BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

CLEOPHAS & DEKISHA JONES,	*	
	*	
Petitioner,	*	
	*	**DOCKET No.: 2448621 (Consolidated)**
v.	*	
	*	
FRANK M. O'CONNELL, in his Official Capacity as Commissioner of the GEORGIA DEPARTMENT OF REVENUE,	*	
	*	
Respondent.	*	

DECISION

I. INTRODUCTION

This case is a consolidation of four separate actions brought by Petitioners Cleophas and DeKisha Jones seeking tax refunds for tax years 2016, 2021, and 2022 ("the Tax Years"). Such actions are as follows: (1) Docket No. 2445650 seeking to challenge the "official assessment and demand for payment," "issuance of state tax execution" and "failure to grant tax refund" for tax year 2016, stamped filed on May 30, 2024; (2) Docket No. 2446007 seeking to challenge the "issuance of state tax execution" and "failure to grant tax refund" for tax year 2021, stamped filed on May 31, 2024; (3) Docket No. 2446008 seeking to challenge the "issuance of state tax execution" and "failure to grant tax refund" for tax year 2022, stamped filed on May 31, 2024; and (4) Docket No. 2448621 seeking to challenge the "official assessment and demand for payment", "issuance of state tax execution", and "failure to grant tax refund" for tax year 2016, stamped filed on June 12, 2024. All of these actions were consolidated under Docket No. 2448621 via the October 3, 2024 order of this Court. On June 4, 2025, the Court conducted a bench trial at which both parties appeared.

Upon consideration of the evidence presented at such trial, the pleadings, the law, and the

arguments of the parties, this Court finds that the Tax Tribunal lacks subject matter jurisdiction over Petitioners' refund claim for tax year 2016, Petitioners' refund claim for tax year 2021 must be **DENIED**, and that the Tax Tribunal lacks subject matter jurisdiction over tax year 2022. Because the Tax Tribunal lacks subject matter jurisdiction over tax years 2016 and 2022, those matters must be **DISMISSED**.

II. FINDINGS OF FACT

A. Background

1.

The Court takes judicial notice[1] of relevant background information regarding Petitioners' employment and businesses as established in Jones v. Comm'r, TAX-IIT-2204666 (Ga. Tax Tribunal, September 10, 2024) (the "Prior Decision").

2.

During the Tax Years Petitioners were employed as W-2 employees. Mr. Jones was employed by the Fulton County School System and Mrs. Jones was employed by the Georgia Department of Human Services. Mr. Jones has been an educator for thirty years. Id.

3.

Mr. Jones is also an artist, videographer, and author who has written over twenty children's books. In 2010, Mr. Jones organized Unique Literacy and Educational Consultants ("ULEC") as a single member LLC in the State of Georgia. Operations for ULEC were suspended for some time between 2010 and 2016, but there is no evidence in the record that the business was dissolved at

[1] Under O.C.G.A § 24-2-201, a court may take judicial notice of adjudicative facts that are not subject to reasonable dispute when they are: (1) generally known within the territorial jurisdiction of the court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

any point since its inception. ULEC has claimed expenses for illustrations, publication, video productions, a website, clothing, grooming, and entertainment expenses. ULEC employs Mr. Jones' wife and children, as well as others to help write and proofread the books, model clothes for the books' illustrators, and do voice overs for videos. Id.

4.

In the Prior Decision, it was found that ULEC was not engaged in a trade or business conducted for profit during tax years 2018, 2019, and 2020. Specifically, it was found that:

- ULEC was not conducted in a businesslike manner.
    - ULEC did not maintain accurate books and records during the tax years at issue and Petitioners did not present sufficient evidence that ULEC had a bookkeeper, a written business plan, or budget or income projections.
- ULEC possessed only a history of losses.
    - ULEC never generated revenues in excess of expenses (earned a profit) for any tax year from its inception in 2010 through 2020.
- There was no indication that ULEC may earn a profit in the future.
    - Petitioners did not present sufficient evidence or compelling argument that ULEC had a reasonable expectation of profit in the future or that it was engaged in a highly speculative venture that might explain the consistent lack of profit earned.
- Petitioners would have recognized a clear tax benefit from the losses generated by ULEC had the returns filed by Petitioners not been examined, and then changed by the Department.
    - Petitioners' returns reflected a significant reduction in their income tax burden,

in part, due to ULEC's reported net losses of $32,088 for tax year 2018, $52,357 for tax year 2019, and $23,095 for tax year 2020.

Id.

5.

Mr. Jones is also the sole member of ULEC Real Estate Enterprises, LLC ("ULEC Real Estate"). ULEC Real Estate has managed two different properties between the time period of 2016 through 2021. One such property is the rental real property located at 4787 Lost Colony Court in Stone Mountain, Georgia, which was owned by either Mr. Jones or ULEC Real Estate during both tax year 2016 and tax year 2021. (Id.; Respondent's Exhibits 1, 3, 15 & 20).

B. Tax Year 2016

6.

For tax year 2016, Petitioners filed a timely tax return reflecting a total refund due of $1,786. This refund was granted in full. (Respondent's Exhibit 1; Testimony of Keldric Robinson).

7.

On November 2, 2018, Petitioners filed an amended tax return for tax year 2016 requesting an additional refund of $2,451. Keldric Robinson, Department of Revenue Business Analyst, Returns Examination Section, testified that this amended return was flagged by the Department for possible fraud. The additional refund request was not granted by the Department, and on January 30, 2020, the Department issued a Notice of Return Changes, Letter ID L0517524272, indicating an amount owed by Petitioners. (Respondent's Exhibits 3 & 4; Testimony of Keldric Robinson).

8.

On April 16, 2020, the Department issued an Official Assessment and Demand for

Payment, Letter ID L1755189288, assessing Petitioners a tax due amount of $1,486.08. This assessment was not timely appealed. (Respondent's Exhibit 5; Testimony of Keldric Robinson).

9.

On June 20, 2020, the Department issued a Notice of State Tax Execution, Letter ID L1546055240. The Department never recorded this tax execution. Instead, it reconsidered Petitioners' tax liability after receiving additional evidence from Petitioner's CPA and reduced the tax due amount to $303. (Respondent's Exhibits 6 & 7; Testimony of Keldric Robinson).

10.

On September 30, 2020, the outstanding tax due for tax year 2016 was paid via offset from Petitioners' tax year 2019 refund. (Respondent's Exhibit 11).

11.

On November 20, 2020, the Department issued a Notice of Return Changes, Letter ID L1285833200, reflecting the Department's adjustments to Petitioners' amended 2016 tax return (minus the offset payment on September 30, 2020) as follows:

Return Line Items	Per Your Return	Per our computation
Federal Adjusted Gross Income	$144,512	$160,358
Adjustments from Schedule 1	-14,056	$0
Georgia Adjusted Gross Income	$130,456	$160,358
Standard/Itemized Deductions	$38,438	$22,401
Georgia Taxable Income	$78,618	$124,557
Tax	$4,459	$7,213
Tax Balance	$4,099	$6,853

Refund Due	$2,451	
Amount Due		$303

(Respondent's Exhibit 9; Testimony of Keldric Robinson).

12.

Petitioners subsequently wrote several letters to the Department requesting a refund for tax year 2016, including the November 26, 2022 letter attached to the Petition for Docket No. 2448621 in this case. However, Petitioner did not utilize the form provided by the Department to submit refund claims until April 27, 2024. (Respondent's Exhibits 13 & 14; Testimony of Keldric Robinson; Petition, Docket No. 2448621).

13.

Petitioners filed suit for tax year 2016 in the Georgia Tax Tribunal on May 30, 2024. Petitioners filed a second suit for tax year 2016 on June 12, 2024. (Petition, Docket No. 2445650; Petition, Docket No. 2448621).

C. Tax Year 2021

14.

For tax year 2021, Petitioners filed a timely tax return reflecting a total refund due of $6,205. The Department partially granted and denied this refund via letter dated February 22, 2023, granting Petitioners a refund of $1,167. (Respondent's Exhibits 15 & 16).

15.

On January 14, 2025, the Department recalculated Petitioners' tax year 2021 liability and granted an additional refund of $1,013, for a total refund issued of $2,180. (Respondent's Exhibit 17).

16.

In March of 2025, Petitioners filed an amended tax return for tax year 2021, seeking a

refund of $7,054.[2] The only change made on the amended return was the addition of a $7,500 deduction for legal and professional services. Petitioners' witness, Phyllis Spears, who has worked with Petitioners for several years and prepared Petitioners' tax year 2021 amended tax return, testified stating that the $7,500 deduction for legal and professional services is Petitioners' portion of the retainer that Ms. Spears' company, Epiphany Financial Services, has paid to an attorney for representation in litigation against the State of Georgia. After review, the Department did not grant the additionally requested refund. Mr. Robinson testified that the $7,500 in legal and professional expenses should be disallowed because it does not appear that the expenses were incurred or paid during the 2021 calendar year. Further, the invoice Petitioners submitted to the Department supporting the expense is dated as having been created and paid on March 23, 2025. (Respondent's Exhibits 20 & 21; Testimony of Phyllis Spears; Testimony of Keldric Robinson).

17.

Petitioners reported combined W-2 wages of $171,885. Petitioners claimed $46,508 in itemized deductions on Schedule A of their 2021 tax return (2021 Schedule A, line 17). On Schedule A, line 2, itemized deductions, Petitioners claimed $13,992 in medical and dental expenses, which resulted in a deduction of $4,659. On line 6, other taxes, Petitioners deducted $18,228. To support this amount, Petitioners presented a self-prepared document reflecting prior tax amounts Petitioners contended they had paid to the Georgia Department of Revenue between tax years 2014 and 2022. On line 11, gifts by tax or check, Petitioners deducted $2,119. On line 12, gifts to charity other than by cash or check, Petitioners deducted $2,500. (Respondent's Exhibit 15).

[2] The amended return seeks a refund of $7,054 but does not explain how that figure was calculated. Presumably, Petitioners are seeking a refund of the $4,025 previously denied on their original return in addition to $849 from the amended return, for a total of $4,874 (if credit is given for the $2,180 of refund already issued).

18.

Petitioners' tax year 2021 tax returns included two separate Schedules C. The first was for ULEC, and the second was for ULEC Real Estate. Id.

19.

Petitioners' 2021 ULEC Schedule C indicated that ULEC had no gross receipts or sales, but had $2,453 in other income (line 6). Against this, Petitioners claimed the following expenses, totaling $33,976, to wit: $25 in advertising expenses (line 8); $5,408 in car and truck expenses, calculated using the standard mileage deduction election ($0.56 x 9,658 miles = $5,408) (line 9); $14,372 for depreciation (line 13); $2,012 for repairs and maintenance (line 21); $11,027 in supplies (line 22); $100 for taxes and licenses (line 23); and $1,032 for other expenses, which includes storage expenses (line 27a). The total loss reflected on this Schedule C is $31,523 (line 31). Id.

20.

Petitioners also submitted a second schedule C for ULEC Real Estate. This schedule C indicated that ULEC Real Estate had no gross receipts or sales, but had $7,400 in other income (line 6), a number that matches the total "rents received" on Petitioners schedule E for 4787 Lost Colony Ct. Against this, Petitioners claimed the following expenses totaling $13,687, to wit: $2,297 in car and truck expenses, calculated using the standard mileage deduction election ($0.56 x 4,102 miles = $2,297.12) (line 9); $1,860 in contract labor (line 11); $7,507 in supplies (line 22); $50 in taxes and licenses (line 23); $773 in utilities (line 25); and $1,200 in other expenses, in which a business phone is listed (line 27a). Petitioners also claimed $1,113 in business use of home (line 30). The total loss reflected on this schedule C is $7,400 (line 31). Id.

21.

The Department issued two separate adjustments of Petitioners' original tax return for tax year 2021 during the course of this litigation, the most recent of which was a Notice of Return Changes, Letter ID L12667777328, issued on January 13, 2025. This Notice adjusted Petitioners' return as follows:

Return Line Items	Per Your Return	Per our computation
Federal Adjusted Gross Income	$124,443	$171,885
Adjustments from Schedule 1	$327	$0
Georgia Adjusted Gross Income	$124,770	$171,885
Standard/Itemized Deductions	$46,508	$23,621
Georgia Taxable Income	$64,862	$134,864
Tax	$3,495	$7,520
Tax Balance	$2,362	$6,387
Refund Due	$6,205	$2,180

(Respondent's Exhibit 17).

22.

On Schedule A, the Department disallowed Petitioners' claimed $13,992 in medical and dental expenses because Petitioners could not provide substantiation that this amount was paid by Petitioners. Mr. Robinson testified that the information provided to the Department to substantiate this expense was a self-prepared schedule created by Petitioners that included purchases of food, such as groceries and visits to restaurants, which are not typically deductible as medical expenses. The self-prepared schedule submitted by Petitioners also included what appear to be payments for

"insurance" to Mrs. Jones' employer, the Georgia Department of Human Services. Mr. Robinson testified further that the Department disallowed Petitioners tax refund request on line 6, other taxes, as that line is designated for taxes that were paid to a foreign country. Mr. Robinson continued, stating that the self-prepared substantiation offered by Petitioners for this deduction referenced taxes paid to Georgia in prior years, which cannot be deducted there. (Respondent's Exhibit 22; Testimony of Keldric Robinson).

23.

The ULEC Schedule C was disallowed in its entirety by the Department after application of the "hobby loss rule."[3] Mr. Robinson testified that Petitioners have not presented any information to the Department showing that the business was conducted any differently in tax year 2021 than in tax years 2018, 2019, and 2020. Mr. Robinson testified further that his review of the tax year 2021 ULEC Schedule C showed that there was, again, no profit earned by ULEC. (Testimony of Keldric Robinson).

24.

Mr. Robinson testified that the Department's decision to disallow the ULEC Schedule C in its entirety would not have changed even if the "hobby loss rule" was not applied due to errors or other issues with Petitioners' claimed deductions. Mr. Robinson testified that Petitioners appear to be claiming car and truck expenses in multiple places on their return, as they have claimed standard mileage on line 9, and then claimed expenses and depreciation related to those same vehicles on line 13 and line 22. Mr. Robinson's testimony continued as he stated that this posed an issue because depreciation and expenses for vehicles are already contemplated in the line 9 car and truck expenses, so Petitioners' inclusion of the same expenses on line 13 and 22 resulted in a

[3] The "hobby loss rule" refers to section 183 of the Internal Revenue Code ("I.R.C.").

double-dip effect that benefitted Petitioners by increasing ULEC's business expenses. Mr. Robinson further testified that many of the items listed on the depreciation schedule were well past their useful life, and that other expenses appeared to be personal in nature. Similarly, Mr. Robinson testified that a number of the items listed in supplies should have been depreciated and appeared to be personal expenses as well. Globally, Mr. Robinson stated that he did not believe the expenses on the ULEC Schedule C had been substantiated. (Testimony of Keldric Robinson).

25.

The Schedule C for ULEC Real Estate was also disallowed in its entirety by the Department. Mr. Robinson testified that, upon review, it appeared Petitioners reported the same income and expenses on both the Schedule C for ULEC Real Estate and the Schedule E for supplemental income and loss. Mr. Robinson further testified that the expenses reported for ULEC Real Estate had many of the same issues as those claimed for ULEC, including the simultaneous deduction of both standard mileage and actual vehicle expenses, resulting in the same double-dip effect increasing Petitioners' expenses. Mr. Robinson also noted that it was unclear which expenses were attributable to ULEC versus ULEC Real Estate. Finally, Mr. Robinson testified that the documentation provided to substantiate the utilities deduction listed Petitioners' primary residence, not the rental property. (Testimony of Keldric Robinson; Respondent's Exhibit 26).

26.

Regarding the Schedule E submitted by Petitioners for tax year 2021, Mr. Robinson testified that while the Schedule E was initially allowed by the Department, because Petitioners' adjusted gross income, after the changes made by the Department, was too high to qualify for the $25,000 offset for passive rental real estate activities, Petitioners' loss of $8,519 was not allowed as a deduction when the Department recalculated Petitioners' tax liability. (Testimony of Keldric

Robinson).

27.

Petitioners filed suit for tax year 2021 in the Georgia Tax Tribunal on May 31, 2024. (Petition, Docket No. 2446008).

D. Tax Year 2022

28.

For tax year 2022, Petitioners filed a timely tax return reflecting a total refund due of $6,808. The Department partially granted this refund and informed Petitioners via letter dated February 17, 2023. Petitioners filed suit in the Georgia Tax Tribunal on May 31, 2024. In March of 2025, Petitioners filed an amended return seeking $3,546 in refund. This refund claim was granted in full by the Department.

III. CONCLUSIONS OF LAW

In all proceedings before the Georgia Tax Tribunal, the standard of review is *de novo*, and the evidence presented is not limited to the evidence considered by the Department. Ga. Comp. R. & Regs. 616-1-3-.11(a). Under *de novo* review, the Tribunal is required to make an "independent determination of the issues." See United States v. First City Nat'l Bank of Houston, 386 U.S. 361, 368 (1967); see also Marc J. Fleury & Nathalie Mason-Fleury v. Comm'r, TAX-IIT-1532748 & 1552226 (Ga. Tax Tribunal 2015).

A. Jurisdiction of the Georgia Tax Tribunal

The Georgia Tax Tribunal's jurisdiction is prescribed by O.C.G.A. § 50-13A-9(a), which provides that

> ...[A]ny person may petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76 and subparagraph (d)(2)(C) of Code Section 48-7-31. The tribunal shall have jurisdiction over actions for declaratory

> judgment that fall within subsection (a) of Code Section 50-13-10 and involve a rule of the commissioner that is applicable to taxes administered by the commissioner under Title 48.

See also O.C.G.A. § 50-13A-9(b) ("The tribunal shall have concurrent jurisdiction with the superior courts over those matters set forth in subsection (a) of this Code section.") Although Petitioners indicated that they are challenging the "official assessment and demand for payment" for tax year 2016, Petitioners did not file a timely appeal of this Assessment. O.C.G.A. §§ 48-2-59(a) and (b) permit a taxpayer, except with respect to refund claims, to file an appeal from any "order, ruling, or finding of the Commissioner" . . . "within 30 days of the date of the decision of the commissioner or at any time after the department records a state tax execution." Petitioners did not file an appeal with the Tax Tribunal until, May 30, 2024, which is far beyond 30 days of the issuance of the Official Assessment and Demand for Payment on April 16, 2020.

Similarly, for each of the tax years in this case, Petitioners indicated that they are challenging the "issuance of a tax execution". However, while the Department issued a Notice of State Tax Execution on June 20, 2020, this Notice only covered tax year 2016, and moreover, there is no evidence in the record that the Department ever recorded that tax execution or any other tax execution for any of the Tax Years in this case. Thus, this leaves only Petitioners' "failure to grant a tax refund" challenges remaining for further consideration.

Claims for refund are governed by O.C.G.A. § 48-2-35(a), which states that a taxpayer shall be refunded all taxes or fees which are determined to have been erroneously or illegally assessed and collected from such taxpayer, whether paid voluntarily or involuntarily. To receive a refund, the taxpayer must submit a refund claim to the Department within three years after (i) the date of the payment of 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. Id. at O.C.G.A § 48-2-35(c)(1)(A); Ingalls Iron Works Co. v. Blackmon, 133 Ga. App. 164 (1974). The refund claim must be filed in writing in the form and containing such information as the commissioner shall reasonably require. Id. at O.C.G.A § 48-2-35(c)(1)(B). Ga. Comp. R. & Regs, r 560-7-8-.26(3) provides that, in the case of income taxes, refund claims must be filed on the form prescribed by the Commissioner, and if the "prescribed form is not timely filed the claim may be disallowed". This regulation also provides that "unless otherwise specified by the Department, in the event a claim for refund is paid for an amount less than the amount claimed, the amount not paid shall be deemed denied." Id. at (4).

i. The Tax Tribunal Lacks Subject Matter Jurisdiction Over Petitioners' Refund Claim for Tax Year 2016

In tax year 2016, Petitioners filed an original return claiming a refund of $1,786, which the Department granted in full. On November 4, 2018, Petitioners filed an amended return claiming an additional refund of $2,451. This amended return was flagged by the Department for possible fraud, and the additional refund was not granted. The Department effectively formalized this refund denial on January 30, 2020, by issuing Notice of Return Changes, Letter ID L0517524272, indicating an amount owed by Petitioners. Under O.C.G.A § 48-2-35(c)(6)(A)(i), once a claim for refund has been denied, a taxpayer must file suit for the recovery of that refund within two years of the denial. Petitioners did not file Petitions challenging the amended return refund denial with the Tax Tribunal until May 30, 2024, and June 12, 2024. Both of these dates far exceed the two years provided by O.C.G.A § 48-2-35(c)(6)(A)(i), rendering Petitioners' appeal of the Department's denial of the additional refund claim for tax year 2016 untimely. Since the Petitions were untimely, the Tribunal lacks subject matter jurisdiction over Petitioners' appeal of the Department's denial of the amended return refund claim.

On June 20, 2020, the Department issued a Notice of State Tax Execution, Letter ID

L1546055240. However, following the receipt of additional evidence from Petitioners' CPA, the Department never recorded the tax execution, and instead reconsidered Petitioners tax liability, reducing the amount due to $303. The outstanding tax due amount of $303 was paid via offset from Petitioners' tax year 2019 refund on September 30, 2020. Under O.C.G.A § 48-2-35(c)(1)(A)(ii), a taxpayer must file a claim for refund within three years after the later of (a) when the tax or fee was paid, or (b) the due date for filing the return (including extensions). O.C.G.A § 48-2-35(c)(1)(B) provides that

> Each claim shall be filed in writing in the form and containing such information as the commissioner may reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies and an identification of the transactions being contested.

This provision is further defined by Ga. Comp. R. & Regs, r 560-7- 8-.26(3), which provides that

> Claims must be filed on the form prescribed by the Commissioner, and if the prescribed form is not timely filed the claim may be disallowed. If the taxpayer requests a refund in other than the prescribed manner within the period allowed by O.C.G.A. § 48-2-35 the taxpayer must, in order for the claim to be considered, show by satisfactory evidence that:
>
> (a) The taxpayer did not have access to the internet; and
>
> (b) The taxpayer requested the prescribed forms from the Department of Revenue, the Department failed or refused to supply them, and the taxpayer's request for forms was made in sufficient time for the Department to mail and for the taxpayer to complete and submit the forms within the time prescribed by law.

Here, Petitioners did not file a refund claim in compliance with the regulation until April 27, 2024. Because this is more than three years after the date of the offset payment on September 30, 2020, the Department may disallow Petitioners' refund claim under Ga. Comp. R. & Regs, r 560-7-8-.26(3). At trial the Department indicated its position that Petitioners are not entitled to any refund for tax year 2016, effectively disallowing the claim of $303.

Before submitting the April 27, 2024, refund claim, Petitioners wrote several letters to the

Department requesting a refund for tax year 2016. However, only one such letter is included in the record for this case, that being the November 26, 2022 letter that is attached to the Petition for Docket 2448621. In this letter, Petitioner demands refunds for tax years 2021, 2020, 2019, 2018, and 2016. To the extent this and the other letters could be interpreted as informal refund requests submitted "in other than the prescribed manner [of Ga. Comp. R. & Regs, r 560-7- 8-.26(3)], Petitioners would have needed to provide evidence that (a) Petitioners did not have access to the internet, and (b) that Petitioners timely requested the prescribed forms from the Department of Revenue, and the Department failed or refused to supply them.

Petitioners have not alleged, at any point during this case, that they lack access to the internet or that they made such prior timely requests for the prescribed forms to the Department. Thus, Petitioners did not submit a timely refund claim in compliance with O.C.G.A. § 48-2-35. Accordingly, the Tribunal lacks subject matter jurisdiction over Petitioners' refund claim for tax year 2016, and this matter, insofar as it pertains to tax year 2016 must be **DISMISSED**.

ii. The Tax Tribunal Has Subject Matter Jurisdiction Over Petitioners' Refund Claim For Tax Year 2021 Pursuant to O.C.G.A § 48-2-35(c)(6)(A)(i)

In tax year 2021, Petitioners' original return claimed a refund. This claim was granted in part on February 22, 2023, in the amount of $1,167. Pursuant to Ga. Comp. R. & Regs, r 560-7-8-.26(4), the amount not paid was deemed denied. Under O.C.G.A § 48-2-35(c)(6)(A)(i), once a claim for refund has been denied, a taxpayer must file suit for the recovery of that refund within two years of the denial. Because Petitioners filed suit on May 31, 2024, which is within two years of the February 22, 2023, refund denial, this Court has jurisdiction over Petitioner's refund claim associated with tax year 2021.

iii. The Tax Tribunal Lacks Subject Matter Jurisdiction Over Tax Year 2022

In tax year 2022, the undisputed evidence demonstrates that the Department received a

refund claim on Petitioners' amended return that was filed in March, 2025, and granted that refund claim in full. As no refund claim remains outstanding, there is nothing remaining for this Court to adjudicate for tax year 2022. Accordingly, this matter, insofar as it pertains to tax year 2022 is **DISMISSED**.

B. Petitioners' Refund Claims

The instant matter is an action for refund pursuant to O.C.G.A. § 48-2-35. Such actions are in the nature of actions for money had and received. See Hawes v. Bigbie, 123 Ga. App. 122 (1970); Oxford v. Shuman, 106 Ga. App. 73, 79 (1962). As explained in Hawes v Shuman, 123 Ga. App. 543, 548-549 (1971), dissenting opinion adopted in 228 Ga. 101,

> In a [refund action] he must prove his true and correct tax liability in order to have a money recovery since the commissioner is wrongfully withholding only that amount in excess of what the taxpayer owes.

Thus, the burden is on Petitioners to demonstrate their true and correct income tax liability, and that such liability is less than the amount collected by the Department.

Under Georgia law, the calculation of a taxpayer's income tax liability begins with the federal adjusted gross income. See O.C.G.A. § 48-7-27(a). Deductions and exemptions included in such calculations are a matter of legislative grace, and the taxpayer generally bears the burden of proving entitlement to any deduction claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Inc Co. v Helvering, 292 U.S. 435, 440 (1934). A taxpayer claiming a deduction on a federal income tax return must demonstrate that the deduction is allowable pursuant to a statutory provision and must further substantiate that the expense to which the deduction relates has been paid or incurred. See I.R.C. § 6001; Hradesky v. Commissioner, 65 T.C. 87, 89-90 (1975), aff'd pur curiam, 540 F.2d 821 (5th Cir. 1976).

i. Tax Year 2016

As stated above, the Tax Tribunal does not have subject matter jurisdiction over Petitioners' tax year 2016 refund claim. However, even if this Court could consider Petitioners' refund claim for 2016, Petitioners have not demonstrated that they are entitled to such refund. Petitioners' principal argument regarding tax year 2016 is that the IRS "fully reduced" Petitioners tax liability for that tax year, and that, as a result, the Department of Revenue is required to follow that determination and grant Petitioners the entire refund sought on their 2016 amended tax return.

The Tribunal has rejected this exact argument by Petitioners several times. See Docket 2204666, Order Denying Petitioners' Motion for Summary Judgment; Jones v Comm'r, TAX-IIT-2204666; Docket 2448621, Order Denying Petitioners' Motion for Summary Judgment. The Department has both the legal authority and the duty to enforce the revenue laws of the State of Georgia and investigate information contained in a taxpayer's return. See O.C.G.A.§ 48-2-5, 48-2-7, and 48-2-8. These powers and duties include the authority to conduct audits, review Federal tax returns, issue assessments for inadequate taxes paid to the State, and offset refunds that would otherwise be due to satisfy those liabilities. See, e.g, O.C.G.A. § 48-2-35(d), 48-2-48, 48-2-54, 48-2-54.1, 48-7-2, and 48-7-59.

In this case, for tax year 2016, the Department reviewed the amened tax return filed by Petitioners, determined that Petitioners' actual adjusted gross income was higher than what was reported by Petitioners on their amended tax return, issued an assessment (see Respondent's Exhibit 5, Letter ID L1755189288 assessing Petitioners a balance due of $1,486.08), and then offset a refund that would have otherwise been owed to Petitioners to satisfy the remaining liability (see Respondent's Exhibit 11, offsetting a portion of Petitioners' 2019 tax refund to satisfy the remaining tax year 2016 liability of $303).[4] The actions taken by the Department are well within

[4] Petitioners' tax year 2016 tax liability was reduced from $1,486.08 to $303 after the Department received additional evidence from Petitioners' CPA. See Respondent's Exhibit 7.

the Commissioner's legal authority. Further, it is well established that Petitioners have the burden to demonstrate their true and correct tax liability. See Graham v McKesson Info. Solutions, LLC, 279 Ga. App. 364 (2006) (holding that the Department of Revenue is not required to grant a refund based upon a federal return accepted by the IRS). Petitioners, by merely pointing to an IRS determination, have not met this burden. Thus, even if this Court had jurisdiction over Petitioners' refund claim for tax year 2016, such refund claim would be denied.

ii. Tax Year 2021

Similar to tax year 2016, the burden is on the Petitioners to demonstrate their actual tax liability for tax year 2021 and, in this case, to show that such amount is less than that collected by the Department.

a. Schedule A

On Schedule A for tax year 2021, the Department disallowed $13,992.00 in medical and dental expenses that were claimed by Petitioners. A taxpayer may deduct expenses not compensated by insurance or otherwise that are paid during the taxable year for the medical care of the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. I.R.C. § 213(a); Estate of Smith v Commissioner, 79 T.C. 313, 318 (1982). The medical expense deduction is allowed only to the extent it exceeds 10% of federal adjusted gross income. I.R.C. § 213(a); Treas. Reg. § 1.213-1(a)(3). The taxpayer must substantiate medical expense deductions with "the name and address of each person to whom payment for medical expenses was made and the amount and date of the payment thereof in each case." Treas. Reg. § 1.213-1(h).

During the hearing, Mr. Robinson testified that, in support of this deduction, Petitioners submitted a schedule that included purchases of food, such as groceries and visits to restaurants. The schedule also contained certain insurance payments made to the Georgia Department of

Human Services, Mrs. Jones' employer. Food purchases at grocery stores and restaurants are not deductible as medical expenses. See Massa v Commissioner, 1999 Tax Ct. Memo LEXIS 72 (Mar. 4, 1999) (diet of a health-conscious individual not deductible as a medical expense). Likewise, insurance payments to one's employer are not a deducible medical expense. See 26 USCS § 213 (allowing deduction for medical expenses not compensated by insurance). Petitioners have not provided sufficient evidence showing that these insurance payments to Mrs. Jones' employer are for medical expenses that were not compensated by insurance. Thus, Petitioners have failed to meet their burden of demonstrating that they are entitled to these deductions.

The Department also disallowed $18,228 in other taxes. The substantiation Petitioners provided to the Department was a self-prepared schedule of state taxes Petitioners allege they have paid between 2014 and 2022. Mr. Robinson testified that line 6, other taxes, is typically designated for taxes that were paid to a foreign country, not state taxes paid in other years. Petitioners did not provide sufficient legal authority that would support the allowance of this deduction. Further, there is no evidence in the record that Petitioners paid any taxes to a foreign country for this tax year or any previous tax year. Thus, Petitioners have not met their burden in showing that they are entitled to this deduction.

b. ULEC

Taxpayers are generally allowed deductions for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." I.R.C. § 162; Boyd v. Commissioner, 122 T.C. 35, 313 (2004). However, I.R.C. section 183(a) provides that taxpayers are not allowed a deduction "if such activity is not engaged in for profit." I.R.C. § 183(a); see also Westbrook v Commissioner, 68 F.3d 868, 875 (5th Cir. 1995). "[I]f such activity is not engaged in for profit, no deduction attributable to such activity [is] allowed" except to the extent provided

by I.R.C. section 183(b).[5] Id. However, for tax year 2021, no deduction is permitted by I.R.C. section 183(b). See 26 U.S.C. 67(g) (stating that "no miscellaneous itemized deduction shall be allowed for any taxable year beginning after December 31, 2017, and before January 1, 2026").

An activity is engaged in for profit if the taxpayer entertained an actual and honest profit objective in engaging in the activity. Dreicer v. Commissioner, 78 T.C. 642, 645 (1982), aff'd, 702 F.2d 1205 (D.C. Cir. 1983) (unpublished table decision); Treas. Reg. § 1.183- 2(a). The taxpayer's expectation of profit must be in good faith. Allen v. Commissioner, 72 T.C. 28, 33 (1979) (citing Treas. Reg. § 1.183-2(a)). Whether the requisite profit objective exists is determined by looking at all the surrounding facts and circumstances. Keanini v. Commissioner, 94 T.C. 41, 46 (1990); Treas. Reg. § 1.183-2(b). Greater weight is given to objective facts than to a taxpayer's mere statement of intent. Thomas v. Commissioner, 84 T.C. 1244, 1269 (1985), aff'd, 792 F.2d 1256 (4th Cir. 1986); Treas. Reg. § 1.183-2(a).

The treasury regulations provide a non-exhaustive list of nine factors that may be considered when determining whether a taxpayer conducted an activity with the intent to earn a profit: (1) the manner in which the taxpayer carries on the activity; (2) the expertise of the taxpayer or the taxpayer's advisers; (3) the time and effort expended by the taxpayer in carrying on the activity; (4) the expectation that assets used in the activity may appreciate in value; (5) the success of the taxpayer in carrying on other similar activities; (6) the taxpayer's history of income or loss with respect to the activity; (7) the amount of occasional profits, if any; (8) the financial status of the taxpayer; and (9) whether elements of personal pleasure or recreation are involved. Treas. Reg. § 1.183-2(b). "No one factor is determinative," and it is not intended that "a determination... be

[5] I.R.C. Section 183(b) allows deductions that would have been allowable had the activity been engaged in for profit but only to the extent of gross income derived from the activity (reduced by deductions attributable to the activity that are allowable without regard to whether the activity was engaged in for profit).

made on the basis that the number of factors... indicating a lack of profit objective exceeds the number of factors indicating a profit objective, or vice versa." Id. In other words, "a decision as to a taxpayer's intent is not governed by a numerical preponderance of the factors." Golanty v. Commissioner, 72 T.C. 411, 426 (1979), aff d without published opinion, 647 F.2d 170 (9th Cir. 1981).

It was held in the Prior Decision that ULEC was not engaged in a trade or business conducted for profit during tax years 2018, 2019, and 2020. However, there is nothing in the treasury regulations that states that once an activity is deemed to not be conducted for profit for one tax year, that the designation is permanent or binding on future tax years. Thus, upon a showing of a profit motive by Petitioners, ULEC could be found to be a business conducted for profit for tax year 2021.

In the Prior Decision, it was specifically found that there were four factors against Petitioners:

- ULEC was not conducted in a businesslike manner.
    - ULEC did not maintain accurate books and records during the tax years at issue and Petitioners did not present sufficient evidence that ULEC had a bookkeeper, a written business plan, or budget or income projections.
- ULEC possessed only a history of losses.
    - ULEC never generated revenues in excess of expenses (earned a profit) for any tax year from its inception in 2010 through 2020.
- There was no indication that ULEC may earn a profit in the future.
    - Petitioners did not present sufficient evidence or compelling argument that ULEC had a reasonable expectation of profit in the future or that it was engaged

in a highly speculative venture that might explain the consistent lack of profit earned.

- Petitioners would have recognized a clear tax benefit from the losses generated by ULEC had the returns filed by Petitioners not been examined, and then changed by the Department.
    - Petitioners' returns reflected a significant reduction in their income tax burden, in part, due to ULEC's reported net losses of $32,088 for tax year 2018, $52,357 for tax year 2019, and $23,095 for tax year 2020.

There were two factors in favor of Petitioners:

1) Petitioners demonstrated expertise in the field of Education.
2) It appeared that Petitioners dedicated a considerable amount of time to ULEC.

And there were three factors that were neutral:

1) Expectation of Appreciation in Value.
2) Taxpayer's Success in Other Activities.
3) Elements of Personal Pleasure.

Ultimately, based on the totality of the circumstances, the court found that ULEC was not engaged in a business for profit during tax years 2018, 2019, and 2020. Jones v Comm'r, TAX-IIT-2204666.

In this case, Petitioners did not offer sufficient evidence showing that ULEC was conducted any differently in tax year 2021 than in tax years 2018, 2019, and 2020. Similar to the prior case, Petitioners here did not present sufficient evidence that it had a bookkeeper, a written business plan or budget or income projections prior to or in 2021. Nor did Petitioners demonstrate at trial that their books and records for tax year 2021 were prepared and maintained during that year,

rather than in subsequent years in preparation for trial. Mr. Robinson testified that his review of the tax year 2021 ULEC Schedule C showed that there was, again, no profit earned. Petitioners did not present sufficient evidence or compelling argument that ULEC had a reasonable expectation of profit in the future, or that it was engaged in a highly speculative venture that might explain the consistent lack of profit.

Finally, Petitioners did not present sufficient evidence or argument to rebut the inference that tax savings are the primary objective of their operation of ULEC. For tax year 2021, ULEC reported a net loss of $31,523, which Petitioners used to offset their W-2 income of $171,885. The resulting reduction in taxable income underscores what appears to be a continuing pattern of tax-motivated losses. In the absence of credible evidence of a bona fide profit motive, the Court finds that Petitioners continue to derive a substantial and recurring tax benefit from ULEC's losses, supporting the conclusion that the activity lacks a profit objective under I.R.C. section 183.

Further, even if Petitioners were seeking to conduct ULEC for profit, they would still be required to demonstrate that their expenses are ordinary and necessary expenses paid in connection with operating a trade or business. See I.R.C. § 162. The Department presented significant testimony regarding Petitioners' claiming of car repairs and expenses in multiple categories, deprecation beyond useful life, and the inclusion of suspected personal expenses on the ULEC Schedule C. Petitioners did not offer a sufficient explanation for these errors and failed to present sufficient evidence substantiating the claimed deductions. Accordingly, Petitioners have failed to meet their burden of demonstrating that they are entitled to claim the deductions listed on the ULEC Schedule C.

c. ULEC Real Estate

Petitioners included rental income in the amount of $7,400 for their rental home located

at 4787 Lost Colony Court on both Schedule C and on Schedule E. The Department disallowed the Schedule C related to this property, finding that it was appropriately included on schedule E. As explained in Gossain v Comm'r, 2024 Tax. Ct. Memo LEXIS 99 (Oct. 21, 2024), rental activity is a passive activity under I.R.C. section 469(c)(2), and thus must be reflected on Schedule E, unless the taxpayer is a real estate professional under I.R.C. section 469(c)(7)(B). Here, Petitioners have not presented sufficient evidence or compelling argument stating that Mr. Jones qualifies as a real estate professional. The evidence is undisputed that Petitioners are employed full time as W-2 employees. The Court agrees that this property should be reflected on Schedule E, rather than Schedule C. Thus, the Court finds that the Department's disallowance of the ULEC Real Estate Schedule C in its entirety was proper.

Further, even if Schedule C was appropriate for this rental home, testimony evidence showed that many of the expenses on this schedule suffered from the same errors and issues as the expenses on the Schedule C for ULEC. Additionally, the substantiation that Petitioners submitted as support for their utilities deduction listed the address of Petitioners' primary residence, rather than the address of the rental property. Ultimately, Petitioners failed to present sufficient evidence substantiating the claimed deductions. Thus, Petitioners have failed to meet their burden of demonstrating that they are entitled to claim the deductions listed on the ULEC Real Estate Schedule C.

d. Schedule E

I.R.C. section 469(i)(1) allows certain individuals to deduct up to $25,000 of passive activity losses and credits from rental real estate activities if they actively participate in the property and meet specific income limits. However, under I.R.C. section 469(i)(3)(A), this special allowance is phased out by 50% of the amount by which the taxpayer's modified adjusted gross

income exceeds $100,000, and is fully eliminated at $150,000.

Here, the Department presented evidence that Petitioners' federal adjusted gross income is appropriately calculated as $171,885, and Petitioners have failed to meet their burden of demonstrating that their federal adjusted gross income is less than that. Application of the phase out provision under I.R.C. section 469(i)(3)(A, eliminates Petitioners' ability to claim their Schedule E losses. As Petitioners have failed to present evidence demonstrating that the Department's calculation of Petitioners' federal adjusted gross income is in error, Petitioners have failed to present evidence that they are entitled to the Schedule E deduction on this return.

IV. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law, tax year 2016 is **DISMISSED**, Petitioners' refund claim for tax year 2021 is **DENIED**, and tax year 2022 is **DISMISSED**.

SO ORDERED, this 8th day of July, 2025

James E. O'Neal

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