

FC-GEN OPERATIONS INVESTMENTS, LLC  
T/A GENESIS HEALTHCARE

Petitioner

v.

COMPTROLLER OF MALRYLAND

Respondent

\* IN THE  
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• MARYLAND TAX COURT  
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\* Case No. 18-IN-OO-0744  
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**MEMORANDUM AND ORDER**

This is an appeal by the Petitioner, FC-GEN Operations Investments, LLC t/a Genesis Healthcare from the decision of the Respondent, Comptroller of Maryland (hereinafter “Comptroller”), denying a refund of \$598,131 of estimated nonresident tax payments made for the 2012 tax year.

Petitioner, through its subsidiaries, operates a number of skilled and long-term care medical facilities, and provides ancillary healthcare services throughout Maryland. Petitioner is taxed as a partnership for federal and Maryland income tax purposes with a tax year on a calendar year basis. For purposes of the 2012 tax year, among other members, Petitioner’s membership included four nonresident individuals. Based on Petitioner’s initial estimates of its income for the 2012 tax year, Petitioner made quarterly estimated tax payments in 2012 that totaled \$601,467. However, when the final accounting was completed for tax year 2012, Petitioner determined that 2012 was a loss year resulting in a claimed refund of \$598,131.

Comptroller has raised numerous defenses including the statute of limitations, equitable recoupment, the voluntary payment rule, as well as the barring of payment of interest on any valid refund for overpayment of estimated income tax.

Initially, the Court finds that Petitioner timely submitted Maryland 2012 Form 510E to extend the due date of its 2012 Maryland Form 510 and then timely filed its Form 510. Petitioner claims that it had also included Maryland 2012 Form 510C in the same envelope with its Form 510, although Comptroller did not have a record of receiving the Form 510C until January 15, 2016. Based on the competent evidence in the record, the Court finds that the Form 510C was also timely filed.

Petitioner included two nonresident individual members on its Form 510C, Christopher Sertich and Michael Jones. To determine whether Petitioner's members were eligible to participate in the composite return, Petitioner prepared and sent to its nonresident individual members, on or about November 7, 2012, a 2012 Composite Election Form (the "Election Form"). The Election Form listed eligibility criteria for a nonresident individual to be included in the composite return and advised its members to consult with their tax advisors in completing the Election Form. The eligibility criteria required that two of the nonresident members not have any other sources of Maryland income. The completed Election Forms for Mr. Sertich and Mr. Jones were transmitted to Petitioner by Mr. Sertich's and Mr. Jones' tax advisor, David Sammons. At the time of the submission of the Election Forms, there is no evidence that Petitioner was aware of any conflicting eligibility facts.

Petitioner properly issued 2012 Form 510 Schedules K-1 to its members and with the exception of one member, Steven Fishman, none of the Schedules K-1 showed a value for the members' distributive or pro rata share of the estimated nonresident tax paid by Petitioner. Mr. Fishman's distributive or pro rata share of nonresident tax paid by Petitioner was \$3,336 which

should be credited against any valid refund. However, after filing it was determined that Mr. Sertich and Mr. Jones had income sources in Maryland other than from Petitioner.

The Court finds that the Petitioner properly remitted estimated payments for 2012 based on anticipated income in 2012. Due to losses which were unknown to the Petitioner at the time of filing the return, no tax was in fact due and Petitioner was entitled to a refund of \$598,131 after total payments and credits in the amount of \$3,336. The Petitioner submitted a claim for refund on Form 510C, its composite return on September 13, 2013 with the Comptroller. Petitioner properly followed the Maryland Tax Form instructions in filing its claim which was acknowledged by the Comptroller's representatives.

Although the Comptroller initially indicated that the refund was being processed and would be refunded, ultimately the Comptroller issued a denial of the refund in March 2017 based on a violation of the statute of limitations. The Comptroller denied the refund because the composite return was invalid due to the fact that the two nonresident members who participated in filing the composite return were ineligible. The Comptroller also claims that the estimated payments made by Petitioner are analogous to wage withholdings. Wage withholdings are determined based on income actually earned and paid by the employer, whereas in the present case Petitioner paid estimated taxes in advance of estimated income which is not finally determined until the tax returned is prepared and filed by the taxpayer. The Court concludes that the timely filing of a purported invalid refund claim was not a violation of the statute of limitations.

Finally, the Court finds that the Comptroller's argument regarding the applicability of the Voluntary Payment Rule as unpersuasive. Petitioner's efforts to make estimated tax payments in compliance with the tax laws and the Comptroller's belated and conflicting responses to

Petitioner's request for the status of its refund claim undermines the Comptroller's theory that Petitioner's payments were mistakenly and voluntarily paid.

Furthermore, the Court is not required to consider the alternate remedy of equitable recoupment under the facts of this case. The taxpayer properly complied with the applicable tax laws in the filing of its refund claim. Moreover, under Comptroller's multiple defenses to Petitioner's claim for refund, a taxpayer would be forced to make a distribution to its members when not required under the Maryland tax laws.

The Court agrees with the Comptroller that the Petitioner should not be granted interest on the refund due to Petitioner's overpayment of estimated income tax. Tax-General Article §13-603 (b)(2)(iii), Annotated Code of Maryland provides that "A tax collector may not pay interest on a refund if the claim for refund is...an overpayment of...estimated income tax;.." Since the Court found that the Petitioner's submissions were estimated payments, this provision prohibits the payment of interest.

Accordingly, it is this 13<sup>th</sup> day of APRIL, 2020, ORDERED, by the Maryland Tax Court, that Petitioner is entitled to a refund in the amount of \$598,131 without interest thereon.

CC: Herman B. Rosenthal, Esq.  
Murray Singerman, 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.