

Circuit Court for Montgomery County
Case No. 486618-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 189

September Term, 2022

ERIC GREENBERG, *et al.*

v.

COMPTROLLER OF MARYLAND

Nazarian,
Friedman,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 4, 2022

*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.

Eric and Jaquenette Greenberg, husband and wife, filed a claim with the Comptroller of Maryland (the “Comptroller”) seeking a refund for the overpayment of their 2004 Maryland state income taxes. The Comptroller denied the claim because, according to the Comptroller, the Greenbergs failed to file a timely 2004 Maryland tax return. The Greenbergs appealed that decision to the Maryland Tax Court (the “Tax Court”), which, following a hearing, affirmed the Comptroller’s decision. The Greenbergs then filed an appeal to the circuit court, which also affirmed. This timely appeal followed.

In their informal brief, the Greenbergs have set forth various claims of error. For clarity, we have consolidated those claims into a single question:

Did the Tax Court err in affirming the Comptroller’s denial of the Greenbergs’ 2004 Maryland state income tax refund claim?

For reasons to follow, we hold that the Tax Court did not err. We therefore affirm the judgment of the circuit court.

BACKGROUND

In 2007, Mr. Greenberg filed for bankruptcy. At the time, the Greenbergs had not filed federal or Maryland state income tax returns for the years 2004, 2005, and 2006. During the bankruptcy proceedings, the bankruptcy court insisted that the Greenbergs file tax returns for those years. The Greenbergs were being represented in the bankruptcy proceedings by two attorneys, Michael Dana and Michael Fried, who were part of the same law firm. To prepare their tax returns, the Greenbergs hired an accountant. According to the Greenbergs, the accountant completed their 2004, 2005, and 2006 federal and state tax returns in July 2007. Those returns revealed that, in 2004, the Greenbergs had overpaid

their Maryland state income taxes and were entitled to a refund of approximately \$15,000.00.

In July 2011, the Comptroller sent a notice to the Greenbergs stating that the refund claim on their 2004 Maryland tax return had been denied. According to the Comptroller, the Greensbergs' 2004 tax return had just been received. The Comptroller asserted that the Greenbergs' refund claim was therefore untimely because it was not received within the applicable three-year statute of limitations for filing a claim. The Comptroller maintained that, for the claim to have been timely, it needed to be filed in or before 2008.

Final Determination by Comptroller

The Greenbergs thereafter requested and were granted a review hearing before the Comptroller. At that hearing, the Greenbergs insisted that their 2004 Maryland state income tax return and refund claim had been filed in July 2007. They asserted that they had submitted their federal and state returns to their bankruptcy attorneys, who were supposed to file the returns prior to the bankruptcy hearing, which was held in July 2007. The Greenbergs noted that their federal tax returns were properly filed and received by the Internal Revenue Service during that same time period. The Greenbergs also noted that they had successfully filed for bankruptcy without any problems regarding their Maryland tax returns.

The Comptroller ultimately issued a final determination denying the Greenbergs' claim. The Comptroller found none of the Greenbergs' arguments or evidence compelling enough to prove that their 2004 Maryland tax return had been filed within the three-year statute of limitations for filing a refund claim.

Appeal to the Maryland Tax Court

In 2012, the Greenbergs appealed the Comptroller’s decision to the Tax Court. The Greenbergs claimed that the Comptroller erred in denying their refund claim on the grounds that their income tax returns were untimely filed. The Greenbergs asserted that they had presented compelling evidence to the Comptroller showing that their tax returns were timely filed.

For reasons not entirely clear from the record, a hearing on the merits of the Greenbergs’ appeal was not held in the Tax Court until March 2021, approximately nine years after the Greenbergs filed their appeal.¹ At that hearing, Mr. Greenberg testified that he and his wife had overpaid their 2004 Maryland state income taxes and were entitled to a refund. Mr. Greenberg admitted that he did not prepare his 2004, 2005, and 2006 federal and Maryland state income tax returns until 2007, when he filed for bankruptcy. Mr. Greenberg testified that, in 2007, he hired an accountant, who prepared the Greenbergs’ federal and state tax returns for the years 2004, 2005, and 2006. Mr. Greenberg testified that a “copy” of the prepared tax returns were given to his bankruptcy attorneys, Michael Fried and Michael Dana. Mr. Greenberg stated that he “guessed” that a copy of the tax returns had to be submitted to the IRS and the Comptroller. Mr. Greenberg testified that he subsequently received a refund on his federal income taxes, which proved that the IRS did receive the federal returns. Mr. Greenberg testified that “we also gave the copy to Maryland” but that “Maryland didn’t receive it.”

¹ The Greenbergs attribute a portion of that delay to a separate 2011 bankruptcy case, which stayed the instant matter until 2016.

Mr. Greenberg then produced a series of documents, which the Tax Court admitted into evidence without objection. One of those documents was a letter that had been sent in July 2007 from the Greenbergs’ bankruptcy attorney, Mr. Dana, to Sylvia Brokos, an attorney who worked in the Comptroller’s collection unit and who represented the Comptroller in bankruptcy proceedings. That letter read as follows:

Dear Sylvia:

Please find enclosed copies of income tax returns for the above referenced chapter 13 debtor. It is my understanding that the Debtor filed these returns directly with the Service Center.

If you have any questions, please contact me at the number listed above. Thank you for your attention to this matter.

Very truly yours,
Michael G. Dana
Attorney for the Debtor

Mr. Greenberg testified that, after that letter was sent, copies of the tax returns were submitted to the bankruptcy court as part of the bankruptcy proceedings. Mr. Greenberg stated that he “thought it was all done” and that he subsequently received a refund from the IRS based on the federal returns that were purportedly filed. Mr. Greenberg testified that he “didn’t even question about not getting a refund for the state taxes” because he “had a lot of things going on[.]” Mr. Greenberg testified that he did not realize there was a problem with his Maryland state income tax returns until 2011. Mr. Greenberg testified that he “at least thought” that his bankruptcy attorney had given the tax returns to the Comptroller in 2007.

On cross-examination, the Comptroller asked Mr. Greenberg about the letter Mr. Dana had sent to Ms. Brokos, in which Mr. Dana stated that “the Debtor” had filed the returns “directly with the Service Center.” When Mr. Greenberg was asked if he had proof that he filed the tax returns, Mr. Greenberg responded that he “can’t find proof that I filed, but I have proof that he filed it[.]” Mr. Greenberg then highlighted the portion of Mr. Dana’s letter in which Mr. Dana stated that copies of the tax returns had been included with the letter.

The Comptroller then asked Mr. Greenberg about an email exchange from 2011 between Mr. Fried and Mr. Greenberg, which Mr. Greenberg had included in the series of documents the Tax Court had previously admitted into evidence. In an email dated November 14, 2011, Mr. Greenberg maintained that, after his accountant had completed the 2004, 2005, and 2006 state and federal tax returns, a “representative” from Mr. Fried’s office had “picked up the completed and signed copies of the 2004, 2005, and 2006 state and federal tax returns to be sent to the IRS, the State, and a copy to the chapter 13 trustee.” Mr. Greenberg noted that Maryland had not received the returns, and he asked if Mr. Fried had any documentation indicating that the state returns had been submitted. On December 20, 2011, Mr. Fried sent an email to Mr. Greenberg stating that he had reviewed Mr. Greenberg’s file and found “copies of the federal and state tax returns that were prepared by your CPA and submitted to the Bankruptcy Court by our firm.” Mr. Fried stated that he had “no recollection that our firm filed these with either the IRS or State of Maryland on your behalf.” Mr. Fried added: “Since we represented you only in the bankruptcy, not

in connection with resolving your unfiled tax status, we generally would not have filed them for you.”

After highlighting that email exchange, the Comptroller asked Mr. Greenberg about the portion of the exchange in which Mr. Fried stated that his firm had not filed the returns. Mr. Greenberg responded: “They said they sent them to her. They sent them to the Comptroller of Maryland.” Mr. Greenberg then insisted that Mr. Dana’s July 2007 letter to Ms. Brokos was proof that the Comptroller had been given the returns.

Joanne Lee, a hearing and appeals specialist with the Comptroller’s office, testified that she reviewed the Comptroller’s records and found that the Greenbergs’ 2004 Maryland tax returns were not received until June 2011. Ms. Lee testified that there was no record of any tax return being filed by the Greenbergs prior to that time. On cross-examination, Ms. Lee was asked if the Comptroller ever lost an individual tax return. Ms. Lee admitted that it was “possible.”

At the conclusion of Ms. Lee’s testimony, the Comptroller proffered that Ms. Brokos, the attorney with whom Mr. Dana had communicated regarding the Greenbergs’ tax returns, was not someone who regularly receives tax returns but rather was a specialist who handled bankruptcy proceedings. The Tax Court accepted the proffer without objection.

The Tax Court then asked Mr. Greenberg about his claim that his bankruptcy attorneys had filed his Maryland income tax returns. The court noted that some of the documentation submitted by the Greenbergs into evidence did not support that claim. The

court concluded that Mr. Greenberg had not presented any evidence to show that his Maryland income tax returns had been timely filed.

After Mr. Greenberg highlighted Mr. Dana’s letter, which Mr. Dana had sent to Ms. Brokos and with which he had supposedly included copies of the returns, the Tax Court noted “that’s not the filing of your tax returns” but “was for the purpose of the bankruptcy hearing and for bankruptcy purposes.” The court also noted that the letter was unsigned and not on the firm’s letterhead. Nevertheless, the court gave Mr. Greenberg the benefit of the doubt and continued the proceedings so that Mr. Greenberg could obtain “[a]n affidavit or a letter or something indicating that [Mr. Dana] signed a letter like this and he sent this to Sylvia Brok[o]s.”

Mr. Greenberg subsequently obtained and submitted to the Tax Court an affidavit from Mr. Dana. In that affidavit, Mr. Dana stated that he and Mr. Fried had represented Mr. Greenberg in a bankruptcy case in 2007 and that Mr. Fried had since passed away. As to the letter Mr. Dana had sent to Ms. Brokos in 2011, Mr. Dana explained that Mr. Greenberg had obtained a copy of the letter from Mr. Fried as part of their email communications in 2011 regarding the filing of the Greenbergs’ tax returns. Mr. Dana surmised that the letter was unsigned and not on letterhead because “Mr. Fried was not adept at using electronic devices and found only the unsigned computer file draft that would have been printed on letterhead, signed and mailed in due course.” Mr. Dana stated that he could not locate any other copies of the letter. Mr. Dana stated that he did not have “specific recollection” of Mr. Greenberg’s tax returns. Mr. Dana added that “it was standard procedure . . . to advise the taxpayer to have returns prepared and filed, and

provide copies to us for mailing to the Comptroller of Maryland to assist the Comptroller in preparing a proper proof of claim in the bankruptcy case.” Mr. Dana stated further that “pursuant to procedures required for bankruptcy cases, we would have provided copies of such returns also to the Chapter 13 Trustee in the applicable bankruptcy case.”

On June 10, 2021, the Tax Court issued an order affirming the Comptroller’s decision to deny the Greenbergs’ refund claim. The court found that the Greenbergs had “failed to provide sufficient evidence that their 2004 tax returns was timely filed.”

On July 16, 2021, the Tax Court issued a second order stating that it had “withdrawn its prior order of June 10, 2021 for purposes of reviewing the additional exhibits and Memorandum filed by the parties[.]” The court ultimately affirmed the Comptroller’s denial of the Greenbergs’ 2004 refund claim. The court found that “the recent reported decision by the Court of Special Appeals in the matter of *Comptroller of Maryland v. James R. Myers, et al.* Sept. Term 2020, No. 95 (2021) controls the issue in this matter.”

Appeal to the Circuit Court

The Greenbergs thereafter noted an appeal in the circuit court. Following a hearing, the court affirmed the Tax Court’s decision. The court found that the Greenbergs had “failed to meet their burden of proof because they did not produce sufficient evidence to support their claim.” The court based its decision on the evidence contained in the record and presented to the Tax Court.

This timely appeal followed. Additional facts may be supplied below.

DISCUSSION

Parties' contentions

The Greenbergs argue that their 2004 Maryland state income tax refund request should not have been denied as untimely. The Greenbergs contend that the evidence proved that their tax returns were filed in July 2007, within the three-year statute of limitations for filing a refund claim. They also contend that the Tax Court's reliance on *Comptroller of Maryland v. Myers*, 251 Md. App. 213 (2021), was erroneous because that case involved tax returns that were mailed, whereas the tax returns in the Greenbergs' case were filed directly at the Maryland Tax Service Center. The Greenbergs further assert that they were prejudiced by the delay between when they filed their appeal and when the Tax Court held the hearing on the merits of that appeal. Finally, the Greenbergs argue that “fundamental fairness” and “reasonable cause” requires the Comptroller to issue the refund.

The Comptroller counters that, under the relevant statute and case law, the Greenbergs' 2004 refund claim cannot be granted without direct proof of actual timely delivery or a receipt of registered mail showing timely delivery of their 2004 Maryland state income tax refund request. The Comptroller contends that the Greenbergs presented no such proof and thus did not meet their burden. The Comptroller asserts that the only actual evidence of any filing came from Ms. Lee, the Comptroller's representative, who testified that the Greenbergs' 2004 Maryland state tax return was filed in 2011, well beyond the three-year statute of limitations for filing a refund claim. The Comptroller argues that

the statute of limitations is a strict requirement and that equitable concepts such as fundamental fairness or reasonable cause are inapplicable.

Standard of Review

In *Myers*, we set forth the applicable standard when reviewing a decision by the Tax Court:

The Tax Court is an administrative agency subject to the same standards of judicial review as other administrative agencies. As such, we look through the decision of the circuit court and review the decision of the agency. Our review is limited to determining if there is substantial evidence in the record as a whole to support the [Tax Court’s] findings and conclusions, and to determine if the [Tax Court’s] decision is premised upon an erroneous conclusion of law. We will not affirm an agency if its order is premised solely upon an erroneous conclusion of law. If the agency did not err in its interpretation of the law, we review the agency’s factual findings to determine if they are supported by substantial evidence.

Myers, 251 Md. App. at 228-29 (internal citations and quotations omitted).

Analysis

The statute of limitations for filing a refund claim with the Comptroller is set forth in § 13-1104 of the Tax-General (“TG”) Article of the Maryland Code, which states, in pertinent part, that a refund claim “may not be filed after 3 years from the date the tax, interest, or penalty was paid.” TG § 13-1104(a). The statute further provides that “a claim for refund or credit of overpayment of . . . income tax may not be filed after the periods of limitations for filing claims for refund or credit of overpayment set forth in § 6511 of the Internal Revenue Code.” TG § 13-1104(c). Under § 6511 of the Internal Revenue Code:

Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later,

or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

26 U.S.C. § 6511(a).

A taxpayer is required to file a refund claim within the time set forth in TG § 13-1104. TG § 13-903. The burden of proving timely filing rests with the taxpayer. *Myers*, 251 Md. App. at 232-40.

Here, the parties agree that, had the Greenbergs filed their 2004 Maryland state income tax refund request in July 2007, which is when the Greenbergs claim their tax returns were filed, their refund request would have been timely. Thus, the sole question here is whether the Greenbergs presented sufficient evidence to prove that their state tax returns were filed at the time they allege.

In *Myers*, we discussed “what a taxpayer must show to prove that he or she ‘filed’ a document with the Comptroller.” *Id.* at 217. There, James and Monica Myers filed timely Maryland state income tax returns for tax years 2008, 2009, and 2012. *Id.* at 218. After learning that they may be entitled to a refund for those tax years, the Myers prepared amended tax returns that were, according to the Myers, subsequently mailed to the Comptroller within the three-year statute of limitation set forth in TG § 13-1104. *Id.* at 219. In 2017, the Myers learned that the Comptroller had not received the tax returns, so the Myers mailed a second set of amended returns. *Id.* at 220. After receiving the second amended returns, the Comptroller denied the Myers’ refund requests as untimely. *Id.*

The Myers appealed the Comptroller’s decision to the Tax Court, and a hearing was held. *Id.* At that hearing, the Myers’ accountant testified that the first amended returns

had been duly prepared, and Mr. and Mrs. Myers testified that they signed and mailed each of the first amended returns. *Id.* at 223-24. Based on that evidence, the Tax Court ultimately reversed the Comptroller’s decision, finding that “[t]here was really no contest” that the Myers had mailed their first amended tax returns in a timely fashion. *Id.* at 225-26. The Comptroller subsequently appealed that decision to the circuit court, which affirmed. *Id.* at 227.

After the Comptroller noted an appeal in this Court, we reversed and held that the Tax Court and the circuit court had erred as a matter of law in finding that the Myers’ state tax returns had been “filed” in a timely fashion. *Id.* at 240. In so doing, we explained that, because TG § 13-1104 specifically incorporated § 6511 of the Internal Revenue Code (“IRC”) in setting forth the relevant limitations period, the Maryland law was “inextricably keyed” to federal law and therefore must be construed consistent with the relevant federal law, including the federal administrative and judicial interpretations of IRC § 6511. *Id.* at 238-40 (citation and quotations omitted). We noted that, under federal law, “[i]n determining when a claim for a refund has been filed, the original rule, the physical delivery rule, provided that a federal tax return is filed when it is received by the IRS.” *Id.* at 232. We explained that, because that rule “left taxpayers vulnerable to the vagaries of the postal service, . . . some courts applied the common-law mailbox rule, which permitted proof of mailing that gave rise to a presumption that the document was physically delivered in the time such a mailing would ordinarily take to arrive.” *Id.* (citations and quotations omitted). In 1954, Congress created the “statutory mailbox rule,” which provided two statutory exceptions to the physical delivery rule. *Id.* The first exception, which applies only if the

return is actually delivered to the IRS, states that, “if a document is mailed by the due date, the postmark is deemed the date of delivery, even if it is received after the due date.” *Id.* “The second exception provides that, if a document is sent by registered mail, such registration is *prima facie* evidence that the document was delivered, even if the IRS claims not to have received it.” *Id.*

We explained that, since the enactment of the statutory mailbox rule, the United States Treasury Department has issued at least one pertinent regulation addressing the statute. *Id.* at 233. Per that regulation, “unless a taxpayer has direct proof that a document was delivered to the IRS, the statute provides the sole means to prove delivery.” *Id.* at 234. We concluded that, “pursuant to federal law, when a refund request is mailed, but the Comptroller denies that he received it, a taxpayer can show timely filing only through a receipt of registered mail, or other methods set forth in the regulation.” *Id.* at 236. Applying that principle to the Myers’ case, we held that “unless the taxpayer has direct proof that a document was delivered to the IRS, proof of registered or certified mail, or use of a certified private delivery service, is the sole means to prove delivery.” *Id.* at 239. We held, therefore, that the Tax Court and circuit court both erred in finding that the Myers had timely filed their state income taxes, as the Myers did not provide a receipt of registered mail showing that the returns had been mailed. *Id.* at 239-40.

Against that backdrop, we hold that the Tax Court in the instant case did not err in affirming the Comptroller’s decision to deny the Greenbergs’ 2004 refund request as untimely. To begin with, we disagree with the Greenbergs’ assertion that *Myers* is inapposite and that the Tax Court erred in relying on that case. There is nothing in *Myers*

to indicate that our analysis in that case should be confined solely to cases in which a filing is made by mail.² *Myers* makes clear that, in order for any tax return to be considered “filed,” the return must be delivered to the tax agency. To prove delivery in cases in which the tax agency denies receiving the return, the taxpayer is confined to proving delivery pursuant to either the “physical delivery rule” or the “statutory mailbox rule.” Under the physical delivery rule, a taxpayer must provide “direct proof” that the refund request was actually delivered to the tax agency in order for the refund to have been considered filed. Absent such direct proof, the taxpayer can show delivery via the statutory mailbox rule by providing proof of registered or certified mail or use of a private delivery service. In *Myers*, the taxpayers did not have direct proof that their tax returns had been delivered to the Comptroller because they sent their returns through the mail. We held that the taxpayers were therefore confined to the statutory mailbox rule to prove that the returns had been delivered. Thus, where a taxpayer claims that he or she personally delivered their tax returns to the tax agency (rather than mailing them), the taxpayer cannot rely on the statutory mailbox rule and must prove delivery under the physical delivery rule by providing direct proof of actual delivery. That is the standard to be applied here.

Nevertheless, even if *Myers* was somehow limited to situations in which tax returns were sent through the mail, it would still be pertinent. Although the Greenbergs insinuated

² The Greenbergs highlight several other distinctions between their case and *Myers*, such as the fact that *Myers* involved amended returns. None of those distinctions is of any consequence. The Greenbergs also argue that *Myers* is distinguishable because the Greenbergs presented circumstantial evidence “proving” that their returns were filed. We note that similar proof was presented, and rejected, by this Court in *Myers*.

in the Tax Court that their returns were physically delivered to the Comptroller by their bankruptcy attorneys, they also claimed that the returns were mailed to the Comptroller as an attachment to the letter sent in July 2007 from Mr. Dana to Ms. Brokos in connection with the bankruptcy proceedings. To the extent that the Greenbergs were claiming that the inclusion of the documents constituted a “filing,” that filing would have fallen under the statutory mailbox rule discussed in *Myers*.

Turning to the issue of whether the Greenbergs presented direct proof that their tax returns were delivered to the Comptroller, we find no support in the record that such a delivery occurred. The Greenbergs sole witness, Mr. Greenberg, never testified that anyone actually delivered their tax returns to the Comptroller. Instead, Mr. Greenberg relied on various documents, including the July 2007 letter from Mr. Dana to Ms. Brokos, as circumstantial “proof” that the returns were delivered to the Comptroller by their bankruptcy attorneys. The problem, at least for the Greenbergs, is that those documents do not establish, or even insinuate, that the Greenberg’s bankruptcy attorneys had filed the tax returns. To the contrary, the documents show that the Greenbergs’ bankruptcy attorneys likely did not file the returns. In his July 2007 letter to Ms. Brokos, on which the Greenbergs primarily rely, Mr. Dana stated that it was his “understanding that *the Debtor* filed these returns directly with the Service Center.” (Emphasis added.) That is not proof that the tax returns were filed by the bankruptcy attorneys. That is proof that Mr. Dana believed that the *Greenbergs* had filed the returns. That belief was obviously erroneous, given that the Greenbergs insisted that their bankruptcy attorneys filed the tax returns.

But, as they later confirmed, the Greenbergs’ bankruptcy attorneys likely would not have filed the Greenbergs’ tax returns. In his December 2011 email to Mr. Greenberg, Mr. Fried stated that he had “no recollection” as to whether his firm had filed the tax returns and that, ordinarily, his firm would not file a tax return for a client in a bankruptcy proceeding. Then, in his 2021 affidavit, Mr. Dana stated that “it was standard procedure ... to advise the *taxpayer* to have returns prepared and filed” and to “provide copies to us for mailing to the Comptroller of Maryland to assist the Comptroller in preparing a proper proof of claim in the bankruptcy case.” (Emphasis added.) No other evidence was presented by the Greenbergs to indicate whether their bankruptcy attorneys, or anyone else, actually delivered the tax returns to the Comptroller in July 2007. Thus, the Greenbergs failed to prove that their tax returns were filed at that time.

As to the Greenbergs’ reliance on Mr. Dana’s alleged inclusion of copies of the tax returns in his July 2007 letter to Ms. Brokos as proof that the returns were timely filed, *Myers* controls. Assuming, without deciding, that such a mailing could constitute a filing, the Greenbergs were required to provide proof of registered or certified mail or use of a private delivery service. No such proof was submitted; therefore, that mailing cannot be considered as evidence of a filing.

The Greenbergs argue that they presented various other circumstantial evidence that constituted “proof” that their 2004 tax returns were timely filed. Specifically, they note that the filing of their state and federal tax returns was required as part of the 2007 bankruptcy proceedings, that those proceedings were completed without issue, and that they subsequently received their federal tax refund. They also note that the Comptroller

sometimes loses returns and that the Comptroller never notified them that their returns had not been received.

We remain unpersuaded. None of that evidence, either by itself or collectively, constitutes the requisite proof that the Greenbergs' 2004 Maryland tax returns were filed in July 2007. The Greenbergs were required to present direct proof, not circumstantial evidence and innuendoes, that their 2004 Maryland tax return was delivered to the Comptroller in July 2007. Again, no such evidence was presented. As it stands, the only direct proof as to when the Greenbergs' tax returns were filed came from the Comptroller's representative, Joanne Lee, who testified that the returns were delivered to the Comptroller in June 2011. As such, the Tax Court's decision to affirm the Comptroller's decision was supported by substantial evidence.

The Greenbergs argue that they were prejudiced by the decade-long delay between when they filed their appeal in the Tax Court and when the court held the merits hearing. We hold that the Greenbergs' claim is unpreserved because it was not raised in the Tax Court. *Kim v. Bd. of Liquor License Comm'rs for Baltimore City*, 255 Md. App. 35, 47 (2022) (“Under settled Maryland law, appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency.”) (citations and quotations omitted). Assuming, *arguendo*, that the claim was preserved, the Greenbergs have not presented any evidence or argument to show how the outcome of the case would have been different had the Tax Court held their hearing earlier. *See In re Adriana T.*, 208 Md. App. 545, 572 (2012) (noting that “a judgment in a civil case will not be reversed in the absence of a showing of error *and* prejudice of the appealing party” and

that “prejudice means that it is likely that the outcome of the case was negatively affected by the court’s error”) (citations and quotations omitted).

Finally, the Greenbergs argue that “fundamental fairness” and other equitable principles require that their 2004 refund claim be approved. We disagree. The relevant statute provides a strict time limit for when a refund request must be filed, and the Greenbergs have presented no relevant authority to indicate that a court is permitted to ignore that statutory requirement.³ *See 75-80 Props., LLC v. Rale, Inc.*, 470 Md. 598, 631 (2020) (“The term ‘shall’ connotes that an action is mandatory, not subject to discretion or satisfaction of further conditions.”).

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**

³ The Greenbergs rely primarily on the concept of “reasonable cause,” which is a statutory exception to the IRS’s power to impose additional penalties when a tax return is not filed or is filed late. 26 U.S.C. § 6651. The statute permits the imposition of penalties unless the failure to file is due to “reasonable cause.” *Id.* That statute is not applicable here, and thus the Greenbergs’ reliance on “reasonable cause” is misplaced.