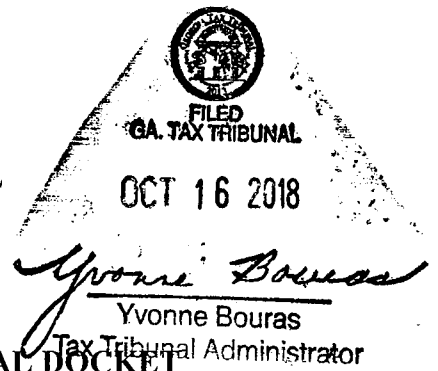


IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



MOOSA COMPANY, LLC,

Petitioner,

v.

COMMISSIONER OF THE GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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TAX TRIBUNAL DOCKET
NO.: 1902782

DECISION

2018 – 1, Ga. Tax Tribunal, October 16, 2018

I. PROCEDURAL POSTURE

1.

On February 1, 2017, the Georgia Department of Revenue (the “Department”) issued Petitioner an Official Assessment and Demand for Payment (“Assessment”) for unpaid tobacco excise taxes in the amount of \$441,084.51. (Letter ID number L0108672992). The Assessment covers tax periods beginning June 1, 2013, and ending April 30, 2016.

2.

Petitioner filed a protest with the Department, and requested a hearing before a Department administrative hearing officer. A hearing was held before Leisa Phillips, a Department administrative hearing officer, on July 19, 2017. On June 25, 2018, the hearing officer issued an Executive Order affirming the Assessment.

3.

On July 3, 2018, Petitioner filed a Motion for Reconsideration of the hearing officer’s decision. As of the date of filing of this matter, no ruling had been issued on that motion.

4.

On July 25, 2018, Petitioner filed this action in the Georgia Tax Tribunal, challenging both the Assessment and the Executive Order.

5.

On August 24, 2018, the Department filed a Motion to Dismiss, contending that the Georgia Tax Tribunal lacks subject matter jurisdiction to consider Petitioner's challenge. Petitioner filed a Response to Department's Motion on September 6, 2018; the Department filed a Reply to Petitioner's Response on September 17, 2018; and Petitioner filed a Surreply to the Department's Reply on September 28, 2018.

II. CONCLUSIONS OF LAW

1.

Although the Civil Practice Act does not apply directly to actions before the Georgia Tax Tribunal, the Tribunal Judge is directed to adopt the provisions of the Civil Practice Act where suitable. See Levy 2014-13 Ga. Tax Tribunal (October 3, 2014), at pg. 3 (citing Tax Tribunal Rule 616-1-3-.02, as adopted in Standing Order dated June 1, 2013, and O.C.G.A. § 50-13A-15(b)).

2.

Therefore, where appropriate, the Tax Tribunal may consider motions to dismiss for lack of subject matter jurisdiction in accordance with O.C.G.A. § 9-11-12(b)(1).

3.

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

[o]n and after January 1, 2013, any person may petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 43-3-1, 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.”).

4.

Each of the sections mentioned *supra*, with the exception of declaratory judgments under O.C.G.A. § 50-13-10, expressly provide for Tax Tribunal jurisdiction within the statutes themselves. See O.C.G.A. § 48-2-18(c) (appeals from property tax assessment issued to utilities); O.C.G.A. § 48-2-35(c)(1)(D)(4) (appeals from denial of refund claims); O.C.G.A. § 48-2-59(a) (appeal of tax assessments generally); O.C.G.A. § 48-3-1 (appeals contesting state tax executions); O.C.G.A. § 48-5-519(b) (appeals of railroad equipment property tax assessments); O.C.G.A. § 48-6-7(b)(1) (appeals seeking refunds of real estate transfer taxes); O.C.G.A. § 48-6-76(e)(1) (appeals seeking refunds of intangible recording taxes); and, O.C.G.A. § 48-7-31(d)(2)(C) (appeals related to a specific allocation or apportionment formula, by reference to O.C.G.A. § 48-2-59).

5.

Tobacco taxes are governed by O.C.G.A. §§ 48-11-1 et. seq. Appeals of a decision, by the Department, relating to tobacco taxes, are governed by O.C.G.A. § 48-11-18, which sets out a two-part appeal process. As a first step, any dispute over tobacco taxes must first be heard in a hearing before the commissioner. O.C.G.A. § 48-11-18(a). After such a hearing, if a petitioner is dissatisfied with the commissioner’s decision, the petitioner may then appeal the decision “to the superior court of the county in which the appellant resides.” O.C.G.A. § 48-11-18(b), see also Ga. Comp. R. and Regs. 560-8-6-.03.

6.

Notwithstanding the appeal process set forth in O.C.G.A. § 48-11-18, Petitioner contends that the Tax Tribunal does have jurisdiction over its appeal, as it was filed under O.C.G.A. § 48-2-59(a), which states:

[e]xcept with respect to claims for refunds, 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 or the superior court of the county of the residence of the taxpayer . . .

Petitioner contends that, as the Assessment is a finding of the commissioner, and the Executive Order is an order of the commissioner, the Tax Tribunal therefore has jurisdiction to hear both appeals.

7.

Petitioner's contention is incorrect. While O.C.G.A. § 48-2-59(a) does state that "either party may appeal from any order, ruling, or finding of the commissioner," it goes on to specify that any appeal must be "in accordance with Chapter 13A of Title 50," which sets forth the Tribunal's specific jurisdiction. See, e.g., Barber, 2014-1 Ga. Tax Tribunal (January 23, 2014), at pg. 2-3 (the Tax Tribunal does not have jurisdiction over an individual's ad valorem property tax assessment because such assessments are not expressly identified in O.C.G.A. § 50-13A-9(a) as matters over which the Tax Tribunal has jurisdiction).

8.

In Georgia, "the express mention of one thing in an [a]ct or statute implies the exclusion of all other things." Allen v. Wright, 282 Ga. 9, 13 (2007); see also In the Interest of Doe, 319 Ga. App. 574, 576 (2013) (the legislature's failure to specify in one statute something that it specified in a related statute, was evidence of its intent to affirmatively exclude it from the former). In O.C.G.A. § 50-13A-9(a), the Tax Tribunal is given jurisdiction over an enumerated

list of tax matters, which does not include tobacco taxes. Instead, in another statute, jurisdiction over tobacco tax appeals is expressly given to the superior court of the county in which an appellant resides, with no mention of the Tax Tribunal. O.C.G.A. § 48-11-18(b). The Tribunal must assume that the exclusions were intentional.

9.

If the Tribunal were to find any conflict between O.C.G.A. §§ 48-2-59(a) and 48-11-18(b), which it does not, the Tribunal would still lack jurisdiction. In Georgia, as in other states, “a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent, to resolve any inconsistency between them.” See Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, 241 Ga. App. 305, 309 (527 S.E.2d 566) (1999). Here, O.C.G.A. § 48-2-59(a) *generally* allows appeals of orders, rulings, or findings of the commissioner, in accordance with O.C.G.A. § 50-13A-9. In contrast, O.C.G.A. § 48-11-18(b) sets out a *specific* procedure for the appeal of tobacco taxes, and therefore must prevail over the general allowance in O.C.G.A. § 48-2-59(a).

III. DECISION

As this Tribunal lacks subject matter jurisdiction, Petitioner’s case must be **DISMISSED**. Accordingly, Respondent’s Motion is hereby **GRANTED**.

SO ORDERED, this th 16 day of October, 2018.



LAWRENCE E. O’NEAL
Chief Judge, Georgia Tax Tribunal

MOOSA COMPANY, LLC

PETITIONER

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BAXTER THOMPSON, ESQ.
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