

Circuit Court for Montgomery County
Case No. 465756-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 234

September Term, 2020

SCOTT WEBBER

v.

COMPTROLLER OF MARYLAND

Arthur,
Reed,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: September 21, 2021

*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.

This case principally concerns the statute of limitations for tax-refund claims. In brief, if a taxpayer files a refund claim within three years of the date when the original return was filed, the amount of the refund or credit may not exceed the amount of the taxes paid in the three years before the filing of the refund claim. 26 U.S.C. § 6511(b)(2)(A); Maryland Code (1988, 2016 Repl. Vol.), § 13-1104(c) of the Tax-General Article (“Tax- Gen’l”) (requiring that refund claims be filed within “the periods of limitations for filing claims for refund or credit of overpayment set forth in § 6511 of the Internal Revenue Code”).

Applying this so-called three-year lookback provision, the Tax Court held, among other things, that a taxpayer had no right to a refund, because his refund claims related to tax payments allegedly made more than three years before the filings of those claims. The Circuit Court for Montgomery County affirmed the Tax Court’s decision, and the taxpayer appealed. We affirm.

BACKGROUND

Appellant Scott Webber routinely filed his Maryland income-tax returns after they were due. This practice resulted in multiple refund claims for a wide range of tax years, as well as litigation regarding those claims. This case concerns the refund claims for 2004, 2005, and 2006.

In 2008, Webber filed his original tax returns for 2004, 2005, and 2006. The 2004 return was almost three years late; the 2005 return was more than two years late; and the 2006 return was more than one year late.

On May 26, 2010, Webber filed amended returns for those years. In the amended return for 2004, Webber claimed that he was entitled to a refund for “all known wrongful IRS intercepts and MD offsets and penalties taken from [him] up to 2004.” In the amended return for 2005, Webber claimed, similarly, that he was entitled to a refund for “all known wrongful IRS intercepts and MD offsets and penalties taken from [him] up to 2005.” Finally, in the amended return for 2006, Webber claimed, similarly, that he was entitled to a refund for “all known wrongful IRS intercepts and MD offsets and penalties taken from [him] up to 2006.” Webber claimed that he was entitled to refunds of \$22,207 for each of those three tax years.

The Comptroller denied the claims for a refund, and Webber filed three separate appeals to the Tax Court (one for each refund claim). Over Webber’s objection, the Tax Court granted the Comptroller’s motion to consolidate the appeals.

Once the appeals had been consolidated and some discovery had occurred, the Comptroller moved for a summary decision. Among other things, the Comptroller argued that Webber’s refund claims are limited to \$0 because his refund requests sought the recovery of alleged tax payments made, if at all, more than three years before the date of the amended returns.

In support of his motion, the Comptroller observed that, under Tax-Gen’l § 13-1104(c), a taxpayer generally may not file a claim for a tax refund “after the periods of limitations for filing claims for refund or credit of overpayment set forth in § 6511 of the Internal Revenue Code” (i.e., 26 U.S.C. § 6511). The Comptroller recognized that, under 26 U.S.C. § 6511(a), Webber had three years from the date when the original returns

were filed in which to file his refund claims. Because Webber had filed the original returns in April 2008 and the refund claims on May 26, 2010, the Comptroller also recognized that the refund claims were timely under § 6511(a). Nonetheless, the Comptroller argued that, under § 6511(b)(2)(A), the amount of any refund could not “exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.” In other words, the amount of any refund could not exceed “the amount of taxes paid in the three-year period immediately preceding the refund claim[s].” *Blatt v. United States*, 34 F.3d 252, 253 (4th Cir. 1994).

The Comptroller established that, in each of the three claims, Webber sought refunds for taxes that he had allegedly paid more than three years before he filed the refund claims on May 26, 2010: the claim for refunds for TY 2004, sought to recover taxes paid “up to 2004”; the claim for refunds for TY 2005, sought to recover taxes paid “up to 2005”; and the claim for refunds for TY 2006, sought to recover taxes paid “up to 2006.” In other words, Webber sought a refund against his 2004 tax obligation on the basis of overpayments that he claimed to have made before the beginning of 2004; he sought a refund against his 2005 tax obligation on the basis of overpayments that he claimed to have made before the beginning of 2005; and he sought a refund against his 2006 tax obligation on the basis of overpayments that he claimed to have made before the beginning of 2006. Thus, because Webber did not seek refunds for taxes paid in the three years preceding the refund claims, the Comptroller concluded that § 6511(b)(2)(A) barred his recovery.

Although Webber claimed to need additional discovery, the Tax Court granted the Comptroller’s motion for summary decision. Among other things, the court explained that Webber’s “requests for credit or refund of tax payments[,]” which were “claimed on his amended returns filed in 2010[,] are limited to \$0 by the three-year look-back period” set forth in 26 U.S.C. § 6511(b)(2), because Webber “limited his claims to tax payments made more than three years before his claims for refund were filed.” The court commented that Webber had “fail[ed] to address” the Comptroller’s substantive arguments.

On a petition for judicial review, the Circuit Court for Montgomery County affirmed.

Webber noted a timely appeal. Representing himself, as he has throughout this litigation, Webber presents three questions, which we quote:

1. Did the [Tax] Court err as a matter of law by granting Summary Judgment in favor of the Comptroller?
2. Were the rights of [Webber] violated by not being allowed to obtain all rightfully available information from the government in an effort to properly prepare for trial?
3. Were the rights of [Webber] violated by not being accorded the right to participate in a fair hearing?

STANDARD OF REVIEW

“As the Tax Court is an adjudicative administrative body of the executive branch, 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). Consequently, this Court “review[s] the decision of the Tax Court, not the

ruling of the circuit court on judicial review.” *Comptroller of Treasury v. Johns Hopkins Univ.*, 186 Md. App. 169, 181 (2009).

DISCUSSION

I. THE TAX COURT CORRECTLY CONCLUDED THAT WEBBER WAS NOT ENTITLED TO A REFUND

The Tax Court correctly concluded that each of Webber’s refund claims is reduced to \$0 under the applicable lookback limitation in 26 U.S.C. § 6511(b)(2)(A). Webber filed the claims in May 2010. The amount of any refund is generally limited to “the amount of taxes paid in the three-year period immediately preceding the refund claim[s],” *Blatt v. United States*, 34 F.3d at 253, i.e., taxes paid between May 2007 and May 2010. According to the express terms of the claims themselves, Webber sought refunds for taxes allegedly paid before the beginning of 2004, 2005, and 2006. Webber, therefore, does not claim to have paid those taxes within three years of when he filed the refund claims on May 26, 2010. Accordingly, § 6511(b)(2)(A) precludes his right to a refund.

Webber observes that under § 6511(b)(2)(A) “the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.” He claims to have received extensions to file a refund claim. On that basis, he seems to contend that his right to a refund is not limited to the taxes that he paid in the three years between May 26, 2007, and May 26, 2010. Webber’s argument has several defects.

First, Webber claims to have received an extension of time to file a claim for a refund, not an extension of time to file a return. Under § 6511(b)(2)(A), the three-year lookback period is lengthened only by “the extension of time for filing the return.” An extension to file a refund claim does not lengthen the period.

Second, under 26 U.S.C. § 6081(a), an individual taxpayer cannot obtain more than a six-month extension to file a tax return, unless the taxpayer lives abroad. Webber does not live abroad. Therefore, even if he had obtained an extension to file his tax returns, which he does not claim to have done, the three-year lookback period would be extended for six months, at most, to cover taxes allegedly paid after November 26, 2006. Yet even the most recent refund claim expressly relates to taxes paid before the beginning of 2006. Webber, therefore, would not benefit from a six-month extension even if he had obtained one.

In his reply brief, Webber cites *Comptroller of Treasury v. Mack Truck, Inc.*, 343 Md. 606 (1996), for the proposition that the lookback period was somehow extended (it is difficult to discern how). That case does not support his contention.

Mack Truck concerns 26 U.S.C. § 6511(c)(1), which comes into play when a taxpayer and the Internal Revenue Service have reached an agreement extending the period for assessment of a tax imposed by the Internal Revenue Code. Under § 6511(c)(1), the time for filing a refund claim is extended until “6 months after the expiration of the period within which an assessment may be made pursuant to the

agreement or any extension thereof.”¹ The Court of Appeals has held that § 6511(c)(1) also extends the period for filing a State refund claim, even though the Comptroller is not a party to the relevant agreement. *Comptroller v. Mack Truck, Inc.*, 343 Md. at 613-15. But while § 6511(c)(1) extends the time for filing a refund claim when the taxpayer and the Internal Revenue Service have reached an agreement, it has no effect on the three-year lookback provision in § 6511(b)(2)(A).

In short, in this case, there is no dispute that Webber sought refunds for taxes allegedly paid before the end of 2003, 2004, and 2005. Nor is there any dispute that Webber did not file his refund claims until May 26, 2010. Under the three-year lookback provision in 26 U.S.C. § 6511(b)(2)(A), the amount of any potential refund is limited to “to the amount of taxes paid in the three-year period immediately preceding the refund claim[s].” *Blatt v. United States*, 34 F.3d at 253. Webber does not claim to have paid those taxes within three years of May 26, 2010, when he filed the refund claims. As a matter of law, therefore, he had no right to a refund.²

¹ Webber claims to have reached such an agreement with the Internal Revenue Service for 2004 and 2005. As the Comptroller observes, however, he failed to submit copies of the relevant forms that reflect the Internal Revenue Service’s assent to the alleged agreement.

² Because the three-year lookback provision bars Webber’s right to a refund, we need not consider the Comptroller’s separate argument, that Webber’s claims are barred by collateral estoppel because of the adjudication of some of his other refund claims.

II. WEBBER’S PROCEDURAL CHALLENGES HAVE NO MERIT

Webber challenges a number of procedural rulings, including the consolidation of his three refund petitions, the alleged failure to enforce the Comptroller’s discovery obligations, and the resolution of his claim in a summary proceeding. We address each challenge in turn.

A. Consolidation

Webber complains that the Tax Court consolidated his three appeals. We find no merit in that complaint.

The Procedures of the Maryland Tax Court, which are part of the record before us, expressly permit consolidation upon a preliminary motion by either party. Rule F states that “[w]hen pending actions involve common questions of law or fact, the court or either party may make a motion for consolidation.” Under Rule F, “the Tax Court may then order a joint hearing of matters in dispute or order any or all the cases consolidated for trial.” The Tax Court has “discretion as to whether a hearing shall be scheduled.” This rule is analogous to Md. Rule 2-503(a), which provides that “[w]hen actions involve a common question of law or fact or a common subject matter, the court, on motion or on its own initiative, may order a joint hearing or trial or consolidation of any or all of the claims, issues, or actions” in order “to avoid unnecessary costs or delay.”

Webber’s three refund petitions involve common parties, facts, claims, and arguments. Moreover, the Comptroller’s defenses are related and similar in all three cases. Based on this record, the Tax Court did not abuse its discretion in consolidating these matters to avoid unnecessary costs and delay.

B. Discovery

Webber contends that the Tax Court violated his right to discovery. He asserts that “[t]he Tax Court, at the Comptroller’s request, did not allow [him] ANY independent discovery[.]” Instead of identifying disputed discovery requests, however, he refers us to pages in the record where he maintains his “position is developed” and the alleged violations are itemized.

The Comptroller counters that Webber received all non-privileged documents relating to his 2004, 2005, and 2006 tax years. The record reflects that the Comptroller produced “the non-privileged contents of” Webber’s “refund file, compliance file, and informal appeal files,” “some associated papers,” a catalog of the documents that were produced, and a privilege log on December 11, 2017. The Comptroller also produced “a CD audio disk containing the recording of the informal hearing^[3] in these cases, with a further descriptive document schedule” on December 14, 2017. Finally, on July 9, 2018, the Comptroller produced “previously withheld documents consisting of federal tax information, following the Internal Revenue Service’s acquiescence in such production[.]” as well as “copies of IRS documents that were arguably responsive to a request for production of documents served by Mr. Webber.” Moreover, the Comptroller points out that, in denying Webber’s motion to compel, the Tax Court prohibited the Comptroller from using any evidence or documents that had not been produced.

³ According to the Comptroller’s website, “the first step in the appeal process is an informal hearing.” <https://www.marylandtaxes.gov/individual/tax-compliance/dispute-it.php>. “An informal hearing is a structured meeting between [the taxpayer] and a hearing officer who is designated by the Comptroller to review any issues in dispute.” *Id.*

Our review of Webber’s broad complaint that he obtained no “independent discovery” is impeded by his failure to identify specific discovery requests that he contends were not satisfied. Although Webber cites a document that contains a list of complaints, all but two of those complaints relate to tax years before 2004. He does not acknowledge or discuss the Comptroller’s response to those complaints, in which the Comptroller advised him that the five-year document retention policy explains why many of the requested documents were “no longer available.” As a result, we cannot discern which, if any, of those discovery requests are, in Webber’s view, still unresolved. Nor can we discern how any of the requests might have had any conceivable relevance to the dispositive issue of whether Webber’s refund claims were barred by the three-year lookback provision.⁴

In these circumstances, we conclude the Tax Court did not err or abuse its discretion in ruling that Webber’s discovery complaints warranted no relief beyond its order excluding any undisclosed documents. *Cf. Taliaferro v. State*, 295 Md. 376, 390-91 (1982) (recognizing that courts have discretion to impose discovery sanctions after considering “whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the

⁴ The only specific discovery-related matters that Webber claims not to have received are the “*Notice of Denial* letters” regarding his refund claims. Webber, however, first raised this argument in his reply brief, thereby depriving the Comptroller of an opportunity to respond. “It is impermissible to hold back the main force of an argument to a reply brief and thereby diminish the opportunity of the appellee to respond to it.” *Dep’t of Housing & Cmty. Dev. v. Mullen*, 165 Md. App. 624, 661 n.14 (2005). For that reason, we shall not to consider that argument.

parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement, and, if so, the overall desirability of a continuance”). Based on this sparse record concerning the nature, extent, and consequences of any disclosure deficiency, we are unpersuaded that Webber was denied discovery, much less that he was denied a fair hearing.

C. Summary Decision

Webber argues that the Tax Court erred in granting the Comptroller’s motion for judgment because, he says, its rules do not authorize such a summary decision. As the Comptroller points out, however, Webber did not preserve his objection that summary judgment is unavailable in the Tax Court, because he did not raise that objection in the Tax Court. *See Comptroller of Treasury v. Taylor*, 465 Md. 76, 99 (2019). Thus, we need not consider the point. *See* Md. Rule 8-131(a).

Even if we were to consider it, however, we would conclude that it has no merit. Section 13-523 of the Tax-General Article authorizes the Tax Court to conduct a proceeding “in a manner similar to a proceeding in a court of general jurisdiction sitting without a jury.” Section 13-525(a) of the Tax-General Article permits a party to “submit to the Tax Court a request for a ruling on a question of law that is material to the appeal.” When a party has submitted such a request, § 13-525(b)(1) authorizes the Tax Court to “issue a ruling on the question of law.”

The propriety of summary judgment is a classic question of law. It would be a complete waste of time and resources to require a trial on the merits when there is no genuine dispute of any material fact, and the moving party is entitled to judgment as a

matter of law. The Tax Court therefore has the statutory power to grant summary judgment or to issue a summary decision.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY,
AFFIRMING THE DECISION OF THE
MARYLAND TAX COURT, AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**