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GA. TAX TRIBUNAL

NOV 17 2021

Chantal Mathurin, Tax Tribunal Administrator

IN THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA

ROBBIE D. TERRY-WASHINGTON and  
CARL WASHINGTON JR.

Petitioners,

v.

Robyn A. Crittenden,  
in her Official Capacity as  
Commissioner of the GEORGIA  
DEPARTMENT OF REVENUE,

Respondent.

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Docket No. 2000622

**FINAL ORDER**

I. INTRODUCTION

A hearing was held before the Tribunal on October 28, 2021 on the issue of the Department's Motion to Dismiss for lack of subject matter jurisdiction. Melody Chapman-Caskey, Esq. appeared on behalf of the Department, and Ms. Robbie Terry-Washington represented herself pro se on behalf of Petitioners. Having carefully read and considered all of the evidence in the record, including witness testimony, the Respondent's Motion to Dismiss for lack of subject matter jurisdiction is hereby GRANTED.

II. PROCEDURAL HISTORY

Petitioners filed their Petition to initiate this matter on July 8, 2019. Exhibit A p. 1-7. This matter is an appeal of a Statement of Taxpayer's Account Letter L2075376624 dated April 24, 2019 regarding individual income tax for tax years 2014, 2015, 2016, and 2017. The parties agree that they have resolved the issues for tax year 2016. The Department filed their answer on October 28, 2019 and raised the issue of subject matter jurisdiction to the Tribunal therein. Exhibit B p. 1-2. Specifically, the second defense in the Department's Answer asserts: "The Petition is barred for lack of subject matter jurisdiction." Exhibit B p. 1. The Department further clarified this issue by

stating in their Answer, “Respondent states that the appeal of the Official Assessment and Demand for Payment for tax years 2014, 2015, and 2017 is not timely.” Exhibit B p. 2 fn 1. The parties agree that the case was set for a calendar call on August 4, 2020 to address the tax year of 2016, but the evidence is unclear regarding what occurred during that call. The Department filed a Motion to Dismiss on July 27, 2021. Exhibit C p. 1-13.

### III. CONCLUSIONS OF LAW

The Department’s Motion to Dismiss for subject matter jurisdiction has two bases. First the Department argues that the Tribunal lacks subject matter jurisdiction because Petitioners appeal a Statement of Taxpayer’s Account, which does not establish any tax liability or constitute an order, ruling, or finding of the Department. Second, the Department argues that even if the Petitioner had appealed the Official Assessment and Demand for Payments issued for tax years 2014, 2015, and 2017, these appeals were not timely because the appeal was filed well over 30 days after the assessment was issued. This Court agrees on both accounts and finds that this case must be dismissed for lack of subject matter jurisdiction.

First, two statutes work together to grant the Tax Tribunal Jurisdiction in this matter, O.C.G.A. §§ 50-13A-9(a) and 48-2-59. Section 50-13A-9(a) states “any person may petition the tribunal for relief as set forth in Code Section[] . . . 48-2-59.” Code Section 48-2-59(a) states in part “...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.”

Here, Petitioner cannot appeal the Statement of Taxpayer’s Account because it is only a notification of the Petitioner’s current account with the Department. This letter does not establish any tax liability or constitute an order, ruling, or finding of the Department. As there is no decision of the Department being appealed, there is no relief which may be granted through this Petition.

Under O.C.G.A. § 48-2-59(a), the Tribunal only has subject matter jurisdiction to hear appeals of orders, rulings, or findings of the Department, which this Petition fails to properly appeal.

Second, even if the Petitioner were to appeal the Official Assessment and Demand for Payment for tax years 2014, 2015, and 2017, such an appeal would not be timely. Under O.C.G.A. § 48-2-59(b), a taxpayer is required to “commence an appeal by filing a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 . . . within 30 days from the date of decision by the commissioner.”

Here, the Official Assessment and Demand for Payment letters for tax years 2014 and 2015 were issued on January 16, 2019, but Petitioner signed her appeal on dated June 20, 2019, well over 30 days after the assessment was issued. Exhibit A p. 2; Exhibit B p. 5-6, 8-9, 11-12, 14-15. Likewise, the Official Assessment and Demand for Payment for tax year 2017 was issued on February 19, 2019, and with Petitioner’s appeal signed on June 20, 2019, this is also well over 30 days after the assessment was issued. Exhibit B p. 23-24.

Petitioner did not present any evidence, either with testimony or documentary evidence, to show any reason for not appealing the Official Assessment and Demand for Payment letters within 30 days as required by Code Section 48-2-59(b). Plaintiff further testified that she was aware of the issues relating to these tax years as she filed a protest with the Department. Additionally, she testified that she spoke with Department employees often and that one such employee informed her about the option to appeal to the Georgia Tax Tribunal. Given this testimony and the lack of evidence for any reason as to why Petitioner was unable to appeal the Official Assessments within 30 days as required by Code Section 48-2-59(b), this Court further finds that this case must likewise be dismissed for lack of subject matter jurisdiction on this ground.

Finally, during the hearing, Petitioner raised the legal issue of whether the Department was

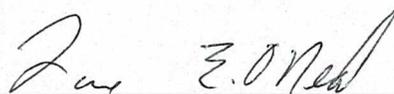
out of time to file a Motion to Dismiss for lack of subject matter jurisdiction. As explained by the Georgia Court of Appeals in Kogel v. Kogel, a “court's lack of subject-matter jurisdiction cannot be waived and may be raised **at any time** either in the trial court, in a collateral attack on a judgment, or in an appeal.” 337 Ga. App. 137, 140 (2016) (emphasis added) (quoting from *Abushmais v. Erby*, 282 Ga. 619, 622 (3) (652 SE2d 549) (2007) (punctuation omitted); see *Jackson v. Gamble*, 232 Ga. 149, 152 (1) (205 SE2d 256) (1974) (“Waiver or consent of the parties cannot confer on a court jurisdiction of a subject matter wherein it has none at law.” (punctuation omitted))).

Further the Department raised the issue of subject matter jurisdiction in their Answer to Petition. Exhibit B p. 1-2. This clearly complies with O.C.G.A. § 9-11-12(b), which states in part “Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion in writing: (1) Lack of jurisdiction over the subject matter;” This further supports the finding that the Department’s defense of lack of subject matter jurisdiction was filed timely.

Additionally, an agency “cannot exercise power beyond [its] constitutional or statutory authority [or] adopt a power that is not conferred on it by the governing statute. Further, state agencies cannot acquire subject matter jurisdiction through consent, waiver, or estoppel.” 81A C.J.S. States § 235. The Georgia Supreme Court has long held that “[j]urisdiction of the subject matter of a suit cannot be conferred by agreement or consent, or be waived or based on an estoppel of a party to deny that it exists.” Ga. R. R. & B. Co. v. Redwine, 208 Ga. 261, 262-263 (1) (66 SE2d 234) (1951) (citation and punctuation omitted). Because a Court’s lack of subject matter jurisdiction may be raised at any time, the Department’s Motion to Dismiss is timely and

appropriate. Therefore, the Petition in this case must be dismissed for lack of subject matter jurisdiction.

**SO ORDERED**, this 17 day of NOV 2021.



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

**PREPARED AND PRESENTED BY:**

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