



FILED
GA. TAX TRIBUNAL

OCT 03 2014

**BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA**

Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

NADINE LEVY,

Petitioner,

v.

**COMMISSIONER OF GEORGIA
DEPARTMENT OF REVENUE,
AND GEORGIA DEPARTMENT OF
LABOR,**

Respondents.

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TAX TRIBUNAL DOCKET

NO.: 1420724

DECISION

2014 – 13 Ga. Tax Tribunal, October 3, 2014

I. INTRODUCTION

This case grows out of the “setoff” program under O.C.G.A. §§ 48-7-160 through -170 pursuant to which the Department of Revenue (“Commissioner” or “Department of Revenue”) is required to offset amounts owed to a state agency against amounts otherwise payable to a taxpayer as a tax refund. In this case, the setoff arises from a Department of Labor’s (“DOL” or “Department of Labor”) assessment against the Petitioner for an unemployment overpayment made to Petitioner by DOL.

The Commissioner and DOL (“Respondents”) have moved to dismiss Petitioner’s claims against them because the Georgia Tax Tribunal lacks subject matter jurisdiction to entertain the claims which are the subject of Petitioner’s case.

For the reasons discussed below, we conclude that the Petitioner has not asserted any claims against the Commissioner and this Tribunal has no jurisdiction to review Petitioner’s claims against DOL. Accordingly, the Respondents’ Motion to Dismiss must be **GRANTED**.

II. FINDINGS OF FACT

The facts in this matter are not disputed.¹

On December 5, 2013, Petitioner Nadine Levy (“Petitioner”) filed her Petition with the Tax Tribunal naming the Commissioner and DOL as Respondents in this action. The allegations in the Petition surround the external offset of Petitioner’s individual income tax refund for tax year 2012 to DOL pursuant to a DOL claim for an unemployment overpayment debt. Specifically, Petitioner’s claims relate *solely* to alleged actions on the part of DOL, and not to any action or inaction on the part of the Commissioner or the Department of Revenue (“Department”). For example, Petitioner asserts in her Petition that “GDOL have [sic] received numerous pages of evidence that indicate that I was willing, able and actively seeking employment,” and the “[i]nitial GDOL investigation [was] incomplete and shoddy.” The Petition contains no allegations whatsoever regarding the Commissioner or the Department of Revenue.

The Commissioner filed an Answer and asserted, *inter alia*, that the Georgia Tax Tribunal lacked jurisdiction over some or all of Petitioner’s claims in this action. On July 18, 2014, in a teleconference with Petitioner and counsel for the Commissioner, the Court informed Petitioner that the Court’s jurisdiction did not extend to matters regarding DOL’s actions and Petitioner’s dispute with DOL, but that Petitioner would be allowed to proceed with her case if she was alleging wrongful action on the part of the Department of Revenue.

Petitioner subsequently requested via email dated July 31, 2014, that the Tribunal transfer her case to the Office of State Administrative Hearings (“OSAH”) for a “review [of] the Ga DOL’s initial basis of Overpayment Determination . . . *which is the real issue at hand.*”

¹ See Petition and documents attached as exhibits to Respondents’ Motion to Dismiss, including a certified copy of Refund Offset Letter, Letter ID number L1826401376.

(Emphasis added). Petitioner’s email also contains assertions that DOL did not afford Petitioner her due process rights with respect to the offset of her tax refund.

In response to Petitioner’s email, the Tribunal postponed Petitioner’s hearing in the Tax Tribunal, directing Petitioner to pursue her claims against DOL (in a different venue) in the meantime, stating that “[t]he Tax Tribunal has no jurisdiction to review the merits of your underlying dispute with the Department of Labor.”

On August 28, 2014, Respondents filed their Motion to Dismiss Petitioner’s Claims and Supporting Brief (the “Motion to Dismiss”). Respondents appended to their Motion to Dismiss a number of documents including a certified copy of the Refund Offset Letter, Letter ID number L1826401376 from the Department of Labor with respect to Petitioner, and a copy of the decision in Petitioner’s prior appeal before the Department of Labor.

III. CONCLUSIONS OF LAW

1. Procedural Considerations

Although the Civil Practice Act, other than its discovery provisions, does not apply directly to actions before the Georgia Tax Tribunal, the Tribunal Judge is directed to adapt the provisions of the Civil Practice Act where suitable. Tribunal Rule 616-1-3.02, as adopted in Standing Order dated June 1, 2013, and O.C.G.A. § 50-13A-1-15(b); John Doe I and John Doe II, 2013 Ga. Tax Tribunal, October 1, 2013, at p.16.

Applying the Civil Practice Act provisions of O.C.G.A. § 9-11-12(b)(1) by analogy, Respondents’ Motion to Dismiss pursuant to lack of subject matter jurisdiction can be supported by evidence outside of the pleadings without requiring that it be converted into a motion for summary judgment. See Int’l Indemnity Co. v. Blakey, 161 Ga. App. 99, 100-01 (1982), *overruled on other grounds by* In Re E.N.R., 323 Ga. App. 815, 817, n. 6 (2013) (all of the sub-

parts of O.C.G.A. § 9-11-12(b) except the 12(b)(6) failure to state a claim provision are matters in abatement that are not within the scope of the summary judgment procedure). See also Ogden Equip. Co. v. Talmadge Farms, Inc., 232 Ga. 614, 614-615 (1974) (12(b)(1) defenses are not proper for summary judgment motions because summary judgment tests the merits of a claim). This Tribunal may therefore consider evidence extrinsic to the pleadings, such as the unobjected to documents attached to Respondents' Motion to Dismiss, in ruling on Respondents' Motion to Dismiss.

2. Jurisdiction

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 Revenue 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 Revenue 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 Revenue 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 Revenue 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).

Code Section 50-13A-9 does not give the Tax Tribunal any subject matter jurisdiction over Petitioner's claims that DOL acted wrongfully in making an intercept request to the Department of Revenue for overpayment of unemployment benefits. Nor has Petitioner made

any claim or allegation against the Commissioner as to his actions in administering the statutorily mandated offset program.²

The setoff debt collection procedures are governed by O.C.G.A. §§ 48-7-160 through -170. The setoff provisions allow certain state agencies, including DOL, to submit a stated debt to the Department of Revenue for collection through setoff of a taxpayer's income tax refund, as determined by the Department to be owed to the taxpayer. O.C.G.A. § 48-7-163(a) and (b). In accordance with O.C.G.A. § 48-7-164(a)(1), the agency seeking the setoff must supply to the Department the identification of the debtor whose refund is sought to be set off. The Department must notify the taxpayer when the setoff has been made. O.C.G.A. § 48-7-164(c).

Additionally, once the setoff is made, the taxpayer can apply to the claimant agency, in this case DOL, for a hearing contesting the validity of the setoff. See O.C.G.A. § 48-7-165(a)(1).

Indeed, Petitioner did contest the validity of the setoff in a hearing before DOL. The Hearing Officer in that matter determined:

The notice released November 4, 2013, intercepting the claimant's Georgia income tax refund and applying it to the balance of the outstanding overpayment debt as provided by O.C.G.A. Sections 48-7-163 and 48-7-164, is affirmed.

As specified in O.C.G.A. § 48-7-165(b), the hearing before DOL was **“in lieu of a hearing before the [D]epartment [of Revenue] to determine the validity of the debt or the propriety of the setoff.”** Furthermore, O.C.G.A. § 48-7-167 provides that **“[w]hen the setoff authorized by this article is exercised, the refund which is set off shall**

² It might be theoretically possible that some action of the Commissioner in the administration of the setoff program could constitute an “order, ruling or finding” of the Commissioner reviewable under O.C.G.A. § 48-2-5. But it is exceedingly difficult to imagine how this could actually happen, given the ministerial role of the Department of Revenue in the administration of the offset program. See John Doe I and John Doe II, 2013-1 Ga. Tax Tribunal, October 1, 2013. There is certainly nothing in the facts of this case that meet these criteria. The Petitioner does not dispute that she is indeed the person who is identified in the intercept notice provided by DOL to the Department of Revenue and she has not raised any issues with respect to her notification of the offset by the Department of Revenue.

be deemed granted.” Once a setoff is made, the Department of Revenue is deemed to have issued the refund to the taxpayer.

Thus, O.C.G.A. § 48-7-165 provides the mechanism by which a taxpayer may contest the validity of the setoff by requesting a hearing with the claimant agency. Petitioner in fact availed herself of this mechanism. But there is no provision in the Revenue Code that gives jurisdiction to this Tribunal to review the underlying basis for the setoff or compliance with the procedures used by the claimant agency in making the underlying determination of liability.

Because it is the Department of Revenue that actually effectuated the offset, it is perhaps understandable that someone such as Petitioner who is representing herself would assume that her dispute is with the Department of Revenue and that this Tribunal has jurisdiction to review that action. But Petitioner, by her own admission, has no dispute with the Department of Revenue. Petitioner’s dispute is with the Department of Labor. Petitioner’s remedy vis-à-vis the Department of Labor is under O.C.G.A. § 48-7-165(b) and she has already availed herself of that remedy.

3. Summary

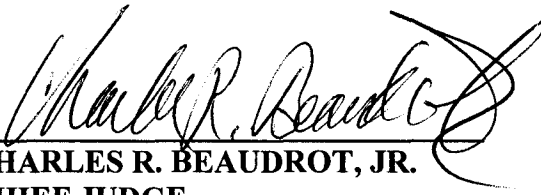
It is understandable that Petitioner was not pleased with the results of her administrative review of her case by the Department of Labor as the decision was adverse to her contentions. By now asking the Tribunal to again review the merits of her dispute with the Department of Labor, Petitioner is in effect requesting a “second bite at the apple”. The fact that Petitioner was not pleased with the outcome of her DOL case does not provide a basis for further review of the merits in her case merely because the Department of Revenue is required to effectuate the offset.

This Tribunal does not have subject matter jurisdiction over Petitioner's claims in this case and they must be dismissed.

III. CONCLUSION

For the above reasons, the Respondents' Motion to Dismiss for lack of jurisdiction is **GRANTED** and Petitioner's case is **DISMISSED**.

SO ORDERED, this 3rd day of October, 2014.


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

NADINE LEVY, *PRO SE*

PETITIONER

SAMUEL S. OLENS, Attorney General, W. WRIGHT BANKS, JR., Deputy Attorney General, WARREN R. CALVERT, Senior Assistant Attorney General, NANCY M. GALLAGHER, Senior Assistant Attorney General

ATTORNEYS FOR RESPONDENT, DOUGLAS J. MACGINNITIE, Commissioner, Georgia Department of Revenue