

**S&W ARCHE ENTERPRISES,
LIMITED LIABILITY COMPANY,**

PETITIONER

vs.

**CIRCUIT COURT FOR
BALTIMORE COUNTY,**

RESPONDENT

:
:
:
:
:
:
:
:
:
:
:

IN THE

MARYLAND TAX COURT

APPEAL No. 22-RC-OO-0604

MEMORANDUM AND ORDER

This matter came before the Court on the Respondent's Motion to Dismiss Petition of Appeal, the Petitioner's Objection to Respondent's Motion to Dismiss, and the Respondent's Reply to the Petitioner's Objection to Motion to Dismiss Petition of Appeal.

A hearing was set for Tuesday, June 20, 2023, but due to a scheduling error, counsel for the Petitioner did not appear. Counsel for the Respondent made no oral argument and submitted the matter to the Court on the written record. The Court will consider the matter based on the Respondent's Motion, the Petitioner's Objection, the Respondent's Reply to the objection, and the memoranda and exhibits attached thereto.

The following facts are undisputed and relevant to the present motion. In September 2019, the Petitioner filed a deed with Land Records in the Circuit Court for Baltimore County. At the time of filing said deed, recording fees, recording taxes, and transfer taxes were assessed and paid by the Petitioner. On or about March 19, 2020, the Petitioner filed with the Respondent a form entitled "Claim for Refund of Taxes Erroneously Paid to State of Maryland Through the Clerks of Court" seeking to recover transfer and/or recordation taxes paid in the amount of \$75,450. The Petitioner re-filed the same claim on April 10, 2020. By way of a notice dated April 24, 2020, the Respondent informed the Petitioner that it was "unable to refund" and that it

“rejected this request”. Petitioner filed a Petition of Appeal with this Court on September 12, 2022.

The Respondent seeks to have the Petitioner’s appeal dismissed as untimely because it was not filed within 30 days of the denial of the Petitioner’s claim. The Petitioner contends that its Claim for Refund of Taxes Erroneously Paid to State of Maryland Through the Clerks of Court was never rejected or refused.

The person who submitted a tax refund claim may appeal any final action taken under Md. Code Ann., Tax-Prop. § 14-911 to the Maryland Tax Court on or before 30 days from the date that the notice of disallowance is received by the person. However, if a refund claim under Md. Code Ann., Tax-Prop. § 14-911 is not allowed or disallowed on or before 6 months from the date of filing the claim, the person filing the claim may: (1) deem the claim to be finally disallowed; and (2) submit an appeal to the Maryland Tax Court. Md. Code Ann., Tax-Prop. § 14-512 (d).

By way of a notice dated April 24, 2020 (Exhibit 14 to the Respondent’s Motion to Dismiss), the Respondent rejected the Petitioner’s tax refund claim. The record does not reflect when the Petitioner received said rejection, but by Petitioner’s own pleadings it acknowledges receipt of the document. According to Tax-Prop. § 14-512 (d) and allowing time for mailing, the Petitioner’s appeal to the Maryland Tax Court should have been made near the end of May 2020. The appeal was made on September 13, 2022.

Even if the Petitioner did not recognize the Respondent’s notice dated April 24, 2020 (Exhibit 14 to the Respondent’s Motion to Dismiss), as final action or disallowance of its claim for a refund, the Respondent took no other action, neither allowed or disallowed, the refund claim. In that event, Tax-Prop. § 14-512 (d) allows the person who filed the claim to (1) deem

the claim to be finally disallowed; and (2) submit an appeal to the Maryland Tax Court. The date of Petitioner's latest refund claim was April 10, 2020, and 6 months from that date is October 9, 2020. As provided in Tax-Prop. § 14-512 (d) after October 9, 2020, the claim could have deemed as finally disallowed allowing for an appeal to be submitted within 30 days thereof. The appeal was submitted nearly two years later, on September 13, 2022.

Finally, Petitioner objects to Respondent's Motion to Dismiss claiming the Respondent's rejection of the refund claim failed to provide certain notices required by Md. Code Ann., Tax-Prop. § 14-911. Specifically, Petitioner claims Respondent's rejection failed to provide notice of an opportunity for a hearing on the claim. Tax-Prop. § 14-911 does not require notice of an opportunity for a hearing on the claim to be provided in a disallowance or rejection notice. It would be pointless to notify the claimant of an opportunity for a hearing on the claim after the denial of the claim. The requirement is to notify the claimant of an opportunity for a hearing on the claim and to conduct a hearing if the claimant requests. Respondent provided the notice required by Tax-Prop. § 14-911 by including the following language at the top of the claim form, which Petitioner twice filed:

“If your refund claim is for a recordation or transfer tax, and you want a hearing, attach a written request (TP § 14-911 (c)).”

Said claim form also includes language informing claimants of their right to appeal and instructing them “If six (6) months have passed since you filed your refund claim and you have not received a notice, act as if your claim was denied and submit an appeal (TP § 14-512 (d)).

For the reasons stated above, the Petitioner's appeal filed on September 13, 2022 is untimely.

Accordingly, it is this 25th day of July, 2023, by the Maryland Tax Court **ORDERED** that the Respondent's Motion to Dismiss is **GRANTED** and the Petitioner's appeal is hereby **DISMISSED**.

CC:

Sang K. Park, Esq.

Rachel Stewart, Esq.

CERTIFIED TRUE COPY

TEST: Andrew Berg, 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.