

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



APR 10 2025


Clara Davis, Tax Tribunal Administrator

TAYO REED,

Petitioner,

v.

FRANK M. O'CONNELL, in his official
capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

Docket No. 2510805

DECISION

I. INTRODUCTION

This case is an appeal brought by Petitioner Tayo Reed (“Petitioner”) challenging State Tax Execution No. REV 120189637. A hearing in this matter was held on April 1, 2025. Frances C. Mulderig, Esq. appeared on behalf of the Georgia Department of Revenue, (hereafter “Respondent” or “the Department”), and Ms. Tayo Reed (“Petitioner”) represented herself *pro se*. The issue in this case is whether the tax execution, which was originally recorded by the Department on November 1, 2012, is valid. Having carefully read and considered all of the evidence in the record, including witness testimony, Respondent’s State Tax Execution, No. REV 120189637, is **AFFIRMED**.

II. FINDINGS OF FACT

1.

Petitioner timely filed a Tax Year 2010 Georgia Form 500, Individual Income Tax Return on April 14, 2011. The return showed a tax due amount of \$5,417.00. The Department considers this tax balance to be “self-assessed” because the return was electronically signed by the Taxpayer

and shows that a balance is owed. Payment of the tax due was not provided with the return. (Respondent's Exhibit A; testimony of Hamilton Russ).

2.

On January 25, 2012, the Department issued an Official Assessment and Demand for Payment for Tax Year 2010. The Official Assessment showed an amount due of \$6,229.50, comprised of a tax due amount of \$5,417.00, penalty of \$270.80, and \$541.70 in interest. (Respondent's Exhibit B).

3.

On August 20, 2012, the Department issued State Tax Execution No. REV 120189637. The tax execution was recorded on November 1, 2012, and encompassed a 20% collection fee of \$1,083.40 and costs of \$50.00. Interest and penalty on the balance continued to accrue, with penalty being subject to a "max out" amount equal to 25% of tax due. At the time of the recording of the tax execution, \$933.89 in interest and \$433.28 in penalty were due. When combined with the tax due and collection fee and costs, the total amount due was \$8,177.57. (Respondent's Exhibit C; testimony of Hamilton Russ).

4.

On January 1, 2018, State Tax Execution No. REV 120189637 was re-recorded with the Clerk of Superior Court of Fulton County. The amount due at this time was \$11,856.69, comprised of \$5,417 in tax due, \$1,354.00 in penalty, \$3,952.29 in interest, a \$1,083.40 collection fee, and costs of \$50.00. The penalty amount accrued until it reached a "max out" amount equal to 25% of tax due. (Respondent's Exhibit D; testimony of Hamilton Russ).

5.

As of March 25, 2025, the amount due for Tax Year 2010 totaled \$14,951.42.

(Respondent's Exhibit E).

III. CONCLUSIONS OF LAW

A. Standard of Review

In all proceedings before the Georgia Tax Tribunal, the standard of review is *de novo*, and the evidence presented is not limited to the evidence considered by the Department. Ga. Comp. R. & Regs. 616-1-3-.11(a). Under *de novo* review, the Tribunal is required to make an “independent determination of the issues.” See United States v. First City Nat'l Bank of Houston, 386 U.S. 361, 368 (1967); see also Marc J. Fleury & Nathalie Mason-Fleury v. Comm'r, TAX-IIT-1532748 & 1552226 (Ga. Tax Tribunal 2015).

B. Petitioner Bears the Burden of Proof

A tax assessment by the Department of Revenue is deemed *prima facie* correct, and the burden of persuasion in an appeal thereof is put on the taxpayer to show errors or unreasonableness in the assessment. See Blackmon v. Ross, 123 Ga. App. 89 (1970); Hawes v. LeCraw, 121 Ga. App. 532 (1970). As explained by the Georgia Court of Appeals:

[T]he burden of proof is on the taxpayer from the beginning . . . and that burden remains on him to . . . show clear and specific error or unreasonableness in the Commissioner's deficiency assessment. This placing of the burden is justified by the fact that the taxpayer is the moving party in contesting the validity of the assessment and has in his possession the information necessary for such contest.

Undercofler v. White, 113 Ga. App. 853, 855 (1966).

During the hearing, Petitioner argued that there are discrepancies in the Department's calculation of Petitioner's amount due, and because of these discrepancies, the Department bears the burden of proof in substantiating the debt allegedly owed by Petitioner. In response to Petitioner's argument, the Department presented evidence showing how the amount due accrued through March 25, 2025.

Petitioner's balance began with the filing of her "self-assessed" tax return on April 14, 2011. Petitioner's balance due at that time was \$5,417.00. Due to Petitioner's failure to pay the amount due when the return was filed, on January 25, 2012, when the Department issued an Official Assessment and Demand for Payment, Petitioner's amount due was \$6,229.50, comprised of a tax due amount of \$5,417.00, penalty of \$270.80, and \$541.70 in interest.

Penalties and interest are subject to specific accrual rules under Georgia law. Penalties on income tax returns are imposed pursuant to O.C.G.A. § 48-7- 86(a). The Code section provides, in relevant part, that:

1) In case of failure to pay:

(A)The amount shown as tax on a return on or before the date prescribed for payment of the tax, such date to be determined with regard to any extension of time for payment, there shall be added to the amount of tax required to be shown on the return one-half of 1 percent of the amount of the tax if the failure is for not more than one month and with an additional one-half of 1 percent for each additional month or fraction of a month during which the failure continues. . . .

2) No penalty shall be assessed pursuant to this subsection which exceeds in the aggregate 25 percent of the amount of the tax. . . .

O.C.G.A. § 48-7- 86(a).

Interest on income tax owed is currently imposed pursuant to O.C.G.A. § 48-7-81(a) and (d), and the rate of that interest is set forth in O.C.G.A. § 48-2-40.¹ That Code section provides, in relevant part, as follows:

Except as otherwise expressly provided by law, taxes owed the state or any local taxing jurisdiction shall bear interest at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. . . .

¹ O.C.G.A. § 48-2-40 was amended in 2016. Prior to the amendment, the rate of interest on past due taxes was 1% per month from the date that the tax was due. See O.C.G.A. § 48-2-40 (2015).

Accordingly, when a taxpayer fails to pay the amount due after filing a return, penalties increase until they reach 25% of the amount of the tax, while interest continues to accrue at the lawful rate until the amount due is paid.

A collection fee and costs are imposed pursuant to O.C.G.A. § 48-16-10 and are imposed when the tax execution is first issued. The Department issued State Tax Execution No. REV 120189637 on August 20, 2012, and recorded the execution on November 1, 2012. At the time that the tax execution was issued, Petitioner's amount due was \$8,177.57, comprised of \$5,417.00 of tax due, \$933.89 in interest, \$433.28 in penalty, a \$1,083.40 collection fee, and costs of \$50.00.

Once a tax execution is issued, the interest is imposed pursuant to O.C.G.A. § 48-3-8, which is again the interest rate set forth in O.C.G.A. § 48-2-40. Due to Petitioner's continued failure to pay the amount due, as of January 1, 2018, when the tax execution was re-recorded, the amount due was \$11,856.69, comprised of \$5,417.00 in tax due, \$1,354.00 in penalty, which accrued until it reached 25% of the amount of tax, \$3,952.29 in interest, a \$1,083.40 collection fee, and costs of \$50.00. As of March 25, 2025, Petitioner's amount due for Tax Year 2010 totaled \$14,951.42, comprised of \$5,417.00 in tax due, \$1,354.00 in penalty, \$7,047.02 in interest, a \$1,083.40 collection fee, and costs of \$50.00.

Taking into consideration all of the evidence submitted, the Court finds that there are no discrepancies in the Department's calculation of Petitioner's amount due. Petitioner has not submitted any credible evidence showing errors or unreasonableness in the Department's calculations. Thus, Petitioner has failed to meet her burden of proof. Thus, the Department's calculations of Petitioner's amount due are **AFFIRMED**.

C. The Department Properly Renewed the State Tax Execution

Under O.C.G.A. § 48-3-42(b), all executions issued by the Department were declared to

be invalid as of December 31, 2017. However, executions recorded within seven years before January 1, 2018, were eligible for renewal for a period of ten years, if a renewed execution was filed by the Department between January 1, 2018, and February 20, 2018. *Id.*

The tax execution in this case was originally recorded by the Department on November 1, 2012, which is within seven years before January 1, 2018. The tax execution was re-recorded by the Department on January 1, 2018, which falls within the period of renewal designated under O.C.G.A. § 48-3-42(b). Thus, the Court finds that the Department properly renewed State Tax Execution No. REV 120198367 in compliance with O.C.G.A. § 48-3-42(b) and Georgia law. Consequently, the Department's renewal of State Tax Execution No. REV 120189637 is **AFFIRMED.**²

SO ORDERED this 10th day of April, 2025.



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

² In conjunction with this Decision, Petitioner's Motion to Dismiss Tax Lien, filed on March 23, 2025, is **DENIED**.