

On her 2011 income tax return, which Petitioner filed with Respondent, Petitioner reported that she did not owe any Georgia income tax for the year 2011 and that Respondent did not owe her an income tax refund.

Even though Petitioner reported that she was not entitled to an income tax refund for the year 2011, Respondent erroneously credited another taxpayer's tax payment to Petitioner's account for the year 2011 and issued Petitioner an erroneous refund in the amount of \$351.00.

Respondent subsequently discovered it had erroneously issued a refund to Petitioner. Respondent corrected its error as to the other taxpayer and applied the amount paid by the other taxpayer to the proper account for that taxpayer.

Respondent then offset \$52.00 otherwise due to Petitioner against the amount of the erroneous refund and issued an Official Assessment and Demand for Payment letter dated May 28, 2013, to recover the net balance of the erroneous refund. In the Official Assessment and Demand for Payment, the Respondent demanded a refund of \$309.53 as "Other," which represented the net balance of the erroneous refund of \$351.00 reduced by the offset previously taken. Respondent also assessed interest of \$12.40.

On July 1, 2013, Petitioner filed her Petition in the Georgia Tax Tribunal, designating her case as proceeding under the Small Claims Division procedures of the Tribunal. In her Petition, Petitioner stated, "(1) I filed taxes as required. (2) [The] State of Georgia sent a letter stating [that] they had refigured my Taxes and I was due a refund and sent [me] a check. (3) [The] State of Georgia made a mistake and I should not have to repay."

After the expiration of the ninety-day remand period under this Tribunal's Standing Remand Order, Respondent filed its Answer on October 7, 2013. On December 3, 2013,

Respondent moved for summary judgment, filing its Motion for Summary Judgment and supporting documentation. Petitioner has not filed any response to Respondent's summary judgment motion and supporting documentation.

II. CONCLUSIONS OF LAW

A. STANDARD OF REVIEW ON SUMMARY JUDGMENT

The standards governing summary judgment are well established. To prevail at 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).

The issue presented for the Tribunal's consideration is whether Petitioner owes Respondent \$299.00 for the year 2011 in order to repay the balance of the erroneous refund that she received and which, by her own admission, she was not entitled.¹

B. THE RESPONDENT'S ASSESSMENT IS PRIMA FACIE CORRECT

A tax assessment made by the Revenue Commissioner is prima facie correct, and the taxpayer has the burden to show errors or unreasonableness in the assessment. Scott v. Blackmon, 132 Ga. App. 578, 579 (1974) (involving a motor fuel tax assessment); Blackmon v. Ross, 123 Ga. App. 89, 90 (1970) (involving a sales tax assessment); Hawes v. LeCraw, 121 Ga. App. 532, 533 (1970) (involving a sales tax assessment). Accord Brosnan v. Undercofler, 111 Ga. App. 95, 97 (1965); Head v. Edgar Bros. Co., 60 Ga. App. 482, 487 (1939) (involving an income tax assessment).

¹ Respondent has conceded that Petitioner is not liable for the interest assessed in the Official Assessment and Demand for Payment Notice Letter ID L 2146468064 and that she is not liable for \$10.53 of the erroneous refund.

C. PETITIONER OWES THE RESPONDENT \$299.00 AND MUST REPAY THE ERRONEOUS REFUND

Petitioner has admitted that she did not claim the refund that she received from the Respondent for the year 2011. Respondent admits that it erroneously issued this refund to Petitioner based on a payment made by another taxpayer. When Respondent discovered its error, it sought to correct it. First, it properly credited the account of the taxpayer who had actually paid the tax. Then it issued an assessment notice to Petitioner to recover the erroneous refund.

Petitioner is understandably frustrated by this chain of events. Unfortunately, we do not live in a perfect world, and errors such as the one giving rise to this action occur.

Respondent receives and processes well over five million tax returns per year. As Commissioner MacGinnitie has remarked publicly, though Respondent strives to reduce the number of errors that occur in the processing of returns, mistakes are inevitable. Even a small percentage of errors on such a large number of returns necessarily results in a large number of returns that require correction. Indeed, the reality of these errors is one of the principal reasons for the creation of this Tribunal by the General Assembly in order to provide a vehicle to ensure that such errors are corrected promptly.

To the taxpayer who is the subject of such a mistake, however, the experience is at best annoying. At worst it results in anxiety, an investment of significant time and effort and, in some cases, outright expense if the taxpayer finds it necessary to engage outside professional assistance to correct the error. The Petitioner's irritation in this case is thus completely understandable.

Unfortunately for Petitioner, however, there is no concept in our tax law of "finders

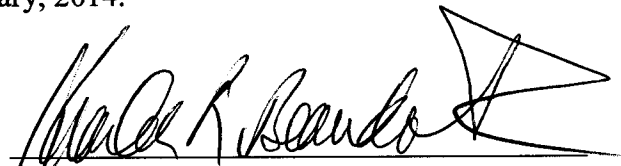
keepers, losers weepers.” There is no suggestion that Petitioner cannot repay the amount at issue, or that Petitioner detrimentally relied on Respondent’s behavior, or any circumstances that could possibly justify an argument that the amount is not due. Nor does Petitioner have a statute of limitations defense. In sum, there is simply no legal basis for Petitioner’s position that she is entitled to retain the erroneous refund, no matter how frustrating this chain of events that got us to this point has proven to be. She must now repay it.

Respondent has conceded an adjustment of \$10.53 as to the claimed refund amount as incorrect and has appropriately waived any claim for interest. Therefore, the net amount owing that Petitioner must now pay Respondent is \$299.00.

CONCLUSION

Accordingly, judgment is entered in favor of Respondent and against Petitioner in the amount of \$299.00.

SO ORDERED, this 24th day of February, 2014.


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

THERESE R BASHAM, PRO SE

PETITIONER

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*