

KENNETH E. COSGROVE
LUCY D. REDDAWAY

Petitioners

v.

COMPTROLLER OF MARYLAND

Respondent

* IN THE
* MARYLAND TAX COURT

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* Appeal No. 19-IN-00-0806
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MEMORANDUM AND ORDER

Respondent, Comptroller of Maryland (hereinafter "Respondent" or "Comptroller"), has moved to dismiss Petitioners' appeal for lack of subject matter jurisdiction under Titles 3 and 13 of the Tax-General Article.

The facts are not in dispute. For tax years 2014 and 2015, Petitioners excluded foreign earned income from their federal adjusted gross income on their federal income tax returns. On their original Maryland resident income tax returns for tax years 2014 and 2015, Petitioners included the foreign earned income in their Maryland adjusted gross income and paid the Maryland income tax reported as due. Petitioners later filed amended Maryland resident income tax returns for 2014 and 2015 excluding the foreign earned income, which resulted in refund claims of \$4,184 for 2014 and \$6,217 for 2015. The Comptroller denied Petitioners' refund claims, and Petitioners filed an administrative appeal. After the informal hearing, the Comptroller issued a Notice of Final Determination affirming the refund denial. Petitioners appealed to this Court. After the parties

exchanged cross-motions for summary judgment, the Comptroller acquiesced and refunded the overpayments along with interest.

The issue is whether this Court has jurisdiction over a matter that the parties have resolved. Respondent has agreed with the Petitioners that their foreign earned income excluded from their federal adjusted gross income on the federal return should also be excluded from their Maryland income. Petitioner now seeks the Court to issue a ruling on the central issue of the appeal for the benefit of similarly situated taxpayers in the future.

While functioning like a court in many respects, the Tax Court is an adjudicatory administrative agency. Although the Tax Court has the authority to conduct proceedings in a manner similarly to a proceeding in a court of general jurisdiction, that authority does not enlarge the special, limited, statutory jurisdiction of the court into the broad general jurisdiction of a court of equity.

The Tax Court has jurisdiction to hear appeals from the final determination of the Comptroller for, among others, the determination of a claim for refund. Tax-General §§ 3-103(a)(4) and 13-510(a)(6). The powers of the Tax Court include hearing, trying, determining, or remanding any matter before it. Tax-General § 13-528(a)(1). "In exercising these powers, the Tax Court may reassess or reclassify; abate, modify, change or alter any valuation, assessment, classification, tax or final order appealed to the Tax Court." Tax-General § 13-528(a)(2).

Petitioners contend that the Tax Court "is broadly empowered to resolve questions of tax law as would a court of general jurisdiction and that the Tax Court retains jurisdiction to issue an advisory opinion even though a controversy has been resolved and the matter is moot. However, the Legislature granted the Tax Court a special, limited jurisdiction, not the general jurisdiction of

other State courts. Tax Court jurisdiction can do no more than make factual determinations and adjudicate disputes in a case where a controversy exists. Because the Tax Court's jurisdiction ends when the controversy ceases, it lacks the power to issue an advisory opinion about matters already resolved.

Even if the Tax Court's jurisdiction reflected that of courts of general jurisdiction, it still could not issue advisory opinions in moot matters. Section 13-505 of the Tax-General Article prohibits a court of general jurisdiction from issuing "an injunction, writ of mandamus, or other process against the State or any officer or employee of the State to enjoin or prevent the assessment or collection of a tax." A court of general jurisdiction cannot issue an advisory opinion in a moot tax matter.

Finally, even if the Tax Court can consider a case when the controversy has ended and issue an advisory opinion, neither of the exceptions to mootness that Petitioners present apply here. The first exception, "capable of repetition, yet evading review," does not apply unless (1) the challenged action is "too short in its duration to be fully litigated prior to its cessation or expiration;" and (2) there is a "reasonable expectation" that the same party will be subjected to the same action again. *State v. Parker*, 334 Md. 576, 585 (1994). Although the controversy in this case resolved without full litigation, there is no "reasonable expectation" that Petitioners will be subjected to an assessment for foreign earned income for later years. To the contrary, the fact that the Comptroller issued Petitioners' refunds with interest shows there is a "reasonable likelihood" that the Comptroller will *not* assess for foreign earned income in other years.

The second exception to mootness – public interest – also does not apply. The public interest exception applies when "the urgency of establishing a rule of future conduct in matters of

important public concern is imperative and manifest.” *Lloyd v. Supervisor of Elections*, 206 Md. 36 at 43. The test for the public interest exception set out in *Lloyd* considers the confluence of four factors:

[1] If the public interest clearly will be hurt if the question is not immediately decided, [2] if the matter involved is likely to recur frequently, and [3] its recurrence will involve a relationship between government and its citizens, or a duty of government, and [4] upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for deciding the issues raised by a question which has become moot, particularly if all these factors occur with sufficient weight.

Beyond conjecture, Petitioners cannot show that factors one, two and four give rise here. Thus, the public interest exception to mootness does not apply.

The Court concludes that it lacks authority to issue an advisory opinion for the reasons set forth herein, and it is this 30th day of Sept., 2021, by the Maryland Tax Court, hereby

ORDERED, that the Respondent’s Motion to Dismiss is GRANTED.

CC: Caroline D. Ciraolo, 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.