

Keith Robertson

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IN THE

*

vs.

MARYLAND TAX COURT

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Comptroller of Maryland

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No. 22-IN-00-0308

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MEMORANDUM AND ORDER

This matter is a request by Petitioner, Keith Robertson, for this Court to reconsider its granting of Respondent, Comptroller of Maryland's, Motion to Dismiss. The granting of the motion was premised on Petitioner's failure to timely appeal. In granting the motion, the Court issued an oral opinion, which it incorporates herein.

In his motion, Petitioner generally raises the same issues addressed in the oral opinion. Specifically, he asserts that TG § 13-509 gives this Court jurisdiction to consider the appeal and that the Court should consider his amended returns. As noted in the oral opinion, the Comptroller's ability to offer relief pursuant to § 13-509 is a "matter of grace" with the section specifically providing an appeal is not authorized. § 13-509(c); (d). And, Petitioner's amended returns have not yet been considered by the Comptroller with the authorized administrative review having not been exhausted. TG § 13-513. See also *Boyd v. Supervisor*, 57 Md. App. 603 (1984). Hence, issues regarding those amended returns are not properly before this Court.¹

¹ The cited revisory powers established in Maryland Rule 2-535 applies only to the Circuit Court and not the Tax Court, as Petitioner suggests. Maryland Rule 1-101(b). The two cited Supreme Court cases address only the deference due to *pro se* pleadings of inmates and to the adequacy of pleadings in claims asserted under the federal Railway Labor Act. *Haines v. Kerner*, 404 U.S. 519 (1972) & *Conley v. Gibson*, 355 U.S. 41 (1957), respectively. Hence, they are not germane to issues raised by Petitioner. Furthermore, the liberal pleading standard articulated in *Conley v. Gibson*, *supra*, was rejected in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Accordingly, it is this 25th day of January, 2023, by the Maryland Tax Court ORDERED that Petitioner's Request to Reconsider is denied and the Respondent's Motion to Dismiss is granted.

CC: Keith Robertson
Jessica K. Wisner, 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.

Keith Robertson

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IN THE

MARYLAND TAX COURT

No. 22-IN-00-0308

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ORDER

This matter is a second request by Petitioner, Keith Robertson, for this Court to reconsider its granting of a motion to dismiss in favor of the Respondent, Comptroller of Maryland. The granting of the motion to dismiss at the motion hearing was premised on the Petitioner's failure to timely appeal or exhaust administrative remedies.

In his second motion to reconsider, Petitioner generally raises the same issues addressed in the oral opinion and the first motion to reconsider. As the first motion to reconsider was denied, so too the second motion to reconsider will also be denied.

When a taxpayer files a petition for appeal in the Tax Court, this Court must only hear appeals to which it has jurisdiction. The Court does not have jurisdiction to hear matters before a taxpayer has first exhausted *all* administrative remedies. Tax General § 13-514 (emphasis added). After Petitioner filed his appeal on April 29, 2022, the Comptroller filed a motion to dismiss based on Petitioner's failure to exhaust administrative remedies. The Court held a hearing on September 28, 2022, solely on the issue of the motion to dismiss. At the conclusion of the hearing, the Court granted the Comptroller's motion to dismiss as Petitioner did not attend his Comptroller-level

hearings and the Comptroller's decision to not correct an erroneously filed assessment is final and not subject to appeal. Tax General § 13-509(c).

After that motion-only hearing, but before the Court could issue its written order, Petitioner filed a motion for reconsideration and perhaps attempting to exhaust administrative remedies, filed amended 2014–18 Maryland income tax returns with the Comptroller. Petitioner asked the Court to consider “new evidence” that the Comptroller received amended Maryland income tax returns for 2014–18 in October 2022. That motion for reconsideration and the response to the Respondent's opposition generally raised the same issues addressed in the Court's oral opinion. The Court granted the Respondent's motion to dismiss and denied Petitioner's first motion to reconsider together in its January order.

Subsequent to that final written order, the Petitioner filed a second motion to reconsider. Again, the Petitioner generally raised the same issues already addressed by this Court at the motions hearing, as well as the January final order. Furthermore, in Petitioner's second motion to reconsider, Petitioner stated that there is alternative evidence that the Comptroller's office received, but did not accept: 2014–2018 amended Maryland income tax returns. To Petitioner, this meant that the Court is open to revise its decisions under Maryland Rule 2-535. The Maryland Rules do not control the Court. Also, Petitioner stated that the Comptroller's denial of these amended returns was no longer “new evidence” (changing his argument from the first motion to reconsider), but a continuation of the assessment-correcting procedure that was initially appealed. That may explain the Petitioner's incorrect reasoning for not appealing the Comptroller's denial of those October-filed returns, which he had a right to do, and was so informed in

the Comptroller's denial letter. This time, Petitioner, when given another opportunity to do so, did not pursue any administrative remedies, let alone exhaust them.

The Court notes that at the time of the January 2023 final order, the Court stated in the written order: "And Petitioner's amended returns have not yet been considered by the Comptroller with the authorized administrative review having not been exhausted." The amended returns filed subsequently appear to have been considered by the Comptroller, but Petitioner admits that he did not appeal the determination, but could have appealed with the Comptroller. If they were appealed with the Comptroller and the Petitioner was still dissatisfied, he could have appealed that final determination to the Tax Court, under a separate appeal from this one. As such, the Maryland Tax Court will not accept any further motions to reconsider appeal 22-IN-OO-0308.

Accordingly, it is this 12th day of JULY, 2023, by the Maryland Tax Court ORDERED that Petitioner's second request to reconsider is denied.

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.