

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



NOV 10 2022

Docket No. 2227644, Tax Tribunal Administrator

JOSEPH & MARIA LUNSFORD,

Petitioner,

v.

ROBYN A. CRITTENDEN, in her official
capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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ORDER GRANTING MOTION TO DISMISS

Before the Georgia Tax Tribunal is the motion of Respondent Robyn A. Crittenden, in her official capacity as Commissioner of the Georgia Department of Revenue (“Respondent” or the “Department”), to dismiss the instant case because the Tribunal lacks subject matter jurisdiction. For the reasons set forth herein, Respondent’s Motion to Dismiss is **GRANTED**.

FINDINGS OF FACT

Petitioners Joseph and Maria Lunsford (“Petitioners”) challenge Official Assessments and Demands for Payment, letter ID’s L2118402864 and L0021250864, issued by Respondent on April 4, 2022, seeking income tax from Petitioners for tax years 2016 and 2018. Petitioners’ Petition is dated May 26, 2022 and was received by the Tribunal on June 1, 2022. Petition at 1, 2. Respondent submitted its answer and Motion to Dismiss to this Court on July 15, 2022. Petitioners submitted their opposition to Respondent’s Motion to Dismiss on July 25, 2022.

CONCLUSIONS OF LAW

The 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”). Under code section 48-2-59, “[t]he taxpayer shall commence an appeal by filing a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court within 30 days from the date of decision by the commissioner[.]” O.C.G.A. § 48-2-59(b).

Respondent filed its motion to dismiss on July 15, 2022 arguing that the Tribunal lacks subject matter jurisdiction due to Petitioners failure to timely file their Petition. Petitioners contend that Petitioners’ failure to timely file the Petition was due to incorrect and misleading information provided by the Department. Because of the incorrect and misleading information, Petitioners argue that their failure to timely file the Petition was due to excusable neglect, which, under the Georgia Civil Practice Act (“Act”), allows a court to have the discretion to permit an “act to be done where the failure to act was the result of excusable neglect.” O.C.G.A. § 9-11-6(b). Petitioners, therefore, request that this Court accept the Petition filed on May 26, 2022, which was beyond the 30-day period set by O.C.G.A. § 48-2-59(b) and deny the Department’s motion to dismiss.

O.C.G.A. § 9-11-6(b), however, is not applicable to this case. “By its terms, the [Civil Practice Act] provision governing extensions applies when, once a “proceeding” has been commenced, the [Civil Practice Act] itself, Chapter 11 of Title 9, a notice thereunder, or a court order requires or allows an act to be performed within a certain time period.” Riddle-Bradley, Inc. v. Riddle, 217 Ga. App. 725, 725 (1995). The Court of Appeals has held that “[g]ranting

extensions of time as permitted under certain circumstances by the Civil Practice Act does not apply to periods of time which are definitely fixed by other statutes.” Id. (quoting McClure v. Dept. of Transp., 140 Ga. App. 564 (1) (231 S.E.2d 532) (1976)). The filing of a petition with the Tax Tribunal is governed by O.C.G.A. § 48-2-59(b). Because the time for filing a petition with the Georgia Tax Tribunal is set by statute, the Act does not enable the Tribunal to grant extensions of time for filing a petition nor grant the Tribunal any discretion to accept an untimely petition.

The only extension of time that this Court is aware of falls under O.C.G.A. § 9-11-6, which states that three days may be added where a party is required to do some act within a prescribed period after service of a notice or other paper, other than process, upon the party by mail or email. See O.C.G.A. § 9-11-6. In this case, Petitioners were sent Official Assessments and Demands for Payment by mail on April 4, 2022. Petitioners’ Petition is dated May 26, 2022. The Petition is 52 days after the Official Assessments and Demands for Payment were mailed to Petitioners. Even with the three additional days afforded by O.C.G.A. § 9-11-6, Petitioners Petition is untimely. Since the Petition was not timely, the Tribunal does not have subject matter jurisdiction over this case.

CONCLUSION

Based upon the foregoing, Respondent’s Motion to Dismiss is **GRANTED**.

SO ORDERED, this 10th day of November, 2022.



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