions, by regulation or by published guidance, to prescribe a rule which is inconsistent with the law.

Accordingly, the Maryland Tax Court will pass an Order affirming the Comptroller's denials of the Petitioners refund claims for the tax years 2007, 2008, 2009 and 2010.