

BRYAN MCKELLER,
PETITIONER

v.

COMPTROLLER OF MARYLAND,
RESPONDENT

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IN THE

MARYLAND TAX COURT

MTC No. 22 – IN – OO – 0618

DECISION AND ORDER

Mr. McKeller appealed his income tax assessments for 2015 and 2016, and the appeal was heard by the Maryland Tax Court (“Court”). At the conclusion of the hearing, the Court asked both parties to file post-hearing briefs. After considering the issues and evidence at the hearing and in the brief, the Court ORDERS that the assessments and interests for 2015 and 2016 be **AFFIRMED** and the penalties for 2015 and 2016 be **REVERSED**.¹

Statement of the Case

On his 2015 and 2016 Maryland personal income tax returns, Mr. McKeller claimed personal itemized deductions in excess of the standard deduction and large losses from three S corporations. To him, these would have amounted to tax refunds for both years. To his dismay, the Comptroller largely disallowed his itemized deductions and completely disallowed his business losses, ultimately resulting in personal income tax

¹ At the hearing, the Comptroller’s witness commented at one point that the interest in Mr. McKeller’s case continued to accrue up until the date of the Notice of Final Determination (August 19, 2022). The Comptroller’s counsel was confident that the interest did not continue to accrue to that date as Mr. McKeller’s balance was completely paid to the Comptroller in 2018. As there was some confusion during the hearing, the Court wants the Comptroller’s office to make sure that interest did not continue to accrue past the date in 2018 when the Comptroller used offsets to completely satisfy Mr. McKeller’s balance.

liabilities for 2015 and 2016. The Comptroller then assessed interest and penalties. The Comptroller used Mr. McKeller's 2014 Maryland state personal income tax refunds and a federal IRS refund to offset the 2015 and 2016 liabilities. As such, by the time the Notice of Determination was issued on August 19, 2022, Mr. McKeller did not owe the Comptroller any money. The deductions that Mr. McKeller sought included Schedule A itemized deductions: medical expenses, state and local taxes, real estate taxes, personal property taxes, mortgage interest, cash contributions to charity, non-cash contributions to charity, and other miscellaneous deductions, and Schedule E passive losses from three businesses that Mr. McKeller wholly owned.

Mr. McKeller's main contentions at the Court hearing were 1) the deductions he sought were erroneously denied by the Comptroller's office and 2) the Comptroller delayed processing his requests, delayed communicating with him, and otherwise frustrated his attempts to resolve his matters. In doing so, this forced more and more interest to accrue. While this Court is not a court of equity, Maryland law allows the Court considerable leeway in determining appropriate amounts of interest and penalties.

Pertinent Facts

As with many Comptroller-related appeals that began before the COVID pandemic shutdown, the timeline in this case is lengthy. On October 11, 2016, the Comptroller sent Mr. McKeller a personal income tax computation notice for the 2015 levy year. Then, on May 31, 2017, the Comptroller sent Mr. McKeller a letter asking for substantiation for both the 2015 and 2016 levy years. Next, by letter dated April 10, 2018, the Comptroller audited and adjusted the income tax for both years. The Comptroller then sent formal

computation notices—sending Mr. McKeller a second personal income tax computation notice for the 2015 levy year—and a personal income tax computation notice for the 2016 levy year on April 16, 2018.

One month later, on May 16, 2018, the Comptroller disallowed Mr. McKeller's application for a revision of an assessment because a formal appealable assessment notice had not yet been issued. MD. CODE ANN., TAX-GEN. § 13-508. Then, on June 18, 2018, the Comptroller sent assessments to Mr. McKeller for both years at question. Mr. McKeller filed a request for hearing on July 18, 2018, but on July 30, 2018, the Comptroller sent a notice to Mr. McKeller that his appeal was one-day too late, but still asked for his documents to support the disallowed items. MD. CODE ANN., TAX-GEN. § 13-509. On August 17, 2018, the Comptroller decided to allow a hearing after all and mailed a hearing notice for Mr. McKeller's appeal with the Hearings and Appeals Division.² The Comptroller held Mr. McKeller's hearing on October 2, 2018.

On May 28, 2020, the Comptroller notified Mr. McKeller that their office received his amended return and asked him to wait eight to twelve weeks for a response. Then, on June 3, 2020, the Comptroller notified Mr. McKeller that the amended returns would not be processed because of the audit appeal in progress. Finally, on August 19, 2022, the Comptroller sent Mr. McKeller his Notice of Final Determination that he then timely

² The Court notes that on August 15, 2018, the Circuit Court for Anne Arundel County sent Mr. McKeller a Notice of Lien Judgement for unpaid tax. That notice stated that the lien was in relation to accounts from January 1, 2012, to December 31, 2016. As some of these dates were outside Mr. McKeller's Tax Court Petition of Appeal, the lien was not addressed by the Tax Court. This information is included in the decision to illustrate Mr. McKeller's longstanding issues with the Comptroller.

appealed to this Court. The Final Determination made no changes as a result of the administrative hearing.

Within the above listed dates, Mr. McKeller repeatedly sent documents to the Comptroller's office as well as correspondence. Pet'r's Ex. 1-5, esp. Ex. 4.

Analysis of Substantiations

The legal issues of personal income tax deductions are generally clear-cut. The Court must answer the following: Can the taxpayer substantiate their claims for deductions? The Comptroller alleges that the taxpayer cannot prove or substantiate the deductions. Deductions are a matter of legislative grace and are legally bound in the taxpayer's ability to prove that they qualify to receive them. With the Comptroller's office, Mr. McKeller could not prove that he qualified for some, while he could prove that he qualified for others. At the Court hearing, Mr. McKeller could not prove with documentary evidence that he qualified for the remaining deductions at issue. Similarly, the Comptroller's decisions are *prima facie* correct, and the petitioner has the burden of proof to persuade the Court otherwise. While the Court appreciated Mr. McKeller's candor and narrative, the Court could only affirm the Comptroller as Mr. McKeller could not substantiate his claims for deductions at the hearing.

Principles of Law

While appeals to the Court are *de novo*, the burden of proof is on the Petitioner to overcome the *prima facie* correct decision of the Comptroller. MD. CODE ANN., TAX-GEN. § 13-523; 13-528(b). Another hurdle that the Petitioner must overcome is the longstanding legal holding that tax deductions are a matter of

legislative grace. *New Colonial Ice Co., Inc. v. G.T. Helvering*, 292 U.S. 435, 440 (1934). This means that at the starting block, the Petitioner must not only prove as to why the Comptroller is incorrect, but in so doing, must prove that their deductions are allowed and that those deductions were correctly taken.

Another significant issue that petitioners often face is between what is acceptable and accepted by the Internal Revenue Service for federal income taxes and what is acceptable and accepted by the Comptroller of Maryland for state income taxes. While there is overlap,³ the Internal Revenue Service is obviously not the Comptroller of Maryland and different rules and laws apply to each. Petitioners will often lament that their federal tax returns were accepted without issue while their state tax returns were audited and disallowed. Nonetheless, each of the deductions and business expenses and income have corresponding treasury regulations and/or applicable Internal Revenue Code sections cited herein. At a basic level, there are standards to keep records. I.R.S. PUB. 529, MISCELLANEOUS DEDUCTIONS & PUB. 535, BUSINESS EXPENSES.

Beyond the assessment, the petitioner is often faced with penalties and interest if the tax is not paid on time. In certain circumstances, the interest can even grow beyond the assessed amount. Nonetheless, the Court has wide latitude in waiving both interest and penalties for “reasonable cause,” a determination that involves looking at the facts and circumstances of the assessment and the actions taken by the Petitioner.

³ MD. CODE ANN., TAX-GEN. § 10-107.

Conclusions of Law

Mr. McKeller did not provide the proper documentation to substantiate his claims for itemized deductions and his income and losses.

The variety of disallowed deductions that Mr. McKeller tried to take included medical expenses, real estate taxes (for 2015), personal property taxes, cash and non-cash charitable contributions, and miscellaneous deductions (for 2015). In so doing, Mr. McKeller tried to take itemized deductions in anticipation that they would sum greater than the standardized deduction for Maryland for both years.

With respect to the medical and dental expense deductions, Treasury Regulation § 1.213-1(h) clearly states that “the taxpayer shall furnish the name and address of each person to whom payment for medical expenses was made,” among other substantiation information. Treas. Reg. § 1.213-1(h). Mr. McKeller at one point during the appeal process commented in writing that the medical deductions were made in error. Nonetheless, at the hearing, Mr. McKeller tried to claim these deductions, but did not provide any necessary evidence under the cited treasury regulation. At the hearing, Mr. McKeller showed a leave statement from his federal employer, which showed premiums paid for his federal health insurance. This does not amount to the proper substantiation information as needed under treasury regulations.

With respect to the real estate tax deduction for 2015, Mr. McKeller showed a house sale closing document. Of the taxes listed on his Schedule A for that year,

recordation taxes were included in the closing document. That type of tax is not property tax and cannot be claimed. 26 U.S.C. § 164(a)(1). The property taxes that may have been allowed were not properly substantiated. The closing document did not list a year, nor did it list the borrower or seller.

With respect to the state and local personal property taxes, Mr. McKeller showed a document with vehicle registration and vehicle title fees. While it may seem that these are taxes on personal property, i.e. his vehicles, Treasury Regulation § 1.164-3(c)(1) specifically states that personal property taxes must be *ad valorem*, while paragraph (c)(3) specifically carves out that vehicle registrations and licenses are not *ad valorem* and therefore are generally not deductible. The caveat is to determine whether the tax is proportional to the value of the personal property and annually imposed. Mr. McKeller did not show or claim that the fees were *ad valorem*.

With respect to the cash and non-cash charitable contributions, Mr. McKeller did not state or show which organizations he contributed to or provide any receipts. The standards for such contributions are described in 26 U.S.C. § 170(f)(8)(A)–(B) and (f)(17). When a contribution is provided, the donee must provide a contemporaneous receipt that includes the value of the donation, a description of the donation, and whether the donor received goods or services in exchange. Mr. McKeller showed none of that information.

With respect to the miscellaneous deductions for 2015, Mr. McKeller did not provide a mileage log to substantiate his business mileage and did not provide

receipts as proof of payments for parking, tolls, or other transportation costs. He did provide an Employee Business Expenses form, but there were no documents to substantiate the deductions that he claimed. There are guidelines and rules under any number of Internal Revenue Code provisions, such as 26 U.S.C. § 67(d), § 162(a) and § 274(d). There are also many IRS publications that aid taxpayers, including Publication 463.

Moving on to the Schedule E business losses, the law requires that substantiation be provided for the business' income and expense statements to prove that a loss or losses actually occurred. Like with other deductions, these are a matter of legislative grace and Mr. McKeller must be able to prove that he is eligible to receive the deductions. *See generally Lamb v. Commissioner*, T.C.M. 2013-155 (June 20, 2013). Mr. McKeller claimed to be the owner of three companies, but aside from alleging losses for each tax year, did not show any documentation from those companies. Again, there are many IRS publications that could have aided Mr. McKeller, especially Publications 535 and 925.

Other Complaints Including Interest and Penalties

While Mr. McKeller felt that his claims for various itemized deductions and business losses were erroneously disallowed, his major contentions were 1) that the Comptroller's slow pace and undue delay increased his interest and negatively affected his ability to provide documentation to substantiate his claims and 2) that the Comptroller's representatives would not assist in his case to enable him to know exactly what documents would help substantiate his claims. While Mr. McKeller's frustrations

with the Comptroller's office were made abundantly clear and understandable, the Court is not a court of equity.

The law in Maryland rules that abatement of interest must be derived from a "reasonable cause." This was held by Maryland's highest court. *Frey v. Comptroller*, 422 Md. 111 (Md. 2011); *Comptroller v. Taylor*, 465 Md. 76 (Md. 2019). The Tax Court does not find that the actions or inactions of the Comptroller's office rose to a "reasonable cause" to abate Mr. McKeller's interest. Also, the Comptroller cannot be estopped from collecting taxes. MD. CODE ANN., TAX-GEN. § 13-505.

The interest on taxes is related to the State not receiving on-time payment of taxes. It is the cost, as listed in the statutes, that allows the State to recoup from the taxpayer who did not pay their taxes on time.⁴ The interest and tax paid at a future date should equal the taxes paid on time considering the time value of money. It is not a penalty, but an equalizer. To avoid paying interest, the taxpayer can pay the taxes owed on time under protest and then file a refund request with the Comptroller.

The Court does not see any reason to dispute that Mr. McKeller sent great quantities of documents to substantiate his claims. The Court, however, has no reason to dispute the Comptroller's decision that those documents were not enough to substantiate Mr. McKeller's deductions.

Government processes, including paying taxes, take time. While the Court appreciates Mr. McKeller's frustrations, it is ultimately the taxpayer's, not the Comptroller's, decision to take an appeal. If the taxpayer prevails, then the amount due

⁴ MD. CODE ANN., TAX-GEN. § 13-601.

could be absolutely nothing, but if the Comptroller prevails, then the time and interest continues to run. The risk in bringing an appeal of an unpaid assessment is that the interest continues to accrue, and the taxpayer risks having to spend more time and ultimately pay more at the end of the day.⁵ Also, as stated previously, the Comptroller cannot be estopped from collecting taxes. MD. CODE ANN., TAX-GEN. § 13-505.

Penalties are the Comptroller's way of holding taxpayers accountable, especially for obviously incorrect tax returns. In the instant case, the Comptroller assessed the frivolous filing penalty. MD. CODE ANN., TAX-GEN. § 13-705. At the end of the audit process, the Comptroller believed that Mr. McKeller's claims were frivolous. The Comptroller cannot claim that a taxpayer filed frivolously if after further consideration of a taxpayer's returns, then made a positive adjustment for the taxpayer.

At no time during the lengthy appeals process did Mr. McKeller obfuscate, delay, or otherwise not cooperate with the Comptroller's representatives. Mr. McKeller was able to present several forms of documentation when asked, albeit in the incorrect form for the Comptroller. While to Mr. McKeller this was an issue of form over substance, there are important reasons as to why the Comptroller's representatives could not accept the documentation. At times when Mr. McKeller provided the correct documentation to substantiate his claims, the Comptroller did adjust his assessments. Therefore, any claims that Mr. McKeller filed frivolously are themselves frivolous.

⁵ Mr. McKeller himself needed a six-week postponement before his hearing with the Comptroller's office. Mr. McKeller may have also been able to file his appeal with the Tax Court earlier. MD. CODE ANN., TAX-GEN. § 13-510(b).

The burden of proof is always on the taxpayer to substantiate. MD. CODE ANN., TAX-GEN. § 13-528(b). A major contention that taxpayers make at the Court is that quantities of documentation are provided. The Comptroller, under its policies, procedures, regulations, and ultimately under the law, needs quality of documents. For better or worse, the Comptroller does not tell taxpayers what suffices for documentation. One reason is stated above—the burden is always on the taxpayer. Another reason is that the taxpayer is obligated under the law to know what they are doing and how to properly file taxes.⁶

The actions of Mr. McKeller and the Comptroller's office do not arise to trigger reasonable cause that persuades the Court to abate interest. The cooperation of Mr. McKeller and the Comptroller's partial correction of the assessment in his favor make it clear that the tax returns were not filed frivolously and therefore Mr. McKeller's actions should not be penalized.

Conclusion

Mr. McKeller could not substantiate the disputed itemized deductions and business losses, although not without trying. At all levels of appeal both within the Comptroller's administrative remedy procedures and within the Court, the burden of proof lay with Mr. McKeller. As such, it is ORDERED by the Court on JUNE 6th, 2025 that the 2015 and 2016 assessments and interests be AFFIRMED, and the 2015 and 2016 penalties be REVERSED.

⁶ Mr. McKeller was recommended by the Comptroller to seek IRS guidelines in Publications 529 and 535.

CERTIFIED TRUE COPY

TEST: Andrew Berg, Clerk

NOTICE: You have the right to an 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 or online.

CHIEF JUDGE WISNIEWSKI

Cc: Bryan McKeller

Jessica Wisner, Esq. – Assistant Attorney General of Maryland