



IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

JUN 14 2022


Clara Davis, Tax Tribunal Administrator

BHUGESH INVESTMENTS, LLC,

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Petitioner,

Docket No. 2215501

v.

ROBYN A. CRITTENDEN, in her Official
Capacity as Commissioner of the
GEORGIA DEPARTMENT OF
REVENUE,

Respondent.

ORDER GRANTING MOTION TO DISMISS

Before the Tribunal is the motion of Respondent Robyn A. Crittenden, Commissioner of Georgia Department of Revenue (the “Department”), to dismiss the instant case because the Tribunal cannot grant the requested relief and lacks subject matter jurisdiction over this matter. For the reasons set forth herein, this motion is GRANTED.

FINDINGS OF FACT

Petitioner Bhugesh Investments, LLC (herein, “Bhugesh”) has operated as a lessor of motor vehicles to the motion picture industry since 2017. *See generally*, Petition. Bhugesh is based in Morgan County, Georgia. *Id.* On August 30, 2021, Bhugesh received a written “Rental Car Certification Approval” from the Department which, according to that document, “grants a reduced rate of state and local Title Ad Valorem Tax (TAVT)” pursuant to O.C.G.A. § 48-5C-1. *Id.* Although not issued until August 2021, Bhugesh alleges this certification should be applied retroactively to adjust the total TAVT it already paid for its rental vehicle fleet between 2017 and 2021, alleging that “refunds of overpayments of [TAVT] are permitted to be issued to taxpayers that are a rental motor vehicle concern for a period of up to three years since the date such tax

overpayment was remitted to the Department of Revenue, pursuant to O.C.G.A. §§ 48-2-35 and 48-5C-1.” *Id.*

In its Petition, Bhugesh alleges it sought such a refund from the Department but was denied. *Id.* It then filed this appeal. Bhugesh’s Petition seeks an order of this Tribunal: (1) declaring that Petitioner is entitled to a three-year retroactive reduction of TAVT paid due to Petitioner’s 2021 certification as a Rental Motor Vehicle Concern under O.C.G.A. §§ 48-2-35 and 48-5C-1; and (2) ordering the Department to issue such a refund. *See generally*, Petition. However, for the reasons set forth in detail below, this type of relief is clearly outside the Tribunal’s jurisdiction and for that reason, Bhugesh’s Petition must be dismissed.

CONCLUSIONS OF LAW

1. Background of the Tribunal’s Jurisdiction

This case raises issues of the Tribunal’s subject-matter jurisdiction. The Georgia General Assembly established the Georgia Tax Tribunal in 2012 as a specialized court with specific, enumerated jurisdiction concurrent with the superior courts. *See, e.g.*, O.C.G.A. §§ 50-13A-1 to 50-13A-20. In particular, the Tribunal was established to “resolve disputes between *the [Department of Revenue]* and taxpayers in an efficient and cost-effective manner.” O.C.G.A. § 50-13A-2 (emphasis added). Its statutory jurisdiction is set forth in O.C.G.A. § 50-13A-9(a), which provides that “[a]ny person may petition the tribunal for relief” as set forth in the following Code Sections:

- 48-2-18, which concerns appeals from assessment actions of the State Board of Equalization;
- 48-2-35, which concerns refunds of “any and all taxes or fees which are determined to have been erroneously or illegally assessed and collected from such taxpayer under the laws of this state”;

- 48-2-59, which concerns an “appeal from any order, ruling, or finding of the commissioner [of Revenue]”;
- 48-5-519, which concerns the taxation of railroad companies;
- 48-6-7, which concerns taxes collected by a clerk of superior court;
- 48-6-76, which concerns protests of intangible recording taxes;
- 48-7-31(d)(2)(C), which concerns the interstate allocation of corporate income taxes; and
- 48-5-342, which concerns appeals of county tax digests.

In addition, the same Code Section provides that the Tribunal has jurisdiction over “actions for declaratory judgement that fall within subsection (a) of Code Section 50-13-10 [which concerns actions declaring the validity of any “rule, waiver, or variance”] and involve a *rule of the commissioner that is applicable to taxes administered by the commissioner* under Title 48.” O.C.G.A. § 50-13A-9(b) (emphasis added). The Rules of the Tribunal contain identical jurisdictional provisions. Ga. Comp. R. Reg. 616-1-3-.03(a).

In this case, the Petitioner’s claims are outside the Tribunal’s jurisdiction because the TAVT is not a tax which is “administered by” the Department or the Commissioner within the meaning of Title 48 or Title 50. This prevents the Tribunal from adjudicating the Petitioner’s claim for declaratory judgment specifically and also the Petitioner’s claim for refund generally, where both arise under a TAVT scheme that the Department does not administer.

2. The Tribunal Cannot Adjudicate Petitioner’s Claim for Declaratory Judgment

Initially, the Tribunal’s statutory jurisdiction clearly precludes adjudication of the Petitioner’s claim for declaratory judgment. That jurisdictional provision, which is limited to “taxes administered by the commissioner,” is interpreted according to its “plain and ordinary meaning.” *Moosa Co. LLC v. Dep’t of Revenue*, 353 Ga. App. 429, 430 (2020). In that regard, the

dictionary defines “administer” as “to manage or supervise the execution, use, or conduct of.”¹ TAVT, and in particular the TAVT at issue in this petition, are assessed and collected by county or municipal taxing authorities, not the Department. *See generally*, O.C.G.A. §§ 48-5C-1(b), (c) (providing for TAVT collections exclusively by localities); 48-5-444 to 446, 48-5-471, 48-5-473 (same). While the localities must distribute a portion of TAVT to the State of Georgia, the Department has no role in the actual administration of the tax. *Id.* Petitioner’s claim for declaratory judgment is governed by O.C.G.A. § 50-13A-9(b), which grants the Tribunal jurisdiction only over those claims involving a “rule of the commissioner that is applicable to taxes administered by the commissioner.” In addition to the Department not administering the tax of which the Petition complains, there is also no rule of the Commissioner of Revenue that is at issue in this case. Thus, Petitioner’s claim for declaratory judgment fails to meet either prong of the Tribunal’s statutory jurisdiction under O.C.G.A. § 50-13A-9(b). For that reason alone, the Petitioner’s claims fail and must be dismissed.

3. The Tribunal Cannot Adjudicate Claims for Refund of TAVT Generally

Additionally, the Tribunal lacks jurisdiction to consider TAVT-related refund claims generally under O.C.G.A. § 48-2-35(a). While the text of that Code Section does not limit the type of “taxes or fees” to which it applies², any proper interpretation of the scope of that statute “must view the statutory text in the context in which it appears.” *Moosa Co. LLC*, 353 Ga. App. at 430-31. In this case, that context includes the statutory refund scheme set forth in Chapter 2 of Title 48 and the Tribunal’s jurisdictional structure as set forth in Chapter 13A of Title 50. When read

¹ <https://www.merriam-webster.com/dictionary/administer>

² Additionally, O.C.G.A. § 48-2-35(a) limits claims for refund to those taxes which were “erroneously or illegally assessed and collected.” In this case, there is no allegation that the TAVT was improperly assessed or collected, only that it should be retroactively adjusted for the past three years. As such, the Tribunal also lacks jurisdiction under the plain language of the refund statute.

together, those statutory provisions clearly contemplate Tribunal jurisdiction for refunds only of those taxes administered by the Department, which excludes TAVT.

First, as set forth above, the Tribunal's jurisdiction for declaratory judgment is expressly limited to taxes administered by the Department. The rules of statutory construction require that the Tribunal's jurisdiction be interpreted in a manner that does not lead to illogical or nonsensical results. *Gary v. State*, 338 Ga. App. 403, 408 (2016). An interpretation that would grant the Tribunal jurisdiction to consider claims for refund of taxes without the concurrent power to declare the rights and duties of the parties as to such taxes, would violate this rule. Thus, the Tribunal must decline an invitation to adjudicate claims for refunds of taxes where it clearly lacks the fundamental power to grant declaratory relief as to those same taxes.

Second, the statutory structure and language clearly allows only for Tribunal jurisdiction of refund claims where the tax is administered by the Department. The Tribunal's very statutory purpose is to resolve disputes only between the Department and taxpayers, and not disputes between local taxing authorities and taxpayers. O.C.G.A. § 50-13A-2. Here, the Petitioner seeks a three-year "retroactive reduction" of TAVT, purportedly under O.C.G.A. § 48-2-35(c)(1)(A), which allows for refund claims "within three years after . . . [t]he date of payment of the tax or fee *to the commissioner [of the Department].*" (emphasis added). The TAVT in this case was not paid to the Department, it was paid to Morgan County. Thus, there cannot be a retroactive refund under that statute. In fact, nowhere in Sections (a) through (g) of the general refund statute are local tax commissioners or assessors mentioned, even though they would necessarily have involvement in claims for refund of taxes they administer such as TAVT.

Moreover, the Tribunal's procedural rules in Chapter 13A of Title 50 contemplate adjudication of only those taxes collected by the Department. "[T]he filing of a petition with the

tribunal shall operate as a stay of any enforcement or *collection action by the commissioner [of the Department]* with respect to any tax, penalty, interest, or any collection costs that are disputed in the petition.” O.C.G.A. § 50-13A-11 (emphasis added). Again, such language would be illogical surplusage in the case of TAVT, which the Department does not administer or collect. *See, e.g., Moosa Co. LLC*, 353 Ga. App. at 430-31. It also, if petitions for refund of locally-administrated taxes were proper, would be inadequate and nonsensical as it fails to stay the same collections from local taxing authorities under the same circumstances. The statutes also require that the State Revenue Commissioner, and no other official, be named as respondent in every petition for relief from the Tribunal. O.C.G.A. § 50-13A-10(a).

Taken together, the aforementioned statutory provisions indicate that only those taxes administered by the Department are the proper subject of a claim for relief before the Tribunal. Because TAVT, like nearly all *ad valorem* property taxes³, are not administered by the Department, the Petitioner’s claims must be dismissed for lack of jurisdiction.

Conclusion

Because there is no relief which this Tribunal can grant and the Tribunal lacks subject matter jurisdiction over this matter, the Petition is dismissed.

So ordered this 14th day of June, 2022.



Hon. Lawrence E. O’Neal
Chief Judge, Georgia Tax Tribunal

³ The significant exception to this rule is centrally-assessed property taxes, such as those on railroads or public utilities. Such taxes are administered by the Department and, as such, are expressly included in the Tribunal’s statutory jurisdiction. *See* O.C.G.A. §§ 48-2-18; 50-13A-9(a). This is further indication that locally-assessed *ad valorem* property taxes are outside the Tribunal’s jurisdiction. *See, e.g., State v. Davis*, 303 Ga. 684, 692 (2018) (statutory inclusion of enumerated things implies exclusion of those not named).

ORDER PREPARED BY:

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