

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



JUL 29 2021

HARRY S. HARRELL AND
ILEANA QUINONES HARRELL

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Petitioners,

Docket No. 2034378 Georgia Tax Tribunal Administrator

v.

ROBYN A. CRITTENDEN,¹ in her
Official Capacity as Commissioner of the
GEORGIA DEPARTMENT OF
REVENUE,

Respondent.

FINAL ORDER

I. INTRODUCTION

This matter is an appeal by Petitioners of two Official Assessment and Demand for Payment letters dated January 17, 2020 for income tax related to tax years 2016 and 2018. This case was called for a hearing before the Tribunal on June 29-30, 2021. Melody Chapman-Caskey, Esq. appeared on behalf of the Department, and Mathew Cavitch, Esq. appeared on behalf of Petitioners. Having carefully read and considered all of the evidence in the record, including witness testimony, the Respondent's determination in this matter is hereby **AFFIRMED**.

II. PROCEDURAL HISTORY

On June 4, 2020, Petitioners filed a Petition initiating this matter. Counsel for Petitioners filed a Motion for Admission Pro Hac Vice on October 23, 2020. The Tribunal granted the Motion to Appear Pro Hac Vice by Mr. Matthew P. Cavitch, Esq. on January 4, 2020. This matter was

¹ On July 1, 2021, Robyn A. Crittenden replaced David M. Curry as Commissioner of the Georgia Department of Revenue. Pursuant to O.C.G.A. § 9-11-25(d)(1), Commissioner Crittenden is automatically substituted as a party, and the case name has been updated accordingly.

called for a hearing and reset by agreement of the parties on February 2, 2021.

On February 18, 2021, Petitioners filed a Motion for Partial Summary Judgment regarding tax year 2016. On March 17, 2021, the Department Responded to Petitioner's Motion for Partial Summary Judgment and Responded to Petitioners' Statement of Facts In Support of Motion for Partial Summary Judgment. On March 28, 2021, Petitioners filed a Reply Memorandum and Reply Statement of Undisputed Facts In Support of Their Motion for Partial Summary Judgment Regarding Tax Year 2016. On April 5, 2021, the Department filed a Sur-Reply Brief, Motion to Amend Their Pleadings, and an Amended Answer. By consent of the parties, oral argument was held on April 16, 2021. On May 4, 2021, Petitioners' Motion for Partial Summary Judgment Regarding Tax Year 2016 was denied. On May 6, 2021, the Tribunal granted the Department's Motion to Amend Their Pleadings. The parties jointly submitted a Pre-Trial Order on June 16, 2021, with outlines of each party's case and contentions, fact stipulations, witnesses to be present at the trial, and stipulated exhibits.

III. STIPULATIONS OF FACT

The parties have stipulated to the following undisputed facts:

1. The first correspondence by the DOR with the Petitioners regarding tax years 2016 and 2018 was its 11/19/19 eight-page letter (Exhibit A). This included a two-page Statement of Taxpayer's Account, a two-page Notice of Proposed Assessment ("NOPA") for 2016, a two-page NOPA for 2018, and a two-page Taxpayer Bill of Rights ("TBOR").
2. The 2016 NOPA states in part: "Why you are getting this letter: You filed your return after the due date and did not pay all of the penalty and/or interest due. You did not pay the total amount of tax, interest and/or penalties due on time."
3. The 2018 NOPA states in part: "Why you are getting this letter: You did not pay the total

amount of tax, interest and/or penalties due on time.”

4. Neither NOPA includes the words “net operating loss.”
5. Each NOPA states: “If you want to protest this assessment: You have 30 days from the date of this notice to file a protest; You may file a protest at <https://gtc.dor.ga.gov>.”
6. Regarding the 2016 and 2018 NOPAs, the Petitioners engaged their accountant, Bishop Norris, CPA (the “CPA”), to respond to the DOR.
7. The CPA responded to the NOPAs by letter dated 12/10/19 (the “CPA’s Letter,” Exhibit B). The CPA’s Letter was uploaded using the DOR’s electronic portal. (See video, Exhibit C).² The CPA’s Letter did not include the DOR’s electronic protest form. The CPA’s Letter states in part: “Our clients have received no information explaining this increase in tax so, they do not agree with the assessment. We request additional information to explain the reason for the increase in tax.” The CPA’s Letter included the CPA’s power of attorney for each Petitioner, which the DOR accepted.
8. The 2016 and 2018 Official Assessments were dated 1/17/20 (Exhibit D). The Official Assessments are identical to their corresponding NOPAs regarding the “why you are getting this letter” information.
9. The Petitioners and their CPA filed a second amended return regarding tax year 2013. The DOR granted a 2013 refund of \$26,843. On 3/11/20, the DOR applied the 2013 refund of \$26,843 to the 2016 tax liability. The DOR sent a Statement of Taxpayer’s Account dated 3/18/20 (Exhibit E), reflecting the 2013 refund in a reduced balance.

² The record reflects, and the Tribunal so finds, that this letter was not filed under the electronic portal “common task” labeled “protest a proposed assessment,” but rather as an attachment to a Power of Attorney Request. Hearing Transcript pp. 71-75. According to the Department’s witness, documents attached to a Power of Attorney Request are only used for verification, in order to confirm that a representative is authorized, in the event that that representative contacts the Department. Hearing Transcript p. 92.

10. The DOR adjusted the Petitioners' 2017 tax return and imposed a penalty for 2017. Taxpayers were automatically assessed a UET penalty in 2017 when they failed to pay 70% of the estimated quarterly taxes as required.
11. Petitioners received a Statement of Taxpayer's Account dated 5/19/20 (Exhibit F), indicating that "A state tax execution has been issued" for both 2016 and 2018. A Notice of State Tax Execution was issued the following day (Exhibit G). This prompted the CPA to call the DOR.
12. On 6/1/20, the CPA called the DOR and the DOR representative explained the basis for the assessment and how it related to the NOL issue. This was the first time the DOR discussed the NOL issue with the Petitioners. (DOR Account Notes, Exhibit H).
13. The CPA filed the Tax Tribunal Petition on June 4, 2020. (Exhibit I).
14. After the filing of the Petition, the DOR and/or their representative made contact or attempted to make contact by phone with the CPA regarding the issues in the Petition on 6/26/20, 8/18/20, 9/14/20, 9/18/20, 10/9/20, 10/30/20, 11/2/20. (Exhibit H). On 2/4/21, Counsel for the taxpayers submitted a Form 500-NOL, which was subsequently processed by the Department. (Exhibit J). On 2/12/21, the DOR provided a written explanation of the current balance due and how the balance was calculated. (Exhibit K).
15. The DOR's Account Notes (Exhibit H) dated 10/22/19 state: "Reviewed and processed T[ax] Y[ear] 2016 individual return based on the original return received. Disallowed GA NOL Carryforwards."
16. Petitioners reported an NOL of \$1,898,823.00 in their federal tax return(s) for 2015, which they carried back on their federal tax returns to 2013.
17. The CPA prepared the Petitioners' Georgia tax returns and federal tax returns for all tax

years 2013 through 2018, and more.

18. The CPA did not file Form 500-NOL for the Georgia tax year 2015 at the time he filed the 2015 tax return. On 2/4/21, Petitioners' lawyer submitted a completed Form 500-NOL prepared by the CPA, during settlement negotiations (Exhibit J).
19. The 2015 Instructions for Form 500-NOL is Exhibit L.
20. The DOR revised the Instructions to Form 500-NOL in 2018 (Exhibit M).
21. The CPA stated in his declaration on 2/18/21: "I prepared the Petitioners' 2015 Georgia tax return. They had a big NOL that year, which I carried back on their federal tax return. I did not carry it back on their Georgia tax return and I did not file Form 500-NOL." As further stated in the CPA's affidavit, it was his understanding that "The 2015 Instructions to Form 500-NOL did not require its filing under these circumstances. The Instructions confirmed that 'The carryback period may be foregone and the N.O.L. carried forward.' There was no requirement that the carryforward be declared in any way on the 2015 return. In addition, the Commerce Clearing House tax preparation software I used did not have any alert that a special filing needed to be made, which in my reading confirmed the 2015 Instructions." The CPA's declaration is Exhibit P.³
22. For tax year 2016, Petitioners' Georgia tax return(s) claimed a NOL of \$1,890,347.00, which the DOR disallowed. This was a carryforward from a 2015 NOL, which the Petitioners reported on their 2015 federal tax return, and carried back to 2013 on their federal tax return(s). The Petitioners did not carryback the 2015 NOL on their Georgia tax return(s). Instead, the Petitioners carried the 2015 NOL forward to 2016. If Petitioners had carried back the 2015 NOL to their Georgia tax returns for 2013 they would have used up

³ At the hearing on this matter, when asked the question, "Did you read the Georgia tax statute?", the CPA replied, "I did not." Hearing Transcript p. 47.

\$1,131,794.00 of the 2015 NOL, leaving \$758,553.00 as an NOL deduction in 2016.

23. The 2016 Georgia tax return due date for those businesses or individuals affected by Hurricane Irma who had a valid extension to file their 2016 return that was due to run out on Oct. 16, 2017 was extended to January 31, 2018. Exhibit N is the Georgia DOR announcement of relief dated September 19, 2017. Exhibit O is the IRS announcement of relief dated September 19, 2017. The Petitioners' 2016 Georgia tax return was filed electronically by the CPA on February 1, 2018.

24. If the NOL issue is considered, then the following calculations ensue:

- a. For 2016, the Petitioners' original Georgia return shows taxable income of \$277,382.00 with an original tax due of \$16,383.00. Petitioners had a withholding of \$6,115.00 and made a return payment of \$18,999.00. After DOR disallowed the NOL, the Georgia Taxable income increased to \$2,167,729.00 and their tax liability increased to \$129,804.00. The Official Assessment was calculated by taking the increased tax liability of \$129,804.00 and subtracting the withholding of \$6,115.00 and the return payment of \$18,999.00, to reach the amount owed of: \$104,690.00.
- b. After DOR processed the 2015 Form 500-NOL, the amount owed for 2016 was reduced to: \$32,334.00 of tax owed, with \$12,833.22 in penalty, and \$10,157.39 in interest.⁴ The verified NOL was \$758,553.00. After allowance of the verified NOL, the taxable income decreased from \$2,167,729.00 to \$1,409,176.00. Tax decreased from \$129,804.00 to \$84,291.00. The \$84,291.00 amount is reduced by the withholding credit of \$6,115.00, \$18,999.00 of return payment, and the \$26,843.00,

⁴ Due to a penalty waiver that was granted prior to the hearing, the amounts the Department is seeking for the Assessment were reduced, per counsel's opening statement at the hearing. The tax balance for 2016 is \$32,334.00 and \$10,998.09 in interest, totaling \$43,332.09 for tax year 2016. The Department confirmed at the hearing that it is no longer seeking any penalties in this matter.

which is the 2013 refund offset.

- c. [This paragraph has been removed because the parties agreed at the hearing that penalties have been waived.]
- d. The Petitioners' tax liability for 2016 is reduced by the \$26,843.00 refund dated 3/11/20.
- e. For 2018, the remaining tax liability is \$812.53.
- f. [This paragraph has been removed because the parties agreed at the hearing that penalties have been waived.]
- g. For 2018, the interest the DOR calculates is due is \$5,164.08. This interest includes interest on the tax balance due, \$118,833.53, before Petitioner's payment was made, related to this tax year because the payment was made late.⁵
- h. Interest on all of the above calculable under law.
- i. For more information on the above calculations, please see the Adjusted Balance Summary for period: 2016-2018, prepared by the DOR and not confirmed by the Petitioners. (Exhibit Q).

25. The parties agreed that all exhibits attached to the stipulated facts or referenced there and herein are a true and correct copy of the document and are authentic.

IV. CONCLUSIONS OF LAW

1. Burden of Proof

When appealing an Assessment, the Petitioners have the burden of proof. "[T]he burden of proof is on the taxpayer from the beginning to file a correct return and that burden remains on him

⁵ As with the 2016 tax year, the Department also granted a penalty waiver for the tax year of 2018. The Department is only seeking \$4,027.78 interest balance for the 2018 tax year, per counsel for the Department's opening statement.

to prove the correctness of his return and to show clear and specific error or unreasonableness in the Commissioner's deficiency assessment.” *Undercofler v. White*, 113 Ga. App. 853, 855 (1966). Further, Ga. Comp. R. & Regs. 616-1-3-.11(c) states, “Except as otherwise may be provided by law, the burden of proof in all proceedings before the Tax Tribunal shall be upon the petitioner.”

2. Alleged Violations of the Taxpayer’s Bill of Rights

Petitioners argue that the five following actions by Respondents violated the Taxpayer’s Bill of Rights, O.C.G.A. § 48-1-9: 1) Respondents did not state the issue of “net operating loss disallowance” on the Official Assessment; 2) Respondents did not respond specifically to Petitioners’ December 12, 2019 letter; 3) it would be wrong for the Department to purposely delay disclosing an NOL issue in order to have the statute of limitations run on an amended return; 4) the Department failed to correctly calculate the proper NOL for 2016; and 5) Respondents’ Statement of Accounts did not clearly specify that the 2013 refund was offset to the 2016 tax year. Ultimately these arguments fail, because Petitioners have been unable to cite to authority that a violation of the Taxpayer’s Bill of Rights results in an abatement of Respondent’s assessment.

In his closing remarks, counsel for Petitioners argued “the Department had a duty to identify the NOL issue in its notice and official assessment. That is required by the taxpayer bill of rights...” Hearing Transcript p. 194. This issue was addressed in Petitioner’s Partial Motion for Summary Judgment, in which Petitioners requested that the Tribunal “rule that no assessment can be made against Petitioners for 2016 relating to their deduction in 2016 of a net operating loss.” Petitioners’ Motion for Partial Summary Judgment Regarding Tax Year 2016, p.1. Petitioners argued that their motion should be granted because the Department cannot introduce a new issue at trial that was not identified in the Official Assessment. *Id.* In the May 4, 2021 Order, the Tribunal held, “it is not clear that these facts support the Petitioners' legal contentions that the Department

may not introduce new issues that were not identified in the Official Assessment... Further, Petitioners have failed to justify or provide any authority that these supposed defects mandate the relief sought: namely, that the Tribunal not consider any net operating loss issue for tax year 2016, which would result in the setting aside of the near entirety of the assessment against Petitioners for tax year 2016.” p. 2. The facts as presented at the hearing do not differ significantly enough from those presented by the parties in the briefing regarding Petitioner’s Partial Motion for Summary Judgement as to change the Tribunal’s determination on this issue. While the 2016 Official Assessment did not include the words “net operating loss,” Petitioners cannot provide any authority that the Department was required to identify this in its Assessments. Petitioners are correct that the Taxpayer’s Bill of Rights states, “Rights of a Taxpayer You have the right to a clear explanation of... [t]he basis of an assessment of additional taxes, interest, and penalties...” The Department provided an explanation of the assessment to the taxpayers’ representative on June 1, 2020, prior to the filing of a hearing request. The Tribunal finds that the June 1, 2020 communication by the Department and subsequent communication by the Department to the taxpayers’ representatives shows that the taxpayers’ rights were not violated, and they were provided a clear explanation of the assessment. Further, Petitioners have been unable to provide any authority that, even if the Department had violated the Taxpayer’s Bill of Rights, this would mandate the setting aside of the near entirety of the assessment against Petitioners for tax year 2016.

In Petitioners’ closing statement, counsel argued, “the DOR, quote, is obligated to resolve tax controversies fairly and equitably at the administrative level whenever possible, unquote. This cannot be done unless the notice of proposed assessment identifies all the issues.” Hearing Transcript p. 194. As with the previous argument, Petitioners have been unable to provide any

authority supporting their contention that failure to identify all issues in the assessment results in the setting aside of the Department's assessment. Further, the Tribunal finds that the Department has not violated the Taxpayer's Bill of Rights because the evidence shows that the Department did work to try and resolve the controversy at the administrative level. Specifically, the Tribunal notes the efforts of Mr. Hamilton Russ and Ms. Raneka Danner in contacting the Petitioners multiple times and processing the 2015 Form 500-NOL, which resulted in a reduction of amount sought by the Department.

Petitioners further argue that "[their CPA's] 12-10-19 letter was a protest letter." Hearing Transcript p. 195. The Tribunal finds that the December 10, 2019 letter is not a protest letter for the following reasons: 1) the letter was not filed as a protest letter, but rather an attachment to a Power of Attorney Request, and 2) the letter did not state that it was a protest letter. However, regardless of whether the letter was a protest letter, per the Taxpayer's Bill of Rights, taxpayers "have the right to prompt and accurate responses from the Department to questions and requests for tax assistance." The Taxpayer's Bill of Rights provides no guidance on whether failing to respond to the December 10, 2019 letter but explaining the basis of the assessment to Petitioners' representative on June 1, 2020, constitutes a violation of the Taxpayer's Bill of Rights. However, it is not necessary for the Tribunal to reach a determination on that issue because, even if the Department failed to provide prompt responses as required, the Petitioners have failed to provide any authority supporting their contention that such failure results in the setting aside of the Department's assessment.

Next Petitioners argue, "it would be wrong for the Department to purposely delay disclosing an NOL issue in order to have the statute of limitations run on an amended return." Hearing Transcript p. 198-199. Counsel for the Petitioners admits "I cannot conclusively prove

today that this [the Department's timing in disallowing the NOL] was deliberate, but I can observe that this was a remarkable coincidence." *Id.* at 199. Since Petitioners admit that the record lacks evidence to support this allegation, and Petitioners have the burden of proof, the Tribunal holds that the Department did not purposefully delay disclosing the NOL issue to allow the statute of limitations to run on an amended return.

Next, Petitioners argue that "the Department had a duty to try to correctly calculate the proper NOL for 2016." Hearing Transcript p. 199. The Tribunal is not persuaded by Petitioner's logic on this point. It is undisputed that Petitioners did not carry back the net operating loss in 2015 on their Georgia return, as they should have under Georgia law because they carried it back on their federal returns. Fact Stipulations ¶ 21; *see* O.C.G.A. § 48-7-21 and 27. The Department's representative testimony confirmed that the Department cannot carry back a net operating loss when the taxpayer selects to carry it forward. Hearing Transcript p. 153. Mr. Russ further testified that "the taxpayer is responsible for preparing the return, and the Department tries to verify that the information is accurate. So the Department does not amend the returns for any taxpayer." *Id.* As such, the Tribunal holds that the Department's actions in disallowing the unverified net operating loss did not violate the Taxpayer's Bill of Rights.

Finally, in earlier briefing, Petitioners argued that Respondents' Statement of Accounts did not clearly specify that the 2013 refund was offset to the 2016 tax year. Petitioners' Reply Memorandum in Support of Their Motion for Partial Summary Judgment, p. 12. Georgia Code Section 48-2-35(d) states in part, "In the event any taxpayer's claim for refund is approved by the commissioner or the commissioner's delegate and the taxpayer has not paid other state taxes which have become due, the commissioner or department may offset any existing liabilities against the refund." Code Section 48-2-35 does not provide any particular notice requirements to the taxpayer

regarding a refund offset. Although Petitioners contend that a Statement of Taxpayer's Accounts is insufficient to satisfy the Taxpayer's Bill of Rights, no legal authority has been cited to support this legal conclusion. Therefore, the Tribunal holds that the Department properly offset Petitioner's tax refund to their outstanding tax liability under O.C.G.A. § 48-2-35 and accompanying regulations.

In summary, the evidence presented at trial was insufficient to change the earlier finding of the Tribunal from the May 4, 2021 Order: "it is not clear that these facts support the Petitioners' legal contentions that the Department may not introduce new issues that were not identified in the Official Assessment... Further, Petitioners have failed to justify or provide any authority that these supposed defects mandate the relief sought: namely, that the Tribunal not consider any net operating loss issue for tax year 2016, which would result in the setting aside of the near entirety of the assessment against Petitioners for tax year 2016." p. 2.

3. Jurisdiction Issues

Petitioners next argue "the Court's jurisdiction is limited to the issues identified by the Department in its official assessment." Hearing Transcript p. 192. The Tribunal's jurisdiction is outlined in O.C.G.A. § 50-13A-9, which states in part "...any person may petition the tribunal for relief as set forth in Code Sections...48-2-59..." (Code 48-2-59(a) reads in part "either party may appeal from any order, ruling, or finding of the commissioner to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50..."). Because the present matter concerns the appeal of a finding of the Commissioner, the Tribunal has proper jurisdiction to hear this appeal and is not limited to specific issues identified in the Official Assessments and Demands for Payment for tax years 2016 and 2018.

Petitioners seek for this Court to: “Please abate the entire assessment, as Mr. Russ conceded, on the grounds that the taxpayer bill of rights was violated in huge ways, rising to the level of a denial of due process.” Per Tribunal rule 616-1-3-.21, “Whenever any party raises issues under either the Georgia or United States Constitution, the sections of any laws or rules constitutionally challenged and any constitutional provisions such laws or rules are alleged to violate must be stated with specificity.” Petitioners have not stated specifically what constitutional due process challenge they raise. Further, “a Tribunal Judge is not authorized to resolve constitutional challenges to statutes or rules.” *Id.*

Under Georgia Law, “due process ‘is satisfied if a party has reasonable notice and opportunity to be heard, and to present its claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.’” *S&S Towing & Recovery, Ltd. v. Charnota*, 309 Ga. 117, 119, (2020). Here, Petitioners were able to receive notice and take advantage of their opportunity to be heard by appealing the assessment to the Georgia Tax Tribunal to present their claim. While the Tribunal is unable to make a determination on whether Petitioners’ due process rights have been violated, due to the jurisdictional constraints of Tribunal Rule 616-1-3-.21, the Tribunal finds that based on the evidence, Petitioners have had reasonable notice and an opportunity to be heard.

Regarding notice, Petitioners admit receiving the Notice of Proposed Assessment and three Statements of Taxpayer Accounts. Hearing Transcript p. 14-18. Further, Petitioner Harry S. Harrell admitted that the mailing address listed on the Official Assessment was the appropriate address for Petitioners at that time. Hearing Transcript p. 24. However, Petitioner testified that he did not receive the Official Assessment and Demand for Payment. Hearing Transcript p. 17. Georgia law does not require the Department to send Official Assessments via certified mail or with a return

receipt requested.⁶ The Tribunal finds that Petitioners still had notice and the full opportunity to be heard by appealing the assessment to this Court and therefore the Taxpayer's Bill of Rights was not violated, even if there was a mailing error that prevented Petitioners from receiving the January 17, 2020 Official Assessment and Demand for Payment letters.

4. Estoppel

Petitioners further argue that "Bishop Norris relied on the Department's 2015 instructions to form 500-NOL when he did not file form 500-NOL in 2015 and when he chose to carry forward the entire NOL." Hearing Transcript p. 201. Petitioners further argue, "All of this leads to the doctrine of estoppel and the Petitioners' brief about the line of cases in which revenue agencies are estopped from collecting taxes when their formal instructions misstate the law and the taxpayers rely on the instructions to their detriment." Hearing Transcript p. 204.

Notwithstanding the fact that the Tribunal is not convinced that the formal instructions in fact misstate the law, it is nonetheless undisputed that Petitioners provided the 2015 Georgia Form 500-NOL to the Department on February 4, 2021, and that the Department processed the Form, which reduced the amount of the Assessment. Stipulated Facts ¶ 14. Further, Petitioner's CPA testified that at the time he thought carrying the 2015 NOL forward was most "advantageous" for the taxpayers. Hearing Transcript p. 58. Petitioner's estoppel arguments are misplaced. This Court holds that the Department has permitted a carryback to 2013, but that the refund that would have been due to the Petitioners is properly barred by the statute of limitations under O.C.G.A. § 48-2-35. Hearing Transcript pp. 162-168. Petitioners could have carried back the NOL and filed an

⁶ A notice of assessment by the commissioner or his or her delegate of any tax or license fee shall be sufficiently served upon the person assessed if it is sent by registered or certified or first-class mail or by statutory overnight delivery to the person at his or her address as shown on the records of the Department. O.C.G.A. § 48-2-45(b).

amended return within the statute of limitations, but chose not to. Therefore, they are unable to recoup the statute barred refund.

5. Net Operating Loss

For tax year 2016, Petitioners' Georgia tax return(s) claimed a NOL of \$1,890,347.00, which the DOR disallowed. Fact Stipulations ¶ 22. Initially Petitioners did not carry back the 2015 NOL on their Georgia tax return, even though they carried back their NOL on their federal return. Fact Stipulations ¶ 16, 21. However, Petitioners were required to carry back their NOL in 2015 because they carried it back on their federal return. *See* O.C.G.A. § 48-7-21 and 27. After DOR processed the 2015 Form 500-NOL, the verified NOL was \$758,553.00. Fact Stipulations ¶ 24(b). This Court finds the statute of limitations properly bars the remainder of Petitioner's refund that could have resulted if Petitioners had carried the net operating loss back to 2013 within the allotted time. Therefore, this Court holds the Department's 2016 tax year assessment be upheld in the amount of \$32,334.00 in tax and \$10,998.09 in interest due.

6. 2018 Interest

Petitioners have failed to present any evidence as to why they do not owe the \$4,027.78 interest. It is undisputed that this "includes interest on the tax balance due, \$118,833.53, before Petitioner's payment was made, related to this tax year because the payment was made late." Fact Stipulations ¶ 24(g). As explained by the Department representative, Mr. Russ, the interest and tax owed for the 2018 tax period was reduced following the penalty waiver approval for the 2017 tax period, which created a credit, which was applied to the 2018 tax period, wiping out the tax balance and reducing the interest balance as an offset. Hearing Transcript p. 162. Given that Petitioners paid their 2018 income taxes late, this Court holds that the Department's assessment be upheld

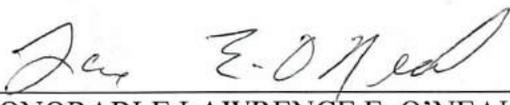
under O.C.G.A. § 48-7-81 regarding the 2018 interest due in the amount of \$4,027.78.

V. CONCLUSION

The picture that emerges is one of a string of errors by Petitioners and their tax preparer, and of the Department attempting to provide Petitioners with the greatest tax benefit legally permissible. The taxpayers' attempts to shift blame onto the Department do not relieve them of the responsibility to correctly and timely file their tax returns.

For all the forgoing reasons, the Respondent's determination in this matter is hereby **AFFIRMED**. Petitioners are **ORDERED** to pay a total of \$47,359.87 including \$4,027.78 interest balance for tax year 2018, \$32,334.00 in tax for 2016, and \$10,998.09 in interest for 2016 to the Department of Revenue.

SO ORDERED this 29th day of July, 2021.



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