

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

GAIL K. and PAUL T. ZANTZINGER,

Petitioners,

v.

**DOUGLAS J. MACGINNITIE, Commissioner,
GEORGIA DEPARTMENT OF REVENUE,**

Respondent.

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: **TAX TRIBUNAL DOCKET**
: **NO.: TAX-IIT-1344697**
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DECISION

2014-2 Ga. Tax Tribunal, January 31, 2014

This matter originally arose as a result of a petition (“Petition”) filed by Petitioners Gail K. and Paul T. Zantzinger (“Petitioners”) challenging an assessment for income tax, penalty and interest made against them by the Department of Revenue (“Respondent”) for the taxable year 2007. (See Petition paragraphs 1, 4 and Official Assessment and Demand for Payment, Letter ID L2146468064 attached to the Petition.) Respondent has conceded that the assessment which was the original subject of the Petition is barred by the statute of limitations. The only remaining issue for decision is whether a claim for refund for 2007 filed by the Petitioners is also barred by the Statute of Limitations

FINDINGS OF FACT

The facts in this matter are not in dispute. The procedural posture for the summary judgment motion which is the subject matter of this decision is somewhat unusual, however.

Petitioners timely filed their original 2007 Georgia state joint income tax return with

Respondent on October 7, 2008. See Exhibit A (Georgia Form 500) to the Amendment to Answer to Petition, page 1. The due date for the Petitioners' return for 2007, which was on extension, was October 15, 2008. In 2008, October 15 was a Wednesday. On Line 25 of the return Petitioners reported an overpayment of \$1,795 and requested that Respondent credit this overpayment to their 2008 estimated tax liability. Id. At page 2, line 25.

On Tuesday October 18, 2011, Petitioners mailed an amended return dated October 17, 2011 for the taxable year 2007 (the "2007 Claim for Refund") requesting a refund of \$1,441. This 2007 Claim for Refund was marked as received by Respondent on October 20, 2011. See Exhibit B (Georgia Form 500X) to the Amendment to Answer to Petition, page 1, lines 11 and 16.

On May 28, 2013, Respondent issued an Official Assessment and Demand for Payment Letter to Petitioners assessing income tax, penalty, and interest of \$2,616.19 against Petitioners for the year 2007 (the "2007 Assessment"). See Exhibit C to the Amendment to Answer to Petition.

In response to the Assessment, Petitioners filed their Petition with the Georgia Tax Tribunal on June 18, 2013. In their Petition, the Petitioners objected to the 2007 Assessment and elected for their case to proceed as a Small Claims division case. It is thus Respondent's 2007 Assessment that triggered the filing of the Petition in this case and which initially brought this matter before the Tax Tribunal.

On October 9, 2013, Respondent filed an Answer to Petition generally denying the facts as stated in Petitioners' original Petition.

On December 5, 2013, Respondent amended the Answer by filing an Amendment to Answer to Petition. Attached to the Amendment to Answer to Petition as Exhibits "A" and "B"

are copies of

- (i) Petitioners' originally filed tax returns for 2007 dated October 4, 2008 but marked as "Received" by Respondent on October 7, 2008; and
- (ii) a copy of the Petitioners' 2007 Claim for Refund.

The copy of the Claim for Refund reflects it was dated October 17, 2011, was postmarked October 18, 2011 and was received by Respondent on October 20, 2011. Respondent had discovered the copy of Petitioner's 2007 Claim for Refund in reviewing Petitioner's file in response to the filing of the Petition.

In the Amendment to Answer to Petition, Respondent raised for the first time an affirmative defense of statute of limitations as to the Petitioners' 2007 Claim for Refund. Simultaneously with the filing of the Amendment to Answer to Petition, Respondent also moved for summary judgment denying the Petitioners' 2007 Claim for Refund. Respondent also acknowledged that the original 2007 Assessment, which was the initial subject of this matter of the Petition, is barred by the statute of limitations.

Thus, the Petitioners have prevailed upon their original Petition as to the Assessment which Respondent acknowledges is barred by the statute of limitation. The only issue remaining before the Tax Tribunal is whether the Petitioners can proceed upon their 2007 Claim for Refund dated October 17, 2011 but which was postmarked on October 18, 2011 and "Received" by the Respondent on October 20, 2011

CONCLUSIONS OF LAW

The standards governing summary judgment are well settled. To prevail on summary judgment under O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine

issue of material fact as to each element of its claim and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c). Lau's Corp., Inc. v. Haskins, 261 Ga. 491 (1991).

Respondent has conceded that the statute of limitations bars the 2007 Assessment which was the genesis of the Petition in this case. In light of Respondent's concession, the sole issue remaining for this Tribunal's determination is whether the statute of limitations also bars the Petitioners' 2007 Claim for Refund in the amount of \$1,441.

The facts are not in dispute. Petitioners mailed their 2007 Claim for Refund on October 18, 2011 and the Claim for Refund was received by Respondent on October 20, 2011.¹ This is more than three years after the Petitioners had filed their original 2007 Georgia state income tax return and more than three years after the October 15 extended due date for that return.² The refund which the Petitioners have requested from Respondent is thus barred by the statute of limitations because the claim was not filed within three years after the date of the payment of the tax or three years from the due date of the return. See O.C.G.A. § 48-2-35(c)(1)(A) ("A claim for refund of a tax or fee erroneously or illegally assessed and collected may be made by the taxpayer at any time within three years after: (i) The date of the payment of the tax or fee to the commissioner; or (ii) In the case of income taxes, the later of the date of the payment of the tax or fee to the commissioner or the due date for filing the applicable income tax return, including any extensions which have been granted.")


¹ On the original return, Petitioners requested that the overpayment for the year 2007 be credited to their estimated tax liability for the year 2008.

² In 2011, October 15 fell on a Saturday. Because the postmark establishes that the refund claim was not mailed until Tuesday October 18, 2011, and not received by the Respondent until October 20, 2011, it is not necessary to examine the question of whether the statute of limitations for the filing of the refund claim would be tolled until Monday, October 17, 2011, or whether the mailing of the amended return on or by that date would be a timely claim for refund for purposes of the statute of limitations.

CONCLUSION

The Respondent has conceded that Respondent's Assessment for the year 2007 against Petitioners is barred by the statute of limitations. We find that the Petitioners' 2007 Claim for Refund is also barred by the statute of limitations and enter judgment for Respondent on that issue accordingly.

SO ORDERED this 3/5th day of January, 2014.


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

GAIL K. and PAUL T. ZANTZINGER, *PRO SE*

PETITIONERS

SAMUEL S. OLENS, Attorney General, W. WRIGHT BANKS, JR., Deputy Attorney General, WARREN R. CALVERT, Senior Assistant Attorney General, LOURDES G. MENDOZA, Senior Assistant Attorney General

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