

**IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA**

TERRY E. MOON,

Petitioner,

v.

**COMMISSIONER OF THE GEORGIA
DEPARTMENT OF REVENUE,**

Respondent.

*
*
*
*
*
*
*
*
*
*

Docket No.: TAX-WT-1400721

DECISION

2013-2 Ga. Tax Tribunal, December 13, 2013

This case is an appeal brought by Petitioner Terry E. Moon (“Petitioner”) challenging three (3) notices of proposed assessment issued by the Georgia Department of Revenue regarding certain withholding taxes for periods in 2010 and 2011 (the “Petition”). For the reasons discussed below, the Tax Tribunal lacks subject matter jurisdiction to consider this challenge and the Petition must be dismissed.

Findings of Fact and Conclusions of Law

The Petitioner filed the Petition with the Tax Tribunal on July 2, 2013, designating the matter as a Small Claims Division Case. Appended to the Petition are copies of Letters ID Nos. L0223372992, L0206121920 and L1420443328 which identify the matters in issue as withholding taxes for the periods June 30, 2010, June 30, 2011, and September 30, 2011 respectively.

Respondent filed his Answer on October 31, 2013, raising the defense of lack of jurisdiction and concurrently filed a Motion To Dismiss for lack of subject matter jurisdiction and Brief In Support Of Motion To Dismiss.

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

...[A]ny person may petition the tribunal for relief as set forth in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 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.”)

Although notices of proposed assessment issued by the Respondent to public utilities and airline companies for ad valorem tax purposes may be appealed to the Tax Tribunal, see O.C.G.A. § 48-2-18(c), none of the statutes listed in Code Section 50-13A-9(a) permits a taxpayer to seek relief in the Tax Tribunal from a proposed assessment involving state payroll withholding taxes. Proposed assessments must instead be appealed administratively by filing a protest with the Respondent. O.C.G.A. § 48-2-46 (“Any taxpayer may contest any proposed assessment . . . by filing *with the commissioner* a written protest at any time within 30 days from the date of notice of the proposed assessment . . .”) (emphasis added).¹

Until the Petitioner has been issued a final assessment, or has paid the disputed liability and satisfied the requirements for bringing a refund action in the Tax Tribunal, the Tax Tribunal does not have jurisdiction to consider this matter. Therefore, the Petition in this case must be dismissed for lack of subject matter jurisdiction.

¹ It should be noted that under the Standing Order on Provisional Filings of the Georgia Tax Tribunal dated October 15, 2013, which can be found at <http://gataxtribunal.georgia.gov/documents/rules-standing-orders>, which was implemented subsequent to the date of filing this Petition, this case would have been docketed as a “Provisional” filing subject to automatic dismissal pursuant to that order.

SO ORDERED, this 31st day of December, 2013.



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

TERRY E. MOON, *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*