

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0003

September Term, 2015

PETER M. FERRARO

v.

COMPTROLLER OF THE TREASURY

Graeff,
Leahy,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 11, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Peter M. Ferraro, appellant, challenges a decision by the Maryland Tax Court affirming the decision of the Comptroller of the Treasury (the “Comptroller”), appellee, that: (1) Mr. Ferraro was not entitled to interest with respect to tax refunds issued for tax years 2003 and 2004; and (2) Mr. Ferraro was not entitled to a refund in the amount of \$5,630.66 due to tax overpayment. The Circuit Court for Baltimore City, on judicial review, affirmed the decision of the Tax Court.

On appeal, Mr. Ferraro raises the following questions for our review, which we have consolidated and rephrased as follows:¹

1. Did the Tax Court err in denying Mr. Ferraro’s claim for interest on his 2003 and 2004 tax refunds?
2. Did the Tax Court properly deny Mr. Ferraro’s claim for a refund of \$5,630.66?

¹ Mr. Ferraro presents the following questions:

1. Did the Tax Court err in denying [Mr.] Ferraro’s claim of interest for refunded amounts as to the 2003 and 2004 tax years because of a discrepancy between the adjusted gross income as reported by the [Internal Revenue Service (“IRS”)] and [Mr.] Ferraro’s amended Maryland returns?
2. Did the Tax Court err in denying [Mr.] Ferraro’s claim of interest for refunded amounts as to the 2004 tax year because [Mr.] Ferraro failed to file an amended Maryland 2005 return?
3. Did the Tax Court otherwise err in denying [Mr.] Ferraro’s claim of interest for refunded amounts as to the 2003 and 2004 tax years?
4. Did the Tax Court err in denying [Mr.] Ferraro’s claim for the \$5,630.66 that the Comptroller applied to subsequently refunded taxes because of a discrepancy between the federal and Maryland tax returns?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Mr. Ferraro's Tax Filings

This appeal involves action related to Mr. Ferraro's tax returns and amended returns, for several years. To put the parties' arguments in context, we initially will discuss the filings for each tax year.

A.

2001

In August 2005, Mr. Ferraro filed, late, his 2001 federal income tax return. The return showed a federal adjusted gross income ("AGI") of \$216,206, a tax liability of \$70,438, and a balance due of \$70,438. That same month, Mr. Ferraro filed, late, his 2001 Maryland resident tax return, which showed an AGI of \$216,206, a tax liability of \$13,412, and a balance due of \$13,412.

In December 2005, Mr. Ferraro sent a \$59,085.65 check to the Comptroller. He subsequently stated that this reflected payments for back taxes owed for 2001 (\$13,411.45), 2002 (\$13,299.15), and 2003 (\$32,375.05). The Comptroller applied \$3,402.35 in assessed interest and penalties for the late filing in 2001.

On or about May 29, 2007, Mr. Ferraro filed an Amended U.S. Individual Income Tax Return for 2001. On or about July 10, 2007, Mr. Ferraro filed an amended 2001 Maryland resident income tax return. On his 2001 Amended Maryland Tax Return, Mr. Ferraro reduced his 2001 AGI from \$216,206 to \$19,517, a decrease of \$196,689. He

explained the reason for the changes on the amended return: “THE SALES WERE REDUCED DUE TO AN ERROR.” On line 25, Mr. Ferraro claimed a refund of \$13,412.

The Comptroller noted that the purpose in filing the amended income tax return in 2001, as well as in 2002-2004, was to utilize a net operating loss (“NOL”) that occurred in tax year 2005, but Mr. Ferraro had not filed a 2005 Maryland income tax return. After Mr. Ferraro failed to submit the required documentation, the Comptroller denied Mr. Ferraro’s 2001 refund claim for lack of substantiation. In November 2012, following an administrative appeal of the denial of his 2001 refund claim, and after receipt of some substantiation of the claim, the Comptroller issued a refund check in the amount of \$13,412 to Mr. Ferraro for his 2001 Maryland income tax payments. Mr. Ferraro cashed the check.

B.

2002

Also in August 2005, Mr. Ferraro filed, late, his 2002 U.S. Individual Income Tax Return. The return showed an AGI of \$181,441, a tax liability of \$62,269, and a balance due of \$62,269. On or about October 13, 2005, he filed, late, his 2002 Maryland resident income tax return. Mr. Ferraro’s 2002 Maryland resident return showed an AGI of \$181,441, a tax liability of \$13,299, and a balance due of \$13,299.

On or about June 3, 2007, Mr. Ferraro filed an Amended U.S. Individual Income tax return for 2002. Thereafter, on or about July 10, 2007, he filed an amended 2002 Maryland resident income tax return. On his 2002 Maryland amended return, Mr. Ferraro reduced his AGI from \$181,441 to \$10,756, a decrease of \$170,685. He explained the reason for the change on his amended return: “THE SAME SELLS [sic] FROM

AUTOMOBILES WERE COUNTED IN MORE THEN [sic] ONE YEAR. THE GROSS SALES WERE REDUCED.” On line 25 of the 2002 amended return, Mr. Ferraro claimed a \$13,299 refund.

The Comptroller denied Mr. Ferraro’s 2002 refund claim for the same reason it denied his 2001 refund claim, lack of substantiation. In November 2012, following an administrative appeal of the denial of his 2002 refund claim, and after receipt of some substantiation of the claim, the Comptroller issued a \$13,299 refund check to Mr. Ferraro for his 2002 Maryland income tax payments. Mr. Ferraro cashed the check.

C.

2003

On or about October 12, 2005, Mr. Ferraro filed, late, his 2003 U.S. Individual Income Tax Return. The return showed an AGI of \$506,635, a tax liability of \$181,554, and a balance due of \$181,554. During the same time period, Mr. Ferraro filed, late, his 2003 Maryland resident income tax return. The 2003 Maryland return showed an AGI of \$506,635, a tax liability of \$39,155, and a balance due of \$39,155.

From the \$59,085.65 check Mr. Ferraro sent to the Comptroller in December 2005, the Comptroller applied \$2,228.31 in satisfaction of 2003 assessed interest and penalties for the late filing and payment of tax.

On or about May 30, 2007, Mr. Ferraro filed an Amended U.S. Individual Income Tax return for 2003. Thereafter, he filed an amended 2003 Maryland resident income tax return. On the 2003 Maryland amended return, Mr. Ferraro reduced his AGI from \$506,635 to negative \$275,942, a decrease of \$782,577. He explained the reason for the

change on the amended return: “THE SAME SELLS [sic] FROM AUTOMOBILES WERE COUNTED IN MORE THEN [sic] ONE YEAR. THE GROSS SALES WERE REDUCED BY \$104,200. AN NOL CARRYBACK FROM 2005 ALSO EFFECTED [sic] LINE 1.”² On line 25 of the 2003 amended return, Mr. Ferraro claimed a refund of \$0.

Mr. Ferraro filed a second amended 2003 Maryland resident income tax return on or about July 10, 2007.³ On the second 2003 amended return, Mr. Ferraro reduced his AGI from \$506,635 to negative \$275,942. E377. He explained the reason for the change on the amended return: “THE SAME SELLS [sic] FROM AUTOMOBILES WERE COUNTED IN MORE THEN [sic] ONE YEAR. THE GROSS SALES WERE REDUCED BY \$104,200. AN NOL CARRYBACK FROM 2005 ALSO EFFECTED [sic] LINE 1.” On line 25 of the 2003 amended return, Mr. Ferraro claimed a refund of \$39,155.

² Provisions of the Internal Revenue code “allow a taxpayer suffering a financial loss to use that loss as a deduction against income produced in preceding years (hence the term ‘carryback’).” *Hickey v. Comptroller of Treasury*, 92 Md. App. 1, 7 (1992). Carryback provisions permit “an adjustment of an earlier [tax year] liability upon the basis of subsequent events.” *Bulova Watch Co. v. United States*, 365 U.S. 753, 759 (1961). Statutory provisions allowing the carryback of NOL’s to non-loss years are limited exceptions to the general rule of basic year-by-year accounting. *Id.* This “exceptional relief measure” contemplates that the initial tax obligation “was actually due, but that an adjustment may be made upon the basis of the taxpayer’s gain or loss in the succeeding year or years.” *Id.* at 758-59.

³ Mr. Ferraro testified that the first 2003 amended return, indicating a refund of \$0, was not filed. He agreed that the Comptroller had two 2003 amended returns and that both were prepared by his return preparer, but he asserted that the copy that was filed indicated that he was due a refund of \$39,155.

Mr. Ferraro did not include a Form 1045 or any accompanying schedules to Form 1045 with either version of his amended returns.⁴ The Comptroller denied Mr. Ferraro’s 2003 refund claim due to a lack of substantiation.

In November 2012, following an administrative appeal of the denial of his 2003 refund claim, and after receipt of some substantiation of the claim, the Comptroller issued a \$34,872.86 refund check to Mr. Ferraro for his 2003 Maryland income tax payments. Mr. Ferraro cashed the check.

D.

2004

Mr. Ferraro filed a U.S. Individual Income Tax Return for 2004 on or about October 12, 2005. His 2004 federal return showed an AGI of \$278,827, a tax liability of \$97,232, and an overpayment of \$7,768. On or about October 15, 2005, he filed a 2004 Maryland Resident Income Tax Return. His 2004 Maryland return showed an AGI of \$237,827, an \$18,220 tax liability, and an overpayment of \$6,780. He reported estimated tax payments of \$25,000 for the 2004 tax year.

On or about May 30, 2007, Mr. Ferraro filed an amended 2004 U.S. individual income tax return. He filed an amended Maryland resident income tax return for 2004 on or about July 10, 2007. On his 2004 Maryland amended tax return, Mr. Ferraro reduced his AGI from \$237,827 to negative \$42,865, a decrease of \$280,692. He explained the

⁴ A Form 1045 is an “Application for Tentative Refund.” Schedule B of the Form 1045 requires the taxpayer to allocate an amount of the NOL to each carryback year.

reason for the change on the amended return: “NOL CARRYBACK FROM TAX YEAR 2005.” On line 23 of the amended return, Mr. Ferraro claimed a prior refund issued to him for \$6,780. He claimed a refund due him of \$18,220.

Mr. Ferraro did not include a Form 1045 or any accompanying schedules to Form 1045 with his amended return. The Comptroller denied Mr. Ferraro’s 2004 refund claim due to a lack of substantiation.

In November 2012, following an administrative appeal of the denial of his 2004 refund claim, and after receipt of adequate substantiation of the claim, the Comptroller issued a refund check to Mr. Ferraro in the amount of \$18,220.72 for his 2004 Maryland income tax payments. Mr. Ferraro cashed the check.

E.

2005

On or about June 4, 2007, Mr. Ferraro filed, late, his 2005 U.S. Individual Income Tax Return. His 2005 federal return showed a negative \$639,890 AGI, \$0 tax liability, and a \$50,000 overpayment. His 2005 Maryland tax return showed a negative \$402,048 AGI, \$0 tax liability, and a \$10,000 overpayment. Mr. Ferraro reported estimated tax payments in the amount of \$10,000 for the 2005 tax year.

On or about June 4, 2007, Mr. Ferraro filed an amended 2005 U.S. Individual Income Tax Return, again reporting an AGI of negative \$639,890. He claimed that he filed an amended 2005 Maryland resident income tax return, but the Comptroller did not have a filed copy, and Mr. Ferraro did not have a copy to file in court.

II.

Audits and Administrative Proceedings

After Mr. Ferraro filed his amended federal tax returns, the IRS conducted an audit. On August 8, 2007, after Mr. Ferraro submitted his amended Maryland income tax returns for tax years 2001-2004, the Comptroller sent him a letter requesting documentation within 30 days to substantiate the NOL's and the adjusted federal figures reflected on his Maryland amended returns. The Comptroller also requested specific documentation pertaining to the 2005 tax year, as Mr. Ferraro had not filed an amended 2005 tax return. Mr. Ferraro did not provide any evidence to the Comptroller that the adjusted income amounts on his amended returns were accepted by the IRS, nor did he submit a Schedule D for tax year 2005, as requested.

The Comptroller instituted its own audit regarding Mr. Ferraro's amended Maryland income tax returns because the AGI's indicated on his Maryland amended returns did not match the information submitted to the IRS. On January 22, 2008, the Comptroller sent Mr. Ferraro a letter requesting complete copies of his 2001-2005 U.S. amended returns, copies of the resulting refund checks, and a copy of his 2005 Maryland amended return. Mr. Ferraro did not provide these documents, and on March 21, 2010, the refunds requested by Mr. Ferraro's 2001-2004 Maryland amended tax returns were denied.

Mr. Ferraro appealed the Comptroller's denial of his refunds, and a hearing was scheduled for September 21, 2010. As a courtesy to Mr. Ferraro, the hearing was canceled, and the appeal was held in abeyance pending the outcome of the IRS audit.

On September 11, 2012, Mr. Ferraro sent to the Comptroller a proposed federal income tax change, which the Comptroller deemed insufficient proof of federal acceptance. The Comptroller informed Mr. Ferraro that he would need “copies of the federal amended returns that match the figures as shown on his Federal Account Transcripts.”

The IRS audit was completed on September 24, 2012, for tax years 2001 and 2003, and October 22, 2012, for tax years 2002 and 2004. Mr. Ferraro provided the Comptroller with documentation showing that, effective July 30, 2012, the IRS had adjusted his AGI for all four years to either \$0 or to negative amounts. As a result of the documented changes, the Comptroller ordered Mr. Ferraro’s 2001 AGI changed to \$182,532, and it issued a refund of \$16,814.35. It ordered his 2002 AGI changed to \$0, and it issued a refund of \$15,527.31. The Comptroller ordered his 2003 AGI changed to \$0, and it issued a refund of \$34,872.86. It ordered his 2004 AGI changed to \$87,741, and it issued a refund of \$18,220.72. Two refund checks were issued to Mr. Ferraro on November 13, 2012, and two refund checks were issued on November 14, 2012. The total refund amount “due” to Mr. Ferraro, under the Comptroller’s adjustments, was \$85,435.24. The total amount refunded to Mr. Ferraro, however, was \$79,804.58.⁵

Subsequently, in a letter dated December 12, 2012, the Comptroller informed Mr. Ferraro that it was denying his request for interest on his 2003 and 2004 refunds. The Comptroller explained:

At the time you submitted the Maryland amended returns, you were aware that the IRS had not permitted the corresponding adjustments on your 2001-2004 Forms 1040X. The language you used as the basis for your appeal was:

⁵ The difference between those amounts is \$5,630.66.

“Denial of amended returns because of a [NOL]. 2001-2005 still under appeal with IRS.” As a standard practice, the Comptroller . . . may not adjust an amended return if an IRS audit is in-process and must wait until the audit is complete before making any corresponding adjustments at the state level.

According to Federal Account Transcripts queried from the IRS database on October 23, 2012, the IRS did not complete their audit of your federal income taxes for tax years 2001 & 2003 until September 24, 2012, and for tax years 2002 & 2004 until October 22, 2012. The amended Maryland income tax returns reflect figures which are not consistent with the figures as reported by the IRS. Specifically, as of October 23, 2012, the [AGI] figures reported by the [IRS] differ from those you claimed on your Maryland amended income tax returns. The AGI figures as reported on the disputed 2001-04 Maryland Tax Forms 502X are inconsistent with federal information. *The incorrect information filed prior to the IRS resolution of the federal audit and your repeated failure to provide the necessary and correct information prohibits your claim that subsequent Maryland refunds are interest eligible back to the date you first filed the amended returns.*

There is substantial authority which supports the deferment of an adjustment request that results in a refund until the facts necessary to determine the refund amount are finalized. Based on Maryland tax law, the State is not required to pay interest on your refunds stemming from amended returns submitted prior to the close of a corresponding IRS audit, as the facts necessary to determine a proper refund amount were not available. Furthermore, authority holds that a claim for refund must be an explicit demand for payment setting forth an exact dollar amount; interest cannot begin to accrue until this claim is made, which requires accurate reporting of tax figures. *The figures you reported in this matter are erroneous. . . .* Your claims for refunds are based on your own errors, and not an error or mistake on the part of the Comptroller. Specifically, your 2001-04 [amended returns] were submitted . . . reporting erroneous [AGI] amounts. . . . [T]he State may justly deny interest on a tax refund if there is a taxpayer mistake or error present which is not attributable to the State.

Moreover . . . a proper refund request [must] be an explicit and written demand for payment setting forth a specific dollar amount for the refund claimed [and] interest [can] only begin to accrue after such a formal claim [is] made. . . . [I]n your case . . . there was no way of knowing an exact reporting of federal income tax figures until the close of an IRS audit on affected years.

(emphasis added). In the Comptroller’s final determination, it further explained its reasons for denying interest:

[*Comptroller of Treasury v. Fairchild Indus., Inc.*, 303 Md. 280 (1985)] state[s] that interest should be computed from the date that the amended income tax return was filed rather than the [date of] the original income tax return. However, [in *Fairchild*], the amount of the taxpayer’s claimed NOL or amended income tax returns were never disputed by the Comptroller’s office or the IRS. Rather, the taxpayer’s amended returns appear to have [been] accepted as filed.

Here, the amended returns filed by Mr. Ferraro were disputed not only by the Comptroller’s office, but by the IRS as well. According to the federal account transcripts, the IRS did not finish their review of the amended income tax returns until October of 2012. Thus, due to the factual differences between the taxpayer’s appeal and those in [*Fairchild*], the position of the Comptroller’s office is that the calculation of interest should not begin upon the filing of the taxpayer’s amended income tax returns in 2007. Rather, the calculation of interest should begin to run from the date that the operative fact [occurred] which entitled the taxpayer to the claimed refund.

For the taxpayer’s appeal, the taxpayer’s amended income tax returns sought to decrease the [AGI] reported on the original income tax returns due to . . . an NOL carryback. . . . [T]he taxpayer’s . . . Maryland income tax liability [is] “inextricably keyed” to the taxpayer’s [AGI]. As a consequence, items claimed on the taxpayer’s return could not be adjusted until the taxpayer’s [AGI] was adjusted by the IRS. The IRS did not actually adjust the taxpayer’s [AGI] until September and October 2012. Thus, the operative fact or critical event giving rise to the taxpayer’s claim for refund of State income taxes did not occur until September and October 2012 and thus, the accrual of interest cannot start until that time.

[T]o utilize an NOL on a Maryland return, the NOL must be allowed on the federal return. Again, the NOL from 2005 was not “allowed” by the IRS and thus not carried back to tax years 2003 and 2004 until September and October of 2012. Thus, the “operative fact” under this statute did not occur and interest can[not] be calculated until that time.

With respect to Mr. Ferraro’s claim for a refund of the prior assessments of interest on late payment of tax, the final determination provided:

Mr. Ferraro’s account shows payments of \$3,402.35 and \$2,228.31 in assessed penalties or interest for tax years 2001 and 2003, respectively. [Md. Code (2013 Supp.)] § 13-603 [of the Tax-General Article (“TG”)] does not provide for a recovery of interest previously paid by a taxpayer. As a consequence, the Comptroller’s office declines the request.

Mr. Ferraro appealed to the Tax Court the Comptroller’s denial of interest on the 2003 and 2004 refunds and the denial of a refund of \$5,630.66 paid for interest and penalties on taxes that, ultimately, he did not owe.⁶

III.

Tax Court Hearing

At the Tax Court hearing, Mr. Ferraro stated that he was seeking interest on his 2003 and 2004 tax refunds, and he also was seeking a refund of \$5,630.66 in overpayments, pursuant to TG § 13-901(a)(1). He stated that the purpose of the requested 2003 and 2004 refunds was the NOL carryback from 2005, and because the Comptroller received the NOL’s and the refund request in July 2007, he sought interest from that date. Mr. Ferraro argued that the Comptroller held his refunds for over five years while waiting for the outcome of the IRS’s audit, and it could not renege on paying the interest owed from that date. He asserted that, although the “numbers [did not] exactly match up” after the completion of the federal audit, “because there were some adjustments and things that the IRS moved around,” that was not “important” because, “at the end of the day . . . there was

⁶ In this appeal, Mr. Ferraro stated that he was seeking a refund of \$5,630.67. Because the parties at other times consistently state that the amount involved is \$5,630.66, we will use that amount.

no taxable income,” so the “refunds were due and owing from the time that the . . . [amended returns] were received in July of 2007.”

Mr. Ferraro agreed that the over-reporting of sales in years 2001, 2002, and part of 2003 was his error. It was “not the [C]omptroller’s error.”⁷

The Comptroller’s Custodian of Records, Christopher Rasmusse, testified that, after the refunds were granted to Mr. Ferraro, the only remaining issue was whether additional interest on the refunds should be paid. Interest payments were denied because Mr. Ferraro erroneously made the overpayments, and he did not file the proper forms for the NOL’s. The errors were Mr. Ferraro’s, not the Comptroller’s.

Mr. Rasmusse explained that Administrative Release No. 18, titled “Net Operating Losses (NOLs) and Associated Maryland Addition and Subtraction Modifications,” addresses the procedure involved when there is a NOL deduction.⁸ This procedure is as follows:

A fiduciary shall reduce the federal taxable income on Maryland Form 504 by the amount of the NOL deduction as used for federal purposes. Copies of the federal Form 1045, including Schedules A and B or equivalent schedules, shall be submitted with the return. A copy of the loss year federal return shall also be an attachment to the carry-back . . . year.

⁷ The parties agreed that \$104,200 of the reduction in income was due to Mr. Ferraro’s mistake, and he was not due interest on any refund due to his mistake. Mr. Ferraro argued, however, that he was entitled to interest on that the portion of the refund due to the NOL.

⁸ Mr. Rasmusse stated that an administrative release is “the [C]omptroller’s interpretation of [its] policies and procedures.”

Mr. Rasmusse also explained that, on Maryland Form 502X, the Amended Maryland Tax Return form, the Comptroller informs the taxpayer that:

IF THIS IS BEING FILED TO CARRY BACK A NET OPERATING LOSS, CHECK THIS BOX .

Attach copies of the federal loss year return and NOL Worksheets. See Instruction 15.

Instruction 15 provides:

NET OPERATING LOSS (NOL). To claim a deduction for a federal NOL on the Maryland return, you must first calculate the NOL for federal purposes. A deduction will be allowed on the Maryland return for the amount of the loss actually utilized on the federal return. The amount of loss utilized for federal purposes is generally equal to the federal taxable income (before loss is used) or the federal modified taxable income as calculated for the year of carryback or carryforward.

You must attach copies of federal Form 1045 or 1040X, whichever was used for federal purposes, and a copy of the federal income tax return for the year of the loss. Also include Schedules A and B of Form 1045 or the equivalent worksheets used to develop the federal NOL and show the amounts utilized on the federal return in the carryback or carry-forward years. Check the box on the front of form 502X located directly below the name and address.

Counsel for the Comptroller argued, that, until Mr. Ferraro filed a proper claim for a refund, i.e., “a 1045 with Schedules A and B” for tax year 2005 allocating the loss, the Comptroller could not figure out the exact amount of the refund owed. The Comptroller ultimately gave Mr. Ferraro a tentative refund in 2012, for years 2003 and 2004, which it subsequently believed to be a mistake, resulting in overpayment to Mr. Ferraro.

IV.

Tax Court's Ruling

In making its ruling, the Tax Court set forth the law regarding interest on refunds, as follows:

[Maryland Code (2010 Repl. Vol.) § 13-901 of the Tax General Article (“TG”)] provides . . . that with respect to a claim for refund, the tax collector shall pay interest on a refund 45 days – from the 45th day after the claim is filed to the date on which the refund is paid. And in this case, refunds were paid by the [C]omptroller’s office for all four years.

However, [TG § 13-603(b)(2)(i)] also provides that a tax collector may not pay interest on a refund if the claim for refund is based on an error, mistake of the claimant not attributable to the State or a unit of the state government, as well as certain other provisions which are not applicable to this particular case.

The Tax Court noted that the refunds for 2001, 2002, and part of 2003, were attributed to errors made by Mr. Ferraro regarding the gross sales from the business he was conducting. Part of the year 2003, as well as 2004, however, were related to a net operating loss. The court explained that, for a taxpayer to receive interest on a refund, “the taxpayer is required to provide sufficient documentation and proof of the NOLs . . . for 2005 to carry them back to 2003 and 2004 in order for the [C]omptroller to properly calculate the amount of interest which might be due to taxpayer on his refunds, that were, in fact, granted.” The Tax Court stated that it would deny Mr. Ferraro’s claim for interest for 2001, 2002, 2003, and 2004 “for the following reasons”:

First, as I indicated for 2001 and [2002] and part of 2003, taxpayer’s already admitted that the amended returns were based on a mistake that he made based on overstatement of income.

For all of 2001 . . . through 2004, his Maryland 502(x)s, that is his amended returns, in the adjusted gross income figures reported by the IRS . . . they’re for some reason different and . . . it’s impossible for the . . . [c]ourt or the [C]omptroller to reconcile without the proper documentation. And I do not believe that the taxpayer has provided sufficient documentation for the [C]omptroller to . . . reconcile those numbers on both sets of returns.

Finally, with respect to the 2005 loss year, according to the representative of the [C]omptroller’s office, the amended or 502(x) for 2005 detailing the NOL . . . for 2005 has not been received. The [C]omptroller has requested specific documentation for the 2005 loss year, but there is no 2005 amended return on file. And without the necessary documentation . . . the taxpayer has made an error or mistake which negates his right to interest and precludes the [C]omptroller from properly determining the addition modifications which are necessary for the [C]omptroller to make a proper determination of how much of the . . . NOL would apply to 2003 and [2004] and in the future. Those future returns . . . are not before[] me but without that documentation, I don’t believe that the taxpayer has put himself in a position where he can claim interest, and I believe that to be an error which negates his otherwise . . . right to receive interest on the NOLs.

The same line of reasoning also applies to his other request for a refund of some . . . \$5600. Again, where we have a discrepancy between the returns filed by the taxpayer . . . with the IRS, as well as with the [C]omptroller’s office, the [c]ourt is not in a position to grant any relief or refunds with respect to that claim.

On July 10, 2014, the Tax Court issued a written order. It ordered: (1) that the Comptroller’s denials of Mr. Ferraro’s “claims for interest on income tax refunds for tax years 2001, 2002, 2003, and 2004” be AFFIRMED; and (2) that the Comptroller’s denial of Mr. Ferraro’s claim for refund of tax overpayment “in the amount of \$5,603, in connection with one or more of . . . tax years 2002, 2002, 2003, and/or 2004” be AFFIRMED.⁹

⁹ We note, again, that the refund amount denied was \$5,630.66.

V.

Circuit Court Proceedings

On petition for judicial review, counsel for Mr. Ferraro argued that, under *Fairchild*, 303 Md. 280, a claimant is owed interest from the date the amended income tax returns are filed. He asserted that a determination of a refund and a determination of interest “go hand in hand,” and when “the refund is made, interest follows with it.” Counsel stated that the Comptroller chose to defer to the IRS audit, but “during that period, they’re not off the hook for interest.” He concluded by stating that “the interest clock starts 45 days after [a] claim [is] made without anything . . . further.”

Counsel for the Comptroller stated that a claim for a refund must be proper, and it is the “obligation of the taxpayer . . . to follow the Comptroller’s instructions, which are set out in Administrative Release 18, and the instructions on the face of the amended return, the 502X.” To ensure that individual taxpayers only use the carryback once, a taxpayer seeking a claim for a refund due to a NOL carryback, “must file a form 502 X and it must be accompanied by a federal form 1045 Schedules A and B,” so the Comptroller “can allocate properly the carryback from the carryback loss year, which in this case was 2005.” Counsel explained that when the Comptroller received information from the IRS in 2012, following Mr. Ferraro’s federal audit,” the Comptroller had “enough information” to provide Mr. Ferraro with a refund of taxes based on the carryback, but the refund was only a “tentative refund,” and the “time for interest running has not begun because there has never been a proper claim for refund.” With respect to the \$5,630.66, counsel stated that

Mr. Ferraro was not entitled to a refund of assessed penalties and interest for late filing of his 2001 and 2003 taxes.

Counsel for Mr. Ferraro responded that the Comptroller “could . . . and did” figure out the refund due in the absence of form 1045, and the Comptroller is “foreclosed from saying that a proper claim wasn’t made when . . . the refund was indeed paid.” With respect to the \$5,630.66, counsel stated that the Comptroller paid him \$5,600 less than it had authorized, and it owed him the amount authorized.

In a written opinion, the circuit court affirmed the Tax Court. The court found that Mr. Ferraro failed to file a proper claim for a refund, and therefore, he “did not trigger the commencement of the 45-day period for payment of interest. As Petitioner’s filing was not perfected, the Tax Court did not err in denying Petitioner’s request for interest.” Accordingly, it found that the Tax Court properly denied Mr. Ferraro’s request for interest. The court also found that Mr. Ferraro was not entitled to a refund of \$5,630.66 related to assessed penalties and interest.

STANDARD OF REVIEW

The Maryland Tax Court is an adjudicative administrative agency and “its decisions are subject to the same standards of judicial review as adjudicatory decisions of other administrative agencies.” *NIHC, Inc. v. Comptroller of Treasury*, 439 Md. 668, 682, (2014). This Court recently reiterated the standard of appellate review of a Tax Court decision:

“When reviewing an administrative decision from the Maryland Tax Court, we generally review that decision directly, not the decision of the circuit court on judicial review. *Comptroller of Treasury v. Science Applications*

Intern. Corp., 405 Md. 185, 192 (2008). The decision of the Tax Court will be affirmed unless that decision is not supported by substantial evidence appearing in the record or is erroneous as a matter of law. *Comptroller of the Treasury v. Blanton*, 390 Md. 528, 535 (2006); *State Dept. of Assessments and Taxation v. Consol. Coal Sales Co.*, 382 Md. 439, 454 (2004). We have previously noted that “the interpretation of the tax law can be a mixed question of fact and law, the resolution of which requires agency expertise.” *Comptroller of the Treasury v. Citicorp Intern. Communications, Inc.*, 389 Md. 156, 164 (2005). The Tax Court’s decision, however, will be overturned if it was based on an error of law. *Consol. Coal Sales Co.*, 382 Md. at 454, citing *Supervisor of Assessments v. Hartge Yacht Yard, Inc.*, 379 Md. 452, 461 (2004).”

Supervisor of Assessments of Montgomery Cnty. v. Lane, 222 Md. App. 107, 114 (quoting *Supervisor of Assessments v. Stellar GT*, 406 Md. 658, 669 (2008)), *cert. granted sub nom.*, 443 Md. 734 (2015) (parallel citations omitted). As with other agencies, a reviewing court will afford great weight to the Tax Court’s “legal conclusions when they are premised upon an interpretation of the statutes that [it] administers and the regulations promulgated for that purpose.” *Frey v. Comptroller of Treasury*, 422 Md. 111, 138 (2011), *cert. denied*, 132 S.Ct. 1796 (2012).

When interpreting a statute, the Court of Appeals has made clear that, “[t]he cardinal rule . . . is to ascertain and effectuate the real and actual intent of the Legislature.” *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). In this regard, we apply well-settled rules:

We begin the statutory interpretation process by looking to the plain language of a statute, giving the words their natural and ordinary meaning. *Breslin [v. Powell]*, 421 Md. [266.] 286 . . . [(2011)] (citing *State Dep’t of Assessments and Tax’n v. Md.-Nat’l Capital Park & Planning Comm’n*, 348 Md. 2, 13 . . . (1997)). To determine the plain meaning of language, we consider the statutory scheme in which the particular provision or provisions appear. *State v. Pagano*, 341 Md. 129, 133 . . . (1996) (citing *Kaczorowski v. Mayor of Balt.*, 309 Md. 505, 514 . . . (1987)) (“[The meaning of the plain language] is controlled by the context in which it appears.”). If the language

is clear and unambiguous on its face, our inquiry ends. *Id.* (citing *Marriot Emps. Fed. Credit Union v. MVA*, 346 Md. 437 . . . (1997)).

Polek v. J.P. Morgan Chase Bank, 424 Md. 333, 351 (2012). “The statute must be read so that no word, clause, sentence, or phrase is rendered superfluous or nugatory.” *Comptroller of Treasury v. Science Applications Int’l Corp.*, 405 Md. 185. 198 (2008).

DISCUSSION

I.

Interest on 2003 and 2004 Tax Refunds

Mr. Ferraro contends that the Tax Court erred in denying his claim for interest with respect to refunds for 2003 and 2004 tax years. He asserts that the following three questions need to be answered in his favor to grant his claim of interest:

1. Was the claim of refund properly filed and if so, when?
2. Was the claim of refund based upon an error or mistake of [Mr.] Ferraro not attributable to the State of unit of the State government?
3. Was [Mr.] Ferraro’s claim of interest on the refund properly filed?

In this regard, he asserts that he properly filed his claims for a refund by filing amended returns for 2003 and 2004 in July 2007, and he is seeking interest only on the portion of the refund representing carryback adjustments for 2003 and 2004, not the portion of his 2003 refund that was based on a miscalculation of sale or other error. Mr. Ferraro further states that his claim for interest was properly made by the filing of amended returns for 2003 and 2004, and that interest should have accrued 45 days from July 26, 2007, the date of filing.¹⁰

¹⁰ He contends, with respect to interest, that he is owed interest of \$12,569.65 on the 2004 refund, an amount calculated from the date the interest period began, (continued . . .)

The Comptroller contends that interest on a refund “does not begin to accrue until 45 days after the taxpayer” files a proper claim for a refund. He asserts that Mr. Ferraro did not file, and still has not filed, “*proper* claims for refunds generated by the NOL carryback deductions for 2003 and 2004” because Mr. Ferraro did not file copies of federal Form 1045, including Schedules A and B, nor did he file a copy of the loss year federal return or a 2005 Maryland amended return.¹¹ Accordingly, the Comptroller asserts, because Mr. Ferraro failed to file his claims in the manner required by TG § 13-902(1), his requests for refunds did not trigger the 45-day period interest commencement date outlined in TG § 13-603(a).

Maryland takes a “strict . . . approach to tax refunds in general.” *MPTH Assoc. v. Dep’t of Fin.*, 308 Md. 674, 681 (1987). Tax refunds in Maryland “are matters of grace with the Legislature.” *Wasena Housing Corp. v. Levay*, 188 Md. 383, 389 (1947). Moreover, “[e]ntitlement to interest on a tax refund is a matter of grace which can only be authorized by legislative enactment.” *Fairchild*, 303 Md. at 284. In determining whether

(. . . continued) July 26, 2007, and ending on the date of his \$18,220.72 refund payment, November 14, 2012. With respect to interest on the 2003 refund, he asserts that he is owed \$23,404.90, which represents interest on the portion of his AGI not based on his error.

¹¹ The Comptroller explains that the requirement that refund claims based on NOL carryback deductions attach the corresponding federal forms exists so the taxpayer can “properly allocate the carryback deduction to the two carryback years and assures the Comptroller that the deduction is not duplicated in the loss year.” In Mr. Ferraro’s case, the AGI reported on his 2005 Maryland return was significantly different from that reported on his original federal return, as well as his amended federal return, “suggesting that [Mr.] Ferraro’s reporting is seriously amiss” and highlighting “the need for compliance with the Comptroller’s clear requirement that federal Form 1045 accompany refund claims based on NOL carryback deductions.”

the General Assembly intended a particular refund to be accompanied by interest, “that intent is primarily to be ascertained from ‘the language of the statute itself which should be construed according to its ordinary and natural import.’” *MPTH*, 308 Md. at 679 (quoting *Fairchild*, 303 Md. at 284).

We thus turn to the statutes at issue here. TG § 13-901 provides, in relevant part, as follows:

(a) *In general.* — A claim for refund may be filed with the tax collector who collects the tax, fee, or charge by a claimant who:

(1) erroneously pays to the State a greater amount of tax, fee, charge, interest, or penalty than is properly and legally payable.

Section 13-902 addresses the form of a refund claim, as follows:

A claim for refund shall be:

- (1) made, under oath, in the form that the tax collector requires; and
- (2) supported by the documents that the tax collector requires

The Maryland refund form and Administrative Release No. 18 make clear that, in order to claim a refund based on a NOL carryback deduction, the taxpayer must attach to the amended return copies of the federal Form 1045, including Schedules A and B or equivalent worksheets, as well as a copy of the loss year federal income tax return.

TG § 13-603 addresses interest due as refund. It provides, in relevant part, as follows:

(a) *In general.* — Except as otherwise provided in this section, if a claim for refund under § 13-901(a)(1) . . . of this title is approved, the tax collector shall pay interest on the refund from the 45th day after the claim is filed in the manner required in Subtitle 9 of this title to the date on which the refund is paid.

Exceptions to the general duty to pay interest or refund includes: “an error or mistake of the claimant not attributable to the State or a unit of the State government.” TG § 13-603(b)(2).

In *Fairchild*, 303 Md. at 287, the Court of Appeals held that a taxpayer was entitled to interest on a state income tax refund arising out of a carryback of a NOL. The Court then addressed the date from which interest had to be paid. In that regard, the Court stated:

As we see it, to interpret the statute to afford the taxpayer a right to interest, commencing from the due date of the original return, rather than from the date the amended return was filed, is inconsistent with common sense and with the legislative purpose in authorizing interest on tax refunds. The interest provisions . . . are designed to commence the running of interest from the time that the operative fact arises which entitles a taxpayer or the State to the principal amount in question and for the period that such amounts were held by or subject to the use of the other party.

Id. at 288-89.

The Court then discussed the “operative fact” involved in that case:

The event which gave rise to the overpayment of Fairchild’s 1975, 1976 and 1977 taxes was its net operating loss in 1978 – a year subsequent to the year in which the excess taxes were actually paid. Had there been no net operating loss incurred in 1978, there would have been no net operating loss carryback to the three previous years. Before Fairchild incurred net operating losses in 1978, it had no basis for claiming a refund for overpayment of taxes. From the . . . due dates of the original returns until the amended returns were filed, the State was legally entitled to the use and possession of Fairchild’s tax payments. *The State had no obligation to pay Fairchild a tax refund, let alone interest on the refund, until the later ensuing net operating loss arose and the carryback was claimed.* That the law permits a taxpayer to subsequently carryback a net operating loss and to obtain a refund in no way reflects a taxpayer’s right to derive the benefits of the funds during the intervening period. Plainly, the nature and context of a net operating loss carryback supports the end result that where a refund for taxes arises from a net operating loss carryback, interest should be computed

from the date the amended return claiming the net operating loss carryback is filed.

Id. at 289 (emphasis added).

This Court subsequently summarized *Fairchild* as holding “that the State had no duty to pay the taxpayer’s refund and any interest thereon, until the taxpayer’s *loss was claimed*,” i.e., filing an “explicit, written, demand for payment, setting forth the dollar amount of the refund sought.” *Hickey v. Comptroller*, 92 Md. App. 1, 8, *cert. denied*, 327 Md. 626 (1992). We explained that “[t]he Court equated the term ‘claimed’ with the filing, by the taxpayer, of an explicit, written, demand for payment, setting forth the dollar amount of the refund sought,” and we held that any “interest on such refund could only have begun to accrue after that formal claim was made.” *Id.*

Here, Mr. Ferraro asserts that the “operative facts” were satisfied when he filed his amended Maryland returns for 2003 and 2004. Accordingly, he asserts that “interest should accrue 45 days from the date of such filing, July 26, 2007, and continue until the payment of [his] refund.” We are not persuaded.

The language of the statute makes clear that entitlement to interest is tied to a proper claim. TG § 13-603(a) states that “the tax collector shall pay interest on the refund from the 45th day **after the claim is filed in the manner required in Subtitle 9 of this title** to the date on which the refund is paid.” (Emphasis added). We hold that, pursuant to the plain language of TG § 13-603(a), a taxpayer is not entitled to interest on a refund until a proper claim for a refund is filed. *Accord Posner v. Comptroller of the Treasury*, 180 Md. App. 379, 384 (“statute only requires the payment of interest if a claim for refund meets

the conditions of Subtitle 9, and then, only from the 45th day after the claim is filed”), *cert. denied*, 406 Md. 193 (2008).¹²

Here, Mr. Ferraro admits that he did not file a refund claim in compliance with TG § 13-902. Accordingly, he is not entitled to interest on his 2003 and 2004 refunds.¹³

II.

Refund for Interest and Penalties Paid in 2001 and 2003

Mr. Ferraro next contends that the Tax Court erred in denying his claim for a refund of \$5,630.66. He asserts that the Comptroller directed that he be paid a total amount of \$85,435.24 for overpayment of taxes for years 2001-2004, but he was paid only \$79,804.58, a deficit of \$5,630.66.

The Comptroller contends that the \$5,630.66 represents interest and penalties due to Mr. Ferraro’s late filing of his tax returns. He asserts that “Maryland law makes no

¹² In *Posner v. Comptroller of the Treasury*, 180 Md. App. 379 (2008), this Court addressed the entitlement to interest on a Maryland estate tax refund under Md. Code (2004 Repl. Vol.) § 13-901(d)(1)(i) of the Tax-General Article (“TG”), which permits a claim for a refund if Maryland estate tax is decreased as a result of a decrease in the federal estate tax on the estate. We noted that the plain language of TG § 13-901(d)(1)(i) requires a decrease in the Maryland estate tax only if there is a decrease in the federal estate tax, and that “operative fact” did not occur until 2005. *Id.* at 387. Thus, we held that it was not until the federal estate tax was decreased in 2005 that Maryland could determine whether a state credit was due and the interest period would begin to run. *Id.*

¹³ Mr. Ferraro asserts, without any supporting authority, that because the Comptroller ultimately paid the refunds, the Comptroller argues in “bad faith,” and it would be “bad policy” for this Court to hold that he is not entitled to interest on the refunds. Counsel for the Comptroller explained that, although Mr. Ferraro never made a proper claim, once the Federal audit was completed, Mr. Ferraro’s informal claim was accepted as a matter of administrative discretion, and refunds were issued. The Comptroller maintains, however, that because a proper claim was not filed, the interest provision was not triggered. We agree.

provision for a taxpayer to recover interest and penalties paid in satisfaction of late filing or payment of taxes,” and that “subsequent amended filings for those years eliminated his tax liabilities, on whatever bases, is immaterial.” He argues that Mr. Ferraro is not entitled to a refund of interest and penalties paid.

The Tax Code provides that, if a person fails to pay a tax due, the Comptroller shall assess interest, as well as a penalty not exceeding 10% of the unpaid tax. TG §§ 13-601(a), 13-701, 13-901(a)(1). The Code provides that a tax payment must be applied “first to any penalty and accrued interest and then to the unpaid tax.” TG § 13-103(a). Interest and penalties for late payment are not a part of the tax, but rather, they are “fixed . . . inducement[s] to pay taxes and [are] levied for a failure to pay them.” *Comptroller of Treasury v. Campanella*, 265 Md. 478, 486 (1972) (citation and quotations omitted).

Here, from Mr. Ferraro’s \$59,085.65 payment in December 2007, the Comptroller would have been required to apply a portion of that amount to interest and penalties assessed against him for late payment of tax. Mr. Ferraro does not direct us to, nor are we aware of, any authority that allows a taxpayer to recover interest and penalties paid in satisfaction of late filing or payment of taxes after subsequent amended filings eliminate the tax liability. *See id.* at 487 (“We find no authorization in the language of [the statute] for the repayment of interest incurred by late filing of the . . . tax.”). Accordingly, the Tax

Court properly determined that Mr. Ferraro was not entitled to a refund of the \$5,630.66 in interest and penalties due to his late filing of tax returns.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**