

BEFORE THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA



FILED  
GA. TAX TRIBUNAL

NOV 14 2014

MATTHEW J. TOWERY,

Petitioner,

v.

DOUGLAS MACGINNITTIE,  
COMMISSIONER, GEORGIA  
DEPARTMENT OF REVENUE,

Respondent.

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*Yvonne Bouras*  
Yvonne Bouras  
Tax Tribunal Administrator

TAX TRIBUNAL DOCKET  
NO.: TAX-IIT-1451931

**DECISION**

**2014 – 14 Ga. Tax Tribunal, November 14, 2014**

This matter is before the Tribunal on a motion to dismiss by Respondent Commissioner of the Georgia Department of Revenue (“Respondent”). Pursuant to Ga. Comp. R. & Regs. 616-1-3-.17(a) as adopted in Standing Order dated June 1, 2013, and O.C.G.A. § 9-11-12(b)(1), Respondent has moved to dismiss Petitioner’s claim that the Department of Revenue (“Department”) owes Petitioner “\$185 in damages” because of overdraft fees incurred after the Petitioner withdrew funds from his bank account when Petitioner did not have sufficient funds in his account.

For the reasons discussed below, Petitioner’s Petition in this case must indeed be dismissed.

**I. FINDINGS OF FACT**

The facts are generally not disputed. Where there are disagreements as to the facts, for purposes of this motion, the facts will be assumed to be those most favorable to Petitioner.

Petitioner filed his Petition in this case on May 9, 2014, as a Small Claims Division case.

In his Petition, Petitioner acknowledged that he owed \$227 in taxes for the year 2013. Petitioner authorized payment of the tax from his bank account and it was debited from his account on February 16, 2014. According to Petitioner, Petitioner's account was then debited a second time on March 17, 2014, in the same amount to cover the same 2013 tax liability. Although Respondent disputes Petitioner's characterization of this sequence of events and asserts that Petitioner in fact authorized the second payment and that such action by Petitioner was voluntary, for purposes of this Motion, again, we will assume the facts to be as alleged by Petitioner.

The Petitioner alleges that he did not learn of this second withdrawal until March 21, 2014. By this time, Petitioner asserts he had incurred a number of overdraft fee charges due to the withdrawal of the second debit from his account.

When notified by Petitioner that the tax had been paid twice, the Department immediately issued a refund check to Petitioner for \$227.

Petitioner then filed a claim for refund seeking to recover from the Department the bank overdraft fees that Petitioner had incurred. The Department denied the claim for refund. Petitioner now seeks \$185 in damages to recover the overdraft bank charges that he incurred when he over-withdrew his bank account as a result of the second debit to his account.

Respondent timely filed an Answer and affirmatively alleged that the Georgia Tax Tribunal lacks jurisdiction over some or all of the claims in this action and does not have jurisdiction to require the Department to issue a refund to Petitioner or to award Petitioner damages for bank overdraft fees. On October 21, 2014, Respondent filed his Motion to Dismiss Petitioner's Claim and Supporting Brief ("Motion to Dismiss"). Petitioner has not responded to Respondent's Motion to Dismiss.

## II. CONCLUSIONS OF LAW

Although the Civil Practice Act (other than its discovery provisions) does not apply directly to actions before the Tribunal, the Tribunal Judge is directed to adapt the provisions of the Civil Practice Act where suitable under O.C.G.A. § 50-13A-1-15(b) and Tribunal Rule 616-1-.3-.02 as adopted in Standing Order dated June 1, 2013. John Doe I and John Doe II, 2013-1 Ga. Tax Tribunal, October 1, 2013. Although Respondent's Motion to Dismiss is framed as a motion to dismiss for lack of jurisdiction, it can also be viewed alternatively as a motion to dismiss for failure to state a claim upon which relief can be granted. In either event, the analysis and the results are the same.

The Georgia Tax Tribunal's jurisdiction is specified in O.C.G.A. § 50-13A-9. That statute allows the Tribunal to hear: (1) appeals of assessments issued by the Department for property tax purposes to public utilities and other centrally-assessed taxpayers, see O.C.G.A. § 48-2-18; (2) actions seeking a refund of taxes collected by the Commissioner, see O.C.G.A. § 48-2-35; (3) appeals from final state tax assessments, see O.C.G.A. § 48-2-59; (4) appeals contesting state tax executions issued by the Department, see O.C.G.A. § 48-3-1; (5) appeals seeking refunds of real estate transfer taxes, see O.C.G.A. § 48-6-7; (6) appeals seeking refunds of intangible recording taxes, see O.C.G.A. § 48-6-76; (7) appeals contesting the denial by the Commissioner of a taxpayer's petition for a specific allocation or apportionment formula, see O.C.G.A. 48-7-31(d)(2)(C); and (8) certain declaratory judgment actions, see O.C.G.A. § 50-13-10(a).

Assuming for the moment that Petitioner's view of the facts in this matter is correct, it is

understandable why he is irritated and would feel that he should be compensated for his expenses. In Petitioner's version of the truth, the Department erred in this matter (which it should be noted, appears to be a disputed point), costing the Petitioner \$185. It is understandable that Petitioner would be frustrated by such a mistake did it indeed occur. As noted in Therese R. Basham, 2014-5 Ga. Tax Tribunal, February 24, 2014, "[T]hough Respondent strives to reduce the number of errors . . . mistakes are inevitable . . . . To the taxpayer who is the subject of such a mistake, however, the experience is at best annoying. At worst it results in anxiety, an investment of significant time and effort and, in some cases, outright expense . . . ."


Unfortunately for Petitioner, not every injury gives rise to a legal remedy. W. A. Heindl, A Remedy for All Injuries, 25 Chi.-Kent L. Rev. 90, (1946). There is nothing that gives a taxpayer a remedy to recover the kinds of expenses that are at issue in this case. There is nothing in Georgia law that is analogous to either the federal Equal Access to Justice Act, 28 U.S.C § 2412, or IRC § 7430, each of which creates a limited right to the recovery of attorney's fees in disputes. Much less is there any basis in Georgia law for claims against the Department and, hence ultimately, the state of Georgia for expenses incurred in connection with tax compliance or associated disputes arising from tax compliance.

So there is simply nothing for this Tribunal to review because Petitioner's Petition does not state a claim upon which relief can be granted. The Department's refusal to reimburse Petitioner \$185 in damages because the Petitioner over-withdrew his bank account due to the alleged wrongful actions of the Department does not create a claim over which this Tribunal has jurisdiction under O.G.C.A. § 50-13A-9. Again, unfortunately for Petitioner in this case, not every injury has a legal remedy.

**III. CONCLUSION**

For the reasons discussed above, Respondent's Motion to Dismiss must **GRANTED** and  
Petitioner's Petition must be **DISMISSED**.

**SO ORDERED**, this 4<sup>th</sup> day of November, 2014.

  
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**CHARLES R. BEAUDROT, JR.**  
**CHIEF JUDGE**  
**GEORGIA TAX TRIBUNAL**