



FEB 27 2024

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

IPHIGENIA MCGRUE,

Petitioner,

v.

COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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Clara Davis, Tax Tribunal Administrator

DOCKET NOS. 1722289, 1722291
CONSOLIDATED

DECISION - 2024-2 Ga. Tax Tribunal, February 27, 2024

I. INTRODUCTION

Iphigenia McGrue (“Petitioner”) challenges the Commissioner of the Georgia Department of Revenue’s (“Respondent”) jeopardy assessments for individual income taxes in tax years 2009, 2010, 2011, 2012, 2013, and 2014. The hearing in this matter was held on January 22, 2024. Petitioner was represented by Frank Podesta, Esq. Respondent was represented by the Honorable Christopher M. Carr, Attorney General of the State of Georgia, and Ronald J. Stay, Esq., and Mitchell P. Watkins, Esq., Senior Assistant Attorneys General. For the reasons stated herein, the jeopardy assessments and state tax executions for each of the tax years are **AFFIRMED**.

II. BACKGROUND

A. The “Checks”

According to the Department’s records, Petitioner first appeared at the customer service window at 1800 Century Center Boulevard on July 25, 2012. Respondent’s Exhibit 23. She presented what at first blush appeared to be a check for \$15,000 to pay off her 2011 individual income tax liability. Id. Petitioner was informed that the Department already owed her a refund from another check which cleared and had paid off her 2009 and 2010 income tax liability, as well

as the sales tax she owed on the purchase of a 2011 Porsche Cayenne. Id. No problem; Petitioner instructed the clerk to deposit the check and send her the refund. Id. “[Petitioner] gave me [the clerk] the check & left the office.” Id. “Upon returning to my desk I noticed that the payment look[ed] a little suspicious so I called Chase Bank . . . [who] acted surprise[d] & stated that that account had been closed for awhile.” Id. The clerk notified her managers and informed them that Petitioner had now submitted three dishonored checks: one for \$53,125.18 on June 14, 2012; another for \$60,000 on July 11, 2012; and now a third for \$15,000, with instructions to refund any overpayment of tax owed to Petitioner. Id. On August 10, Petitioner reappeared at the Department and submitted a fourth check, which ultimately proved invalid, for \$14,000¹. Id.

B. The Condominium

In November of 2011, Petitioner purchased a penthouse on the 44th floor of The Atlantic, 270 17th Street NW, Unit 4406, for \$518,700. *See Jackson v. Wellington & Assocs., LLC*, 389 F. Supp. 3d 1199, 1203 (N.D. Ga. 2019). Respondent’s Exhibit 35. However, Petitioner missed a partial installment of 2012 city and county ad valorem taxes which totaled \$1,304.44. Lien Book 2871, page 11 (Atlanta) and Lien Book 2906, page 486 (Fulton), Fulton County, Georgia records. Accordingly, on September 1, 2015, the Sheriff of Fulton County conducted a tax sale of the \$983.38 City of Atlanta tax *fi.fa.*, which an investor purchased on the courthouse steps for \$420,000. Deed Book 55449, page 643, Fulton County, Georgia records. After deducting the amount of the Fulton County *fi.fa.* and costs the Sheriff interplead \$418,145.57 in Fulton Superior Court, which the United States of America removed to the United States District Court for the Northern District of Georgia on November 2, 2016. *See Jackson v. Wellington & Assocs., LLC*, 389 F. Supp. 3d at 1202. Mortgagor PHH Mortgage Corporation, under the statutory regime in

¹ Respondent submitted copies of each of the four invalid checks, totaling \$141,070.34. Respondent’s Exhibit 27.

effect at the time, ultimately was forced to tender some \$520,043.91 to maintain its lien priority, essentially purchasing the property twice. *See id.*, 389 F. Supp. 3d at 1203. At the conclusion of this action, the District Court awarded the United States \$72,160.70 for Petitioner's federal income tax liens and awarded Respondent \$196,326.09 plus interest for three state tax executions covering Petitioner's state income tax liabilities for tax years 2009, 2010, 2011, 2012, and 2013². *See Jackson v. Wellington*, 2019 U.S. Dist. LEXIS 246765, **6-7 (N.D. Ga. Sept. 9, 2019). The Court further awarded \$149,129.03 to Petitioner's nominee corporation Wellington & Associates, LLC, to which Petitioner had quitclaimed the property on August 1, 2012³. *See id.*; *see also* Book 51959, page 20, Fulton County, Georgia records.

C. The Guilty Plea

Meanwhile, in 2016 Petitioner was indicted in the United States District Court for the Northern District of Georgia for conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. Respondent's Exhibit 40. The indictment covered four months of Petitioner's activity – from September 19, 2013 until January 22, 2014, and alleged she defrauded five federally insured financial institutions: Bank of America, SunTrust, Best Bank, Regions Bank, and Wells Fargo. *Id.* According to the indictment, Petitioner created bogus checks drawn against stolen accounts, to be made payable to fictitious companies in amounts exceeding tens of thousands of dollars. *Id.* Before the financial institutions could discover that the checks were bogus, Petitioner withdrew the money and deposited the monies to yet other accounts at other banks. *Id.*

On December 1, 2016, Petitioner pled guilty to the crimes charged; in her plea colloquy before the Chief Judge, Petitioner, then 39 years old, agreed with the recitation of key facts

² Respondent ultimately received \$204,731.37. Respondent's Exhibit 23.

³ On January 14, 2022, Wellington & Associates, LLC, quitclaimed the property to Global Resource Group, LLC, whose managing member is Petitioner's son. Deed Book 65126, page 217, Fulton County, Georgia records.

supporting the indictment. Id. The United States Attorney informed the Court that the investigation of Petitioner began with some unrelated mortgage loans that Petitioner was involved with. Id. Counsel for Petitioner indicated that restitution for Bank of America and SunTrust alone would be approximately \$206,152.71. Id. The United States Attorney also stated that in September 2013, Petitioner opened a commercial bank account at Best Bank in the name of Quality Care Cleaning Service, deposited ten checks totaling over \$530,000, and withdrew the funds before the bank discovered that the checks were fraudulent. Id.

III. PROCEDURAL HISTORY

On January 19, 2017, Petitioner filed petitions with the Tribunal challenging two state tax executions. Respondent's Exhibit 29. In her first petition, Docket No. 1722289, Petitioner provided a social security number ending in 1764, and indicated that "[t]ax returns for years 2009, 2010, 2011 and 2012 were originally filed with incorrect data which substantially overstated taxable income. Subsequently filed amended returns containing correct data and much lower taxable income were never accepted by [Respondent]." Id. Petitioner attached a copy of State Tax Execution, REV 160471627, filed with the Clerk of Fulton County Superior Court and recorded on October 24, 2016, in the amount of \$67,813.88 for individual income tax for tax years 2009, 2010, 2011, and 2012. Id.

In Petitioner's second petition, Docket No. 172291, Petitioner challenged State Tax Execution, REV 160497344, issued to her under a social security number which ended in 0040 in the amount of \$86,233.91⁴. Respondent's Exhibit 29. In her Petition, Petitioner indicated that she filed in Georgia for tax years 2010, 2011 and 2012 "showing no income tax liability due for each

⁴ In 2012, when asked by a representative of the Department why she used two social security numbers, Petitioner claimed that she had changed numbers because she was a victim of domestic violence and that her current social security number ending in 1764 was her current number. Respondent's Exhibit 23.

year.” Id. Petitioner further claimed that she had filed in states other than Georgia for tax years 2013 and 2014. Id. Thus, as originally filed in 2017, Petitioner’s refund claims under both of her social security numbers totaled \$154,047.79.

After the conclusion of the federal interpleader, but during the pendency of this case, on June 3, 2020, Petitioner additionally submitted nine claims for refund to the Department. Respondent’s Exhibit 41. For her social security number ending in 0040, Petitioner requested refunds of income tax paid in tax years 2010, 2011, 2012, 2013, and 2014 totaling \$90,694.36. Id. For her social security number ending in 1764, Petitioner requested refunds of income tax paid in tax years 2009, 2010, 2011, and 2012 totaling \$114,027.01. Id. Thus, in 2020, Petitioner’s refund claims under both of her social security numbers totaled \$204,721.37.

Petitioner submitted Forms 1040X, Amended U.S. Individual Income Tax Return, along with her refund claims which showed that Petitioner had no taxable income under social security number 1764 in 2009, \$4,720 taxable income in 2010⁵, and \$57,636 in taxable income in 2011. Respondent’s Exhibit 41. Regarding her social security number 0040, Petitioner submitted Forms 1040X, Amended U.S. Individual Income Tax Return, along with her refund claims which showed that Petitioner had an adjusted gross income of \$11,597 in tax year 2013, and \$11,779 in tax year 2014. Id.

IV. FINDINGS OF FACT

A. Tax Year 2009

On November 4, 2010, Respondent received a Georgia Form 500, Individual Tax Return, for tax year 2009 which Petitioner submitted using a social security number ending in 0040.

⁵ Petitioner submitted two Forms 1040X for tax year 2010 for social security number 1764 with her refund claims; one indicated Petitioner owed \$1,140, the second indicated Petitioner owed no tax. Respondent’s Exhibit 41.

Respondent's Exhibit 5. Petitioner filed as head of household with one dependent and claimed federal adjusted gross income of -\$1,092,598. Id.

On March 13, 2012, Respondent received a Georgia Form 500, Individual Tax Return, for tax year 2009 which Petitioner submitted using a social security number ending in 1764⁶. Respondent's Exhibit 9. Petitioner filed as single and claimed a federal adjusted gross income of \$258,153. Id. Petitioner indicated that she owed \$14,999. Id.

On September 12, 2012, Respondent received a Georgia Form 500X, Amended Individual Income Tax Return, for tax year 2009 which Petitioner submitted using a social security number ending in 1764. Respondent's Exhibit 9. Petitioner indicated that her federal adjusted gross income was \$155,653, and not \$258,153 as originally filed; thus, Petitioner claimed that she was due a refund of \$6,150 – the difference between the amount of tax she allegedly paid with the original return and the amended amount due⁷. Id.

On September 9, 2012, Petitioner signed an amended Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, a sole member LLC, which Petitioner indicated had \$155,603 of federal ordinary income in tax year 2009. Respondent's Exhibit 22.

On January 29, 2015, the Department received an amended Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, of which Petitioner was the sole member. Respondent's Exhibit 22. This return indicated that Cisco Industries had no income in tax year 2009. Id.

At the hearing held on January 22, 2024, Petitioner tendered a Georgia Form 500X,

⁶ Although received by the Department on November 4, 2012, Petitioner signed this form on July 20, 2011. Respondent's Exhibit 9.

⁷ The federal form 1040X, Amended U.S. Individual Income Tax Return, included with the amended Georgia form indicated that she was owed a refund of \$32,859 from the federal government – the difference between \$67,544 Petitioner allegedly paid with her original return. Respondent's Exhibit 9.

Amended Individual Tax Return, for tax year 2009 which Petitioner signed on January 26, 2015 and submitted using a social security number ending in 1764. Petitioner's Exhibit 2. Petitioner indicated that her federal adjusted gross income was \$0, and not \$155,608.00 "as originally reported." Id.

B. Tax Year 2010

On March 12, 2012, Respondent received a Georgia Form 500, Individual Tax Return, for tax year 2010 which Petitioner submitted using a social security number ending in 0040. Respondent's Exhibit 6. Petitioner filed as head of household with one dependent and claimed federal adjusted gross income of -\$1,428,862. Id.

On March 13, 2012, Respondent received a Georgia Form 500, Individual Income Tax Return, for tax year 2010 which Petitioner submitted using a social security number ending in 1764⁸. Respondent's Exhibit 11. Petitioner filed as single and claimed federal adjusted gross income of \$268,430. Id. Petitioner indicated that she owed \$16,271. Id.

On September 9, 2012, Petitioner signed a Georgia Form 500, Individual Income Tax Return, for tax year 2010 which Petitioner submitted using a social security number ending in 1764⁹. Respondent's Exhibit 10. Petitioner filed as single and claimed federal adjusted gross income of \$165,930. Id. Petitioner indicated that she owed \$9,863. Id.

On September 9, 2012, Petitioner signed an amended Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, a sole member LLC, which indicated \$165,930 of federal ordinary income in tax year 2010. Respondent's Exhibit 22.

On January 29, 2015, the Department received an amended Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, of which Petitioner was the sole member.

⁸ Petitioner signed this form on July 20, 2011. Respondent's Exhibit 11.

⁹ The date which the Department received this form is not indicated. Respondent's Exhibit 10.

Respondent's Exhibit 22. This return indicated that Cisco Industries had \$4,720 in income in tax year 2010. Id.

At the January 22, 2024 hearing, Petitioner tendered a Georgia Form 500X, Amended Individual Tax Return, for tax year 2010 which Petitioner signed on January 26, 2015 and submitted using a social security number ending in 1764. Petitioner's Exhibit 2. Petitioner indicated that her federal adjusted gross income was \$4,720.00, not \$165,930.00 as originally reported. Id. Thus, Petitioner indicated that she owed no tax for this period. Id.

C. Tax Year 2011

Respondent received a Georgia Form 500, Individual Income Tax Return, for tax year 2011 which Petitioner submitted using a social security number ending in 1764¹⁰. Respondent's Exhibit 13. Petitioner filed as single and claimed a federal adjusted gross income of \$242,624. Id. Petitioner indicated that she owed \$12,262. Id.

On September 12, 2012, Respondent received a Georgia Form 500X, Amended Individual Income Tax Return, for tax year 2011 which Petitioner submitted using a social security number ending in 1764. Respondent's Exhibit 13. Petitioner indicated that her federal adjusted gross income was \$140,124; thus, Petitioner claimed she was due a refund of \$5,897 – the difference between the \$12,262 she allegedly paid with her original return. Id.

On September 12, 2012, Respondent received a Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, for tax year 2011. Respondent's Exhibit 22. Petitioner indicated that Cisco had \$140,113 in federal ordinary income. Id.

On January 29, 2015, the Department received an amended Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, of which Petitioner was the sole member.

¹⁰ The date which the Department received this form is not indicated. Respondent's Exhibit 13.

Respondent's Exhibit 22. This return indicated that Cisco Industries had \$67,136 in income in tax year 2011. Id.

At the January 22, 2024 hearing, Petitioner tendered a Georgia Form 500X, Amended Individual Tax Return, for tax year 2011 which Petitioner signed on January 26, 2015 and submitted using a social security number ending in 1764. Petitioner's Exhibit 2. Petitioner indicated that her Georgia taxable income was \$62,136, and that on October 1, 2012, she had paid \$20,000 under notice of levy. Id. Accordingly, she requested a refund of \$16,461 for this period. Id.

D. Tax Year 2012

Respondent received a Georgia Form 500, Individual Income Tax Return, for tax year 2012 which Petitioner submitted using a social security number ending in 1764¹¹. Respondent's Exhibit 14. Petitioner filed as single and claimed a federal adjusted gross income of \$41,615. Id.

On January 29, 2015, Respondent received a Georgia Form 500X, Amended Individual Income Tax Return, for tax year 2012 which Petitioner submitted using a social security number ending in 1764. Respondent's Exhibit 14. Petitioner indicated that her federal adjusted gross income was \$33,885; thus Petitioner claimed she owed \$1,541. Id.

On January 29, 2015, the Department received an amended Georgia Form 600S, Corporation Tax Return, for Cisco Industries, LLC, for tax year 2012. Respondent's Exhibit 22. This return indicated that Cisco Industries had \$33,885 in income in tax year 2012. Id.

E. Tax Years 2013 and 2014

Petitioner failed to timely file state income tax returns under either social security number for tax years 2013 and 2014.

¹¹ The form is dated April 15, 2013; the date which the Department received this form is not indicated. Respondent's Exhibit 14.

F. Jeopardy Assessments

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID L1033086736, to Petitioner under her social security number ending in 0040 for individual income tax for tax year 2010 for \$9,810.07¹². Respondent's Exhibit 8.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID L1531134608, to Petitioner under her social security number ending in 0040 for individual income tax for tax year 2011 for \$27,276.72¹³. Respondent's Exhibit 8.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID L0060008208, to Petitioner under her social security number ending in 0040 for individual income tax for tax year 2012 for \$26,060.80¹⁴. Respondent's Exhibit 8.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID L0121848464, to Petitioner under her social security number ending in 0040 for individual income tax for tax year 2013 for \$5,914.59¹⁵. Respondent's Exhibit 8.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID L0520144016, to Petitioner under her social security number ending in 0040 for individual income tax for tax year 2014 for \$8,021.68¹⁶. Respondent's Exhibit 8.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID 0596879120, to Petitioner under her social security number ending in 1764 for individual

¹² Tax for this period was \$4,633; interest \$3,018.87; and penalty \$2,158.20. Respondent's Exhibit 8.

¹³ Tax for this period was \$15,153; interest \$8,055.35; and penalty \$4,068.37. Respondent's Exhibit 8.

¹⁴ Tax for this period was \$15,298; interest \$6,296.66; and penalty \$4,466.14. Respondent's Exhibit 8.

¹⁵ Tax for this period was \$3,735; interest \$1,089.13; and penalty \$1,090.46. Respondent's Exhibit 8.

¹⁶ Tax for this period was \$5,485; interest \$941.23; and penalty \$1,595.45. Respondent's Exhibit 8.

income tax for tax year 2009 for \$3,124.98¹⁷. Respondent's Exhibit 9.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID 1670620944, to Petitioner under her social security number ending in 1764 for individual income tax for tax year 2010 for \$11,157.34¹⁸. Respondent's Exhibit 12.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID L1193526416, to Petitioner under her social security number ending in 1764 for individual income tax for tax year 2011 for \$42,773.41¹⁹. Respondent's Exhibit 9.

On October 20, 2016, Respondent issued a jeopardy assessment and demand for payment, Letter ID 1657183376, to Petitioner under her social security number ending in 1764 for individual income tax for tax year 2012 for \$4,264.81²⁰. Respondent's Exhibit 14.

G. Tax Executions

On November 1, 2012, the Department recorded a state tax execution, REV 120176653, for Petitioner under her social security number ending in 1764 for tax years 2009 and 2010. Respondent's Exhibit 28; Lien Book 2488, page 712, Fulton County, Georgia records. The total due for these two tax years was \$23,520.88. Id.

On October 21, 2016, the Department issued a state tax execution, REV 160497344, to Petitioner under her social ending in 0040 for tax years 2010, 2011, 2012, 2013, and 2014. Respondent's Exhibit 28; Docket No. 172291 petition; Lien Book 3717, page 386, Fulton County, Georgia records. The total due for all five tax years was \$86,233.91; when rerecorded on January

¹⁷ Tax for this period was \$0; interest \$1,845; and penalty \$1,279.98. Respondent's Exhibit 9.

¹⁸ Tax for this period was \$6,150; interest \$4,007.34; and penalty \$1,000. Respondent's Exhibit 12.

¹⁹ Tax for this period was \$23,447; interest \$12,464.41; and penalty \$6,862. Respondent's Exhibit 9.

²⁰ Tax for this period was \$2,007; interest \$826.09; and penalty \$1,431.72. Respondent's Exhibit 14.

1, 2018, the total due was \$89,441.62. Id.; Lien Book 4062, page 605, Fulton County, Georgia records.

On October 21, 2016, the Department issued a state tax execution, REV 160471627, to Petitioner under her social ending in 1764 for tax years 2009, 2010, 2011, and 2012. Respondent's Exhibit 28; Docket No. 1722289 petition; Lien Book 3717, page 385, Fulton County, Georgia records. The total due for all four tax years was \$67,813.88. Id. When rerecorded on January 1, 2018, the total due was \$70,172.26. Id.; Lien Book 4057, page 680, Fulton County, Georgia records.

On November 4, 2016, the Department recorded a state tax execution, REV 160447645, for Petitioner under her social ending in 1764 for tax year 2011. Respondent's Exhibit 28; Lien Book 106, page 3962, Cobb County, Georgia records. The total due was \$13,576.19. Id.

H. The 2024 Hearing

At the hearing held before the Tribunal on January 22, 2024, the hearing was bifurcated into two parts. In the hearing's initial portion, Respondent presented its case to meet its burden to prove that the issuance of jeopardy assessments was reasonable. Respondent presented the testimony of James King, a legal analyst specialist who has been employed with the Department of Revenue for seventeen years. Mr. King testified that the Department would have been aware that Petitioner filed a petition for bankruptcy under her social security number ending in 0040 on December 6, 2011, in the Northern District of Georgia, and that at that time she had declared \$1,253,000.00 in assets. Respondent's Exhibit 19. Mr. King further testified that the Department had actual knowledge that Petitioner had been indicted in federal court at the time the jeopardy assessments were issued.

To counter this testimony, Petitioner testified that she did not present the bogus checks at

the Department and that some of the deposits she made into an account at BB&T were the income of other individuals. Petitioner denied filing the returns and amended returns under her social security number ending in 1764 and denied filing the bankruptcy petition in 2011. Petitioner also testified that from January 2018 until October 2018 she was incarcerated for conspiracy to commit bank fraud.

After the close of this portion of the hearing, the Tribunal ruled that Respondent met its burden to demonstrate that its issuance of the jeopardy assessments against Petitioner was reasonable.

In the second segment of the hearing, Petitioner presented evidence to meet its burden of demonstrating that the amount assessed was not appropriate under the circumstances. Petitioner first presented the testimony of Stanley Matarazzo, CPA. Mr. Matarazzo testified that in order to prepare Petitioner's amended returns, he focused on Petitioner's returns using her social security number ending in 1764 which had large reported income for tax years 2009, 2010, 2011, and 2012. Because Mr. Matarazzo could not find supporting evidence to tie in numbers from the original returns, he reconstructed Petitioner's income and requested that she provide him bank statements for any businesses she had been involved with. He went through individual items in the bank records with Petitioner to determine whether the deposits were taxable income or non-taxable, such as loans which had to be repaid. Relying upon only the bank statements and any supplemental verbal explanations provided by Petitioner, Mr. Matarazzo then prepared and submitted amended returns to the Department in 2015. Mr. Matarazzo remembered reviewing Wells Fargo bank records but did not recall examining records from Regions Bank or Chase Bank. When he prepared the amended returns, he did not believe that Petitioner had filed any previous amended returns. He saw no bank records for Quality Care Cleaning Products, the entity mentioned in Petitioner's

criminal indictment. Petitioner testified that she did not receive anywhere near \$530,000 from the proceeds in the Quality Care Cleaning Products account and that she had not been aware that any fraudulent checks were deposited into the account. Petitioner also testified that many of the deposits in her accounts were gifts and loans from her parents, and that records substantiating these loans were lost by previous attorneys she retained.

Respondent recalled James King, who testified that the Department would have used federal tax information to generate the amounts of the jeopardy assessments, in addition to bank records and any other available information, to calculate to the best of their ability the tax Petitioner owed. Regarding the jeopardy assessments generated under the social security number ending in 0400, Mr. King testified that only federal tax information was relied upon to generate the assessments.

In rebuttal, Petitioner testified that she had no recollection of any amended returns filed by C.P.A. Charlie Washington in 2012, and that her signatures on those amended returns were forgeries. She also testified that she had no income whatsoever in 2013, 2014, 2015, and 2016.

V. CONCLUSIONS OF LAW

The standard of review in all proceedings before the Georgia Tax Tribunal is *de novo*, and the evidence presented is not limited to the evidence considered by Respondent. Ga. Comp. R. & Regs. 616-1-3-.1 l(a).

Gross income includes “all income from whatever source derived.” I.R.C. § 61(a). This includes income derived from illegal sources. *James v. United States*, 366 U.S. 213, 218 (1961). When a taxpayer fails to maintain sufficient records to determine their correct tax liabilities, Respondent may reconstruct income using a method that is reasonable considering all surrounding facts and circumstances and shall proceed to collect the state tax due. See O.C.G.A. § 48-2-48;

Petzoldt v. Comm’r, 92 T.C. 661, 686-87 (1989).

“Judicial review of a jeopardy assessment is limited to a *de novo* determination of whether the jeopardy assessment was reasonable under the circumstances and whether the amount assessed was appropriate.” *Golden ADA, Inc. v. United States*, 934 F. Supp. 341, 344 (N.D. Cal. 1996) (citing 26 U.S.C. § 7429(b))²¹. The Government bears the burden of proving by a preponderance of the evidence that the jeopardy determination is “reasonable under the circumstances,” while the taxpayer bears the burden of proving that the amount assessed or demanded is not “appropriate under the circumstances.” *Golden ADA*, 934 F. Supp. at 344 (citing 26 C.F.R. 1.6851-1(a)(1)); 26 U.S.C. § 7429(g). “In determining the reasonableness of the government action, the [C]ourt is not limited to consideration of the information available to the [Government] at the time of the assessment but must also consider any subsequently available information that might affect the reasonableness of the jeopardy assessment.” *Golden ADA*, 934 F. Supp. at 344. Furthermore, “[t]he court may consider evidence which would not be admissible at a trial.” *Stebco, Inc. v. United States*, 733 F. Supp. 1387, 1390 (S.D. Cal. 1990).

A. Respondent’s issuance of jeopardy assessments was reasonable.

The Commissioner may issue a jeopardy assessment when he reasonably finds “that a taxpayer gives evidence of intention to leave the state, to remove his property from the state, to conceal himself or his property, to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffective proceedings to compute, assess, or collect any state tax” O.C.G.A. § 48-2-51(a). Respondent bears the burden of demonstrating that the jeopardy assessment was reasonable under the circumstances. *See* I.R.C. § 7429(g)(1). “Thus[,] the

²¹ Because Georgia’s jeopardy assessment statute is patterned after I.R.C. § 6861 (the federal jeopardy assessment statute) and I.R.C. § 6851 (the federal termination assessment statute), Georgia courts may look to federal law for guidance. *See Bourassa v. Comm’r*, 2015-7 Ga. Tax Tribunal, December 14, 2015; *Blackmon v. Mazo*, 125 Ga. App. 193, 196 (1971).

Government need only establish that the taxpayer's circumstances appear to be jeopardizing collection of a tax -- not whether they definitely do so." *Cantillo v. Coleman*, 559 F. Supp. 205, 207 (D.N.J. 1983).

In making this determination courts have considered factors including, but not limited to, the following: (1) whether the taxpayer appears to be designing quickly to depart from the United States or to conceal herself; (2) whether the taxpayer appears to be designing to place her property beyond the government's reach by removing it from the United States, concealing the property, transferring the property to other persons, or dissipating the property; (3) whether the taxpayer's financial solvency appears to be imperiled; (4) whether the taxpayer appears to have been engaged in illegal business activity; (5) the taxpayer's failure to report substantial amounts of income on her tax returns; or (6) the taxpayer's possession of cash which does not correlate with previously reported income. Making a jeopardy assessment is reasonable when any of these conditions are found to exist. *See Nolan*, 539 F. Supp. at 790.

The evidence in this case indicates that factors two through six are met, making the assessments reasonable under the circumstances. First, Petitioner could have moved her cash to accomplices to conceal it from the government, as had been indicated at the time in her criminal case and which she ultimately admitted was her practice in the guilty plea colloquy. Second, Petitioner was facing substantial prison time and the risk of losing her condominium, which jeopardized her financial solvency and the ability of Respondent to collect taxes. Third, Petitioner was alleged, at the time, to have engaged in illegal activity. Fourth, Petitioner failed to timely file returns under either of the two social security numbers which she is known to have used in tax years 2013 and 2014. Furthermore, although she filed numerous amended returns under both social security numbers, Petitioner has never reported income from the proceeds of her bank fraud –

which by her own admission yielded proceeds of at least \$530,000 in four months of the six tax years at issue²². Petitioner filed income tax returns and at least two rounds of amended returns, using both social security numbers, and opened and utilized bank accounts using both social security numbers, which accounts the bank records demonstrated large amounts of cash had flowed through. Thus, Respondent reasonably issued jeopardy assessments at the outset of the interpleader action in Fulton County in October 2016, when it received notice that a tax sale of Petitioner's property had yielded \$418,145.57.

B. Petitioner has not met her burden to show Respondent's assessments were incorrect or inappropriate.

The Department's tax assessments are deemed *prima facie* correct, and a taxpayer has the burden to show errors or unreasonableness by a preponderance of evidence. *Basham v. Comm'r*, 2014-5 Ga. Tax Tribunal, February 24, 2014. Additionally, in any case in which a return is not

²² Records obtained by the Department include accounts held by Petitioner and nominee LLCs at several banks and time periods apart from the banks and four months referenced in her federal indictment and guilty plea: for example, in February, 2011, Petitioner made four counter deposits totaling \$29,000 into an account at BB&T which she opened using her social security number ending in 1764. Respondent's Exhibit 18. In March, 2011, \$75,149.36 was deposited into an account held at Bank of America by Cisco Industries, LLC, Petitioner's single-member LLC. Petitioner's Exhibit 4. In April, 2011, \$11,814.12 was deposited into the Bank of America Cisco Industries, LLC, account. *Id.* In May, 2011, \$60,207.51 was deposited into the Bank of America Cisco Industries, LLC, account. *Id.* In June, 2011, \$97,314.12 was deposited into the Bank of America Cisco Industries, LLC, account. *Id.* In July, 2011, \$9,594.74 was deposited into the Bank of America Cisco Industries, LLC, account. *Id.* In August, 2011, \$12,606.59 was deposited into the Bank of America Cisco Industries, LLC, account. *Id.* A total of \$272,764.80 was deposited into this account in 2011. *Id.* In July, 2011, \$9,100 was deposited into an account held at Wachovia by Elsci Business Trst, LLC, Petitioner's single-member LLC. Respondent's Exhibits 25, 26. A total of \$49,494 was deposited into two Wells Fargo accounts held by Elsci Business Trust, LLC, between August and December, 2011. Petitioner's Exhibit 5. Between January and May, 2012, \$111,389 was deposited into these accounts. *Id.* Between October and December, 2011, Petitioner deposited \$85,253 into her personal account at Regions Bank. Petitioner's Exhibit 5. Between January and February, 2015, Petitioner deposited \$65,854.22 into her personal account at Chase, which she opened in 2014 using her social security number ending in 0400. Respondent's Exhibit 21; Respondent's Exhibit 37. And in January, 2015, Petitioner deposited \$61,640 into her account at Chase. Respondent's Exhibit 20.

filed, Respondent may “ascertain such information in any way which the [C]ommissioner reasonably considers proper or appropriate,” and any return so made “shall be *prima facie* correct and sufficient for all legal purposes.” O.C.G.A. § 48-2-37. Certain courts, however, “have recognized a limited exception to the general rule where the notice of deficiency determines that the taxpayer failed to report income, particularly income derived from illegal activities.” *Williams v. Comm’r*, T.C. Memo 2003-216, at *9 (July 22, 2003). In those cases, commonly referred to as “naked assessment” cases, Respondent must come forward with a minimal foundation linking the taxpayer with an income-producing activity. *Id.*; *see also Llorente v. Comm’r*, 649 F.2d 152, 156-57 (2d Cir. 1981) (insufficient evidence linking taxpayer with tax-generating activity); *Weimerskirch v. Comm’r*, 596 F.2d 358, 361-62 (9th Cir. 1979) (no evidence taxpayer had more income than he reported); *Carson v. United States*, 560 F.2d 693, 696 (5th Cir. 1977) (no evidence taxpayer engaged in gambling activities); *Pizzarello v. United States*, 408 F.2d 579, 583 (2d Cir. 1969) (no evidence taxpayer operated gambling house). In the present case, Respondent introduced first-hand testimony linking Petitioner to bank fraud in 2013. Because Respondent did not rest solely on the presumption of correctness, the burden does not shift. *See, e.g., McHan v. Comm’r*, TC Memo 2006-84, at *16-17 (Apr. 24, 2006); *Sellers v. Comm’r*, T.C. Memo 1993-330, at *10-12 (July 26, 1993).

The evidence in this case supports the amounts reflected in Respondent’s assessments and the tax executions based upon those executions. Although Petitioner testified that she had no income for several of the tax years at issue, “the mere denial by a taxpayer is not enough to overcome the presumption” of correctness of the assessments. *Pinder v. United States*, 330 F.2d 119, 124 (5th Cir. 1964). In making her case, Petitioner denied responsibility for, *inter alia*, the bogus checks, the conspiracy to commit bank fraud to which she pled guilty, and the filing of

fraudulent returns with the Department. Although Petitioner claimed that she did not make “anything close” to \$530,000 from the Quality Care Cleaning Service bank account fraud at Best Bank, the Tribunal is not required to, nor does it accept Petitioner’s self-serving testimony. *See Geiger v. Comm’r*, 440 F.2d 688, 689 (9th Cir. 1971).

Further, although Petitioner submitted the testimony of Mr. Matarazzo to support her claim that she owed no tax and should be refunded the entire amount of funds awarded the Georgia Department of Revenue at the conclusion of the federal interpleader action, Mr. Matarazzo testified that he was unaware at the time that he worked with Petitioner that she had previously filed amended returns for many of the tax years. Although Mr. Matarazzo testified that he was aware that Petitioner had filed returns using two social security numbers and had focused on Petitioner’s returns using her social security number ending in 1764, he relied only on the bank records which Petitioner shared with him. Mr. Matarazzo did not recall seeing any records from Regions Bank or Chase Bank, and he had seen no bank records for Quality Care Cleaning Products at all. Thus, Respondent’s assessments included consideration of large amounts of income which Mr. Matarazzo lacked when he prepared and submitted Petitioner’s amended returns to the Department in 2015. Respondent was obliged to use figures it obtained from other sources, such as Petitioner’s available federal tax information, criminal investigation, and bank records. Respondent’s calculation, while possibly inaccurate, cannot be said to be unreasonable or improper. *See Golden ADA*, 934 F. Supp. at 344; *Erickson v. Comm’r*, 937 F.2d 1548, 1553 (10th Cir. 1991) (“Where, as here, the taxpayer keeps inadequate records or no records at all, the Commissioner is entitled to reconstruct his income by any reasonable means.”).

VI. CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law, Respondent’s

Assessments and Demands for Payment are **AFFIRMED**.

SO ORDERED, this 27th day of February, 2024.



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