



BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

DEC 18 2024


Clara Davis, Tax Tribunal Administrator

**CAROL D. BULLER-MCGEE &
ROBERT MCGEE,**
Petitioner,

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DOCKET No.: 2433195

v.

**FRANK M. O'CONNELL, in his
Official Capacity as Commissioner of
the GEORGIA DEPARTMENT OF
REVENUE,**

Respondent.

DECISION

I. INTRODUCTION

This matter is before the Georgia Tax Tribunal on Respondent's Motion for Summary Judgment. Carol D. Buller-McGee and Robert McGee ("Petitioners") challenge Official Assessment and Demand for Payment notices issued by the Georgia Department of Revenue ("Respondent" or "Department") for tax years 2017 and 2018. Petitioners represent themselves pro se. Respondent is represented by Joseph Bearden, Esq. There are two issues in this case. The first issue is whether the Tax Tribunal possesses the jurisdiction to hear this appeal for tax year 2018. The second issue is whether Petitioners were required to obtain a qualified appraisal for their charitable contributions of property, and attach said qualified appraisal to their return for the taxable years in question, pursuant to 26 U.S.C.S. § 170(a). For the reasons stated herein, Respondent's Motion for Summary Judgment is **GRANTED** and Petitioners' Petition is dismissed.

II. FINDINGS OF UNDISPUTED FACT

1.

Petitioners' Petition was submitted to the Tax Tribunal on February 1, 2024. See Petition.

2.

Petitioners submitted their original 2017 state and federal individual income tax returns on April 15, 2018. See Respondent's Statement of Material Facts, Exhibit A.

3.

Petitioners submitted their original 2018 state and federal individual income tax returns on February 8, 2019. Id.

4.

On their 2017 federal income tax return, Petitioners submitted a total itemized deduction of \$145,765. Petitioners attached a Form 1040 Schedule A Itemized Deduction sheet to their 2017 federal income tax return. The 2017 Schedule A claimed \$15,520 in taxes paid by Petitioners, \$12,723 in interest paid by Petitioners, and a limited total of \$117,522 in gifts to charity. Petitioners submitted multiple Form 8283 Noncash Charitable Contributions worksheets with their 2017 federal income tax return, claiming a total of \$139,474 in charitable contributions to Goodwill of North Georgia. Id.

5.

On their 2018 federal income tax return, Petitioners submitted a total itemized deduction of \$110,342. Petitioners attached a Form 1040 Schedule A Itemized Deduction sheet to their 2018 federal income tax return. The 2018 Schedule A claimed \$8,000 in medical and dental expenses, \$10,000 in taxes paid by Petitioners, \$18,056 in interest paid by Petitioners, and \$74,286 in gifts to charity. Petitioners submitted a Charitable Contributions Summary with their 2018 income tax return, claiming a total of \$52,453 in charitable contributions to Goodwill of North Georgia. Petitioners' 2018 charitable contributions to Goodwill of North Georgia are broken down in the 2018

Charitable Contributions Summary into multiple individual donations in amounts between \$1,399 and \$4,718. Petitioners' Charitable Contributions Summary for 2018 also includes \$22,040 in carryover charitable contributions from tax year 2017. Id.

6.

Petitioners did not attach a qualified appraisal that met the requirements of 26 C.F.R. § 1.170A-13(c)(3) to their 2017 or 2018 federal income tax returns. See Affidavit of Michael Pashos, Exhibits B and C.

7.

On August 14, 2020, the Department issued a Notice of Return Changes for the 2017 tax year to Petitioners. This Notice of Return Changes decreased Petitioners' itemized deductions down to \$25,709, disallowing \$120,056 of Petitioners' itemized deductions, and asking Petitioners to submit "[c]ategorized copies of supporting documentation for the itemized deductions (receipts, statements, etc.)." On September 10, 2020, Petitioners submitted a formal protest of the changes proposed in the Notice of Proposed Changes for tax year 2017. The Department reviewed Petitioner's formal protest on January 10, 2024, and denied said Protest on January 11, 2024. On or about January 11, 2024, the Department issued an Official Assessment and Demand for Payment, Letter ID. No. L0801834608, for the tax year 2017. The assessment reflected tax due of \$7,092.00. See Respondent's Statement of Material Facts, Exhibits A and B.

8.

On July 21, 2020, the Department issued a Notice of Return Changes for the 2018 tax year to Petitioners. The Department rejected Petitioner's charitable contributions for 2018 for failure to supply sufficient documentation pursuant to the requirements for charitable contributions over the amount of \$5,000 prescribed by 26 U.S.C.S. § 1709(f)(11)(C) and 26 CFR 1.170A-13. On October

17, 2020, the Department issued an Official Assessment and Demand for Payment to Petitioners for tax year 2018 in the amount of \$8,831.59. See Respondent’s Statement of Material Facts, Exhibit A.

III. CONCLUSIONS OF LAW

A. Standard of Review

To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue as to any material fact as to each element of its claim and the undisputed facts, when 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); Tax Tribunal Rule 616-1-3-.19(a); see also Lau’s Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991); Scholastic Book Clubs, Inc. v. Comm’r, 2017-2 (Ga. Tax Tribunal, Feb. 14, 2017).

B. The Tribunal does not jurisdiction over Petitioners’ Appeal of Tax Year 2018

Under O.C.G.A. § 48-2-59(b), a taxpayer is required to “commence an appeal by filing a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 . . . within 30 days from the date of decision by the commissioner.” The Official Assessment for tax year 2018 was issued on October 17, 2020. Petitioners’ Petition was submitted to the Tax Tribunal on February 1, 2024. This is far beyond the 30 days set out under O.C.G.A. § 48-2-59(b) and therefore, not timely. Because the Petition was not filed timely, the Tribunal does not have jurisdiction over this tax year. Thus, Respondent’s Motion for Summary Judgment, regarding tax year 2018, is **GRANTED** and Petitioners’ appeal of tax year 2018 must be dismissed.

C. Whether a Qualified Appraisal is Required Depends on the Aggregate Amount

Reported as a Deduction for Non-Cash Contributions of Property

Under 26 U.S.C.S. § 170(a), “[t]here shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year.”¹ “In the case of contributions of property for which a deduction of more than \$5,000 is claimed, the requirements of this subparagraph are met if the individual, . . . obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.” 26 U.S.C.S. § 170(f)(11)(C); see also 26 C.F.R. § 1.170A-13(c)(1)(i). The term qualified appraisal means an appraisal document that 1) is prepared, signed, and dated by a qualified appraiser, 2) includes a description of the property, 3) is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the due date (including extensions) of the return on which a deduction is first claimed, and 4) does not involve an appraisal fee that is based on a percentage (or set of percentages) of the appraised value of the property. 26 C.F.R. § 1.170A-13(c)(3).

In Bass v. Commissioner, the petitioner in that matter claimed non-cash charitable gifts to Goodwill and the Salvation Army in amounts that exceeded \$5,000. See Bass v. Commissioner, No. 833-20, 2023 Tax Ct. Memo LEXIS 40, at *27 (T.C. Mar. 27, 2023). The petitioner in Bass argued that “because the donated items reflected on each receipt had a fair market value of less than \$250, he did not need to have any of the items appraised.” Id. The U.S. Tax Court rejected this argument, holding that, “for purposes of determining the \$5,000 threshold and accordingly whether the ‘appraisal’ requirements are applicable, [26 U.S.C.S. § 170(f)(11)(C)] and [26 C.F.R. § 1.170A-13(c)(1)(I)] mandate aggregating similar items of property donated to one or more charitable organizations.” Id. Moreover, in making its ruling, the Tax Court looked at the total of clothing

¹ Georgia’s taxable income is based upon an individual’s Federal Adjusted Gross Income. As such, federal law regarding the computation of AGI applies to this matter, including law governing itemized deductions. See O.C.G.A. § 48-7-27.

donations made to both Goodwill and the Salvation Army, finding that “[t]he aggregate of these donations is \$25,446 (i.e., \$13,852 (the total amount of the clothing donations to Goodwill) plus \$11,594 (the total amount of the clothing donations to the Salvation Army)), which is over five times the \$5,000 threshold and thus necessitates that they be appraised.” Id.; see also Cohen v. Commissioner, No. 18208-11S, 2013 Tax Ct. Summary LEXIS 44, at *30 (T.C. June 3, 2013) (holding that “the amount reported as a deduction for contributions of property is an aggregate amount for all similar items of property.”)

In this case, it is undisputed that Petitioners claimed an aggregated \$139,474 of charitable donations consisting of “clothing, footwear, accessories, etc.” on their 2017 tax return and \$52,453 of the same on their 2018 tax return. Pursuant to 26 U.S.C.S. § 170(f)(11)(C) and Bass v. Commissioner, because the aggregate amounts exceed \$5,000, it is required that a qualified appraisal be obtained and attached to the return for each respective taxable year that a deduction for a non-cash charitable gift is being claimed. It is also undisputed that Petitioners did not attach a qualified appraisal, as defined under 26 C.F.R. § 1.170A-13(c)(3), to their 2017 or 2018 tax returns for the voluminous apparel items they allegedly donated to Goodwill of North Georgia during those tax years. Petitioners’ inclusion of the Form 8283 Noncash Charitable Contributions worksheet to their returns does not meet the qualified appraisal requirements of 26 C.F.R. § 1.170A-13(c)(3). Similar to the petitioners in the Bass case, who’s argument was reject by the U.S. Tax Court, Petitioners’ argument in this case, that a qualified appraisal did not have to be obtained and attached to their returns to claim a deduction because each of their individual charitable contributions were under \$5,000, must also be rejected by this Court. Thus, because Petitioners did not obtain and attach a qualified appraisal to the tax returns, in compliance with 26 U.S.C.S. § 170(f)(11)(C), Respondent is entitled to judgment as a matter of law and Respondent’s Motion for Summary Judgment must be

GRANTED.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law, Respondent's Motion for Summary Judgment **GRANTED** and Petitioners' Petition is dismissed.

SO ORDERED, this 18th day of December, 2024.



LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL