

**BEFORE THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA**

<b>ALICE D. DOBY,</b>	:	
	:	
<b>Petitioner,</b>	:	<b>TAX TRIBUNAL DOCKET</b>
	:	
<b>v.</b>	:	<b>NO.: TAX-IIT-1403346</b>
	:	
<b>DOUGLAS J. MACGINNITIE,</b>	:	
<b>Commissioner, GEORGIA</b>	:	
<b>DEPARTMENT OF REVENUE,</b>	:	
	:	
<b>Respondent.</b>	:	

**DECISION**

**2014-3 Ga. Tax Tribunal, February 17, 2014**

**I. INTRODUCTION**

This action is an appeal brought by Petitioner Alice D. Doby (“Petitioner”) challenging a decision by the Department of Revenue (“Respondent”) to deny refunds which the Petitioner requested on amended returns which she filed for the taxable years 2007 and 2008. For the reasons stated below, we conclude that the Respondent is correct and that the Petitioner’s request for refunds must be denied and judgment must be entered in favor of Respondent on those refund claims.

**II. FINDINGS OF FACT**

The facts are not in dispute and are so found.

Petitioner Alice D. Doby (“Petitioner”) timely filed her original 2007 Georgia state income tax return with the Respondent on April 15, 2008 and remitted payment to the Department in the amount of \$899 when she filed the return.

On June 13, 2011, the Department issued a Notice of Intent asking Petitioner to pay an additional \$309.48 for the year 2007 based on information which the Respondent had received

from the Internal Revenue Service. On June 17, 2011, Petitioner paid the tax of \$309.48 to the Respondent.

On March 19, 2013, Petitioner filed an amended return (Georgia Form 500X) with the Department for the year 2007 requesting a refund of \$899.00.

On July 25, 2013, Petitioner filed a Petition with the Georgia Tax Tribunal designating her case as proceeding in the Tribunal's Small Claims Division. Petitioner attached to her Petition a Claim for Refund for the year 2007 with an annotation in pencil or pen that included a request for a refund of \$309, with the words "Audit" written by hand to the side of the Claim. Petitioner also requested a refund of \$1,172 for the year 2007 with the Tax Tribunal, including the \$309 inserted in pencil or pen and the \$899 paid when the original 2007 return was filed.<sup>1</sup>

Petitioner timely filed her original 2008 Georgia state income tax return with the Department on April 15, 2009 and remitted payment of \$832 plus the amount of \$600, which had been withheld from retirement income that she received from the Defense Finance and Accounting Service.

On March 19, 2013, Petitioner filed an amended return (Georgia Form 500X) with Respondent for the year 2008 requesting a refund of \$1,432.00.

The Commissioner has conceded that Petitioner is entitled to a refund for the taxable year 2007 in the amount of \$309.48, plus statutory interest due, which tax was paid on June 17, 2011 and for which a claim for refund was filed on July 25, 2013 with the Georgia Tax Tribunal.

### **III. CONCLUSIONS OF LAW**

#### **A. STANDARD OF REVIEW ON SUMMARY JUDGMENT**

The standards governing summary judgment are well established. To prevail at summary

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<sup>1</sup> The correct total of the two remittances is \$1,208.48.

judgment under O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact as to each element of its claim and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c); Lau's Corp., Inc. v. Haskins, 261 Ga. 491 (1991).

The issue for this Tribunal's determination is whether the statutes of limitations bar the refunds which the Petitioner has requested from the Department for the years 2007 and 2008 in the amounts of \$899 and \$1,432, respectively. For the reasons set forth below, Petitioner is not entitled to the refunds of those taxes.

**B. THE STATUTES OF LIMITATIONS BAR PETITIONERS' CLAIMS FOR REFUND FOR THE TAXABLE YEARS 2007 AND 2008**

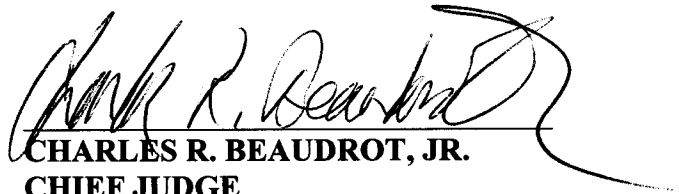
Based on a concession made by the Commissioner, Petitioner is entitled to a refund for the taxable year 2007 of \$309.48, plus statutory interest due, which tax was paid on June 17, 2011 and for which a claim for refund was filed on July 25, 2013 with the Georgia Tax Tribunal. That amount is no longer in dispute.

Petitioner also filed claims for refund with Respondent on March 19, 2013 for 2007 and 2008. In each case, this is more than three years after her 2007 and 2008 Georgia state tax returns had been filed and more than three years after the taxes were paid. These claims for refund of income taxes thus are barred by the statutes of limitations because the claims were not filed within three years after the date of the payment of the tax or three years from the due date of the return. See O.C.G.A. § 48-2-35(c)(1)(A) ("A claim for refund of a tax or fee erroneously or illegally assessed and collected may be made by the taxpayer at any time within three years after: (i) The date of the payment of the tax or fee to the commissioner; or (ii) In the case of income taxes, the later of the date of the payment of the tax or fee to the commissioner or the due

date for filing the applicable income tax return, including any extensions which have been granted.”) See Gail K. and Paul T. Zantzinger, 2014-2 Ga. Tax Tribunal, January 31, 2014.

For the reasons stated above, judgment is entered in favor of Respondent on Petitioner’s claims for refund for tax years 2007 and 2008 in the amounts of \$899.00 and \$1,432 respectively, as such claims for refund are barred by the statutes of limitations and are therefore **DENIED**. Judgment is entered in favor of Petitioner and her claim for refund is **GRANTED** as to the \$309.48 which Petitioner paid on June 17, 2011, plus statutory interest, and as to which the claim for refund was filed with this Tribunal on July 25, 2013.

**SO ORDERED**, this 17<sup>th</sup> day of February, 2014.

  
**CHARLES R. BEAUDROT, JR.**  
**CHIEF JUDGE**  
**GEORGIA TAX TRIBUNAL**

*ALICE D. DOBY, PRO SE*

*PETITIONER*

SAMUEL S. OLENS, Attorney General, W. WRIGHT BANKS, JR., Deputy Attorney General, WARREN R. CALVERT, Senior Assistant Attorney General, LOURDES G. MENDOZA, Senior Assistant Attorney General

*ATTORNEYS FOR RESPONDENT, DOUGLAS J. MACGINNITIE, Commissioner, Georgia Department of Revenue*