Circuit Court for Anne Arundel County
Case No. C-02-CV-17-003470

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 792

September Term, 2018

CARROLL INDEPENDENT FUEL, LLC.

v.

COMPTROLLER OF MARYLAND

Kehoe,
Friedman,
Wilner, Alan M. (Senior Judge, Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed: September 13, 2019

*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.

We are asked in this judicial review action whether the Circuit Court for Anne Arundel County erred in reversing an Order of the Maryland Tax Court. That Order directed the Comptroller of the Treasury (Comptroller) (1) to credit appellant Carroll Independent Fuel Company (Carroll) for overpayments Carroll or its successor company made on its gasoline and diesel tax accounts during the audit period, (2) to eliminate the assessments made by the Comptroller for the Maryland fuel tax due on those accounts, and (3) to return protective payments Carroll paid to the Comptroller on its gasoline and diesel accounts.[1]

BACKGROUND

Summary of the Issue

Carroll buys and sells motor fuel – gasoline and diesel fuel. It controls 250 gas stations and supplies motor fuel to those stations and to 200 independent gas stations. It sells more than 425 million gallons of those products annually.

[1] From the time of its founding in 1917 as a family-owned concern, Carroll operated as a Maryland corporation under the name Carroll Independent Fuel Company. In February 2012, it merged into a newly-formed limited liability company known as Carroll Independent Fuel, LLC. The LLC was the surviving entity, but, until its charter was forfeited in August 2014, the corporation was the sole member of the LLC. The business address remained the same and the only assets of the LLC were those acquired from the corporation pursuant to the merger. Both parties essentially ignored the merger throughout proceedings before the Comptroller and continued to treat Carroll as Carroll Independent Fuel Company. In the Tax Court, the Comptroller made that an issue, contending that, as the Company was no longer legally in existence, it had no right to file for any relief in the Tax Court. We shall deal with that later in this Opinion.

Maryland law imposes a motor fuel sales tax of 23.5 cents per gallon of gasoline, other than aviation gasoline, and 24.25 cents per gallon of diesel fuel. *See* Md. Code, § 9-305(a) of the Tax-General Article (TG). Those taxes do not apply to motor fuel that is exported or sold for exportation from Maryland. TG § 9-303(a).

Carroll purchases some of its motor fuel in Virginia and some in Maryland. Some of that motor fuel is sold to customers in Maryland and some is sold to customers out-of-State. When Carroll purchases the fuel in Virginia, it may pay a Virginia tax but not the Maryland tax. In that situation, it has a Maryland license to load the product and bring it into Maryland tax-free. If it sells the product in Maryland, it collects the Maryland tax from its customer (unless the customer is an exporter) and remits it to the Comptroller.

When Carroll purchases its product in Maryland, it pays the Maryland tax at the point of purchase. If it sells the product in Maryland, the tax has already been paid and, presumably, the price it charges its customers includes reimbursement for that tax. In either of these situations, all is well; the Comptroller gets his due, Carroll gets reimbursed for any tax it paid, and the ultimate Maryland customer bears the burden of the tax.

When Carroll sells the product out-of-State, no Maryland tax is due. If that product was purchased in Maryland, however, Carroll in fact will already have paid the Maryland tax at the time and point of purchase, and it believes that it is entitled to a "credit" for the Maryland tax it paid against taxes due on other transactions. There seems to be no dispute that, between July 1, 2008 and June 30, 2012 – the "audit period" –

Carroll made overpayments of $93,390 in gasoline tax and $186,993 in diesel fuel tax; *i.e.*, it paid that much in taxes for product it purchased in Maryland but sold out-of-State.

What created the problem here is that Carroll neglected to seek a refund of those overpayments within the time allowed by statute for seeking such a refund. Instead, it sought to set off the overpayments against assessments totaling $154,492 imposed by the Comptroller based on other sales occurring during the four-year audit period on a theory of equitable recoupment. The Tax Court allowed it to do so. The Circuit Court said "no." That, in essence, is what is before us.

Factual and Procedural Background

In late 2012, the Comptroller's Office commenced a motor fuel tax audit of Carroll's gasoline and diesel accounts for the 48-month period from July 1, 2008 through June 30, 2012. In August 2014, that audit produced (1) a proposed assessment in the gasoline account of $66,003.52, consisting of $40,703.88 in additional tax, a $4,070.39 penalty, and $21,229.25 in interest, and (2) an assessment in the diesel account of $338,659.84, consisting of $187,189.39 in additional tax, a penalty of $18,718.94, and $132,751.51 in interest. The underpayments leading to those assessments appear to arise largely from the Comptroller's cancellation or denial of exemptions or credits that had been claimed by Carroll during the audit period. The disallowed credits were for product on which Carroll had paid the Maryland tax but which was sold out-of-State and for which no refund claim had been timely filed.

At a hearing before a hearing officer, the Comptroller acquiesced in some adjustments but objected to allowing credits for the overpayments because no timely refund claim had been made. The hearing officer found merit in that objection. In her November 1, 2016 Notice of Final Determination with respect to the gasoline account, she noted:

> "Nearly [all] of the taxpayer's requested adjustments were allowed except for the disallowed tax-paid credits of 50,759 and 9,814 gallons. These credits are not allowed because they were calculated by netting imports and exports. Concededly, the taxpayer may net tax-paid exports (tax-free) and tax paid imports (taxable) to determine tax due, but any overage must be claimed in a refund application, not applied as a carryforward to a subsequent period. The taxpayer failed to file a refund application for this, as well as the other credits generated prior to the assessment period, and, as a result, no further adjustments are warranted."

A similar ruling was made in the Notice of Final Determination regarding the diesel account, which involved the assessment with respect to 275,585 gallons. There, the hearing officer concluded that "the taxpayer never filed a refund application for these credits, the applicable period of limitations has long lapsed, and no statute permits the offset of that credit against the assessment."

In light of those rulings, the hearing officer affirmed Notices of Assessments in the amount of $65,431.56 for gasoline ($34,944.76 additional tax, a $3,494.40 penalty, and $26,992.32 interest) and $256,568.89 for diesel ($119,547.65 additional tax, a $11,954.77 penalty, and $125,066.27 interest).

In order to prevent the continued running of interest at 13% on those amounts while pursuing an appeal, Carroll paid them under protest, which is permitted by a

regulation of the Comptroller. *See Code of Maryland Regulations* (COMAR) § 03.01.01.04.H(3)(a)(ii): "A person may pay an assessment under protest to avoid incurring additional intertest charges during the appeal process."

In accordance with TG § 13-510, Carroll filed a timely appeal to the Maryland Tax Court, which decided the matter on cross-motions for summary judgment.[2] Though acknowledging that it had failed to file timely requests for refunds, Carroll based its appeal solely on the doctrine of equitable recoupment which, it argued, permits a taxpayer defensively to set off overpayments against assessments imposed during the same audit period as the overpayments, even if a refund claim is no longer permissible because of a statute of limitations. In response, the Comptroller argued (1) that the appeal by Carroll Independent Fuel Co. should be dismissed because it was no longer in existence, having merged into the LLC, and (2) a refund of voluntary tax payments is permissible only as provided by statute and the only relevant statutes are TG §§ 13-901(a) and 13-1104(f), requiring a refund claim for motor fuel tax to be filed within one year after purchase.

The Tax Court rejected both of those defenses. As to the motion to dismiss, the Court simply said, *ex cathedra*, that the merger of the corporation into the LLC "does not

[2] Despite its name, the Tax Court, in fact and in law, is an Executive Branch agency and not a judicial body. *See* TG § 3-102 and *Shipp v. Bevard*, 291 Md. 590, 592 (1981). It makes decisions and may issue orders, but it does not render judgments in a judicial sense. A more accurate and descriptive term would be summary disposition rather than summary judgment.

impact the assessment appeal." Distinguishing the cases cited by the Comptroller and relying instead on a 1985 decision of the Tax Court in *Alarm Services Corporation*, 1985 WL 6096 (Md. Tax Court, 3/21/1985), the court held that it had the power under the equitable doctrine of recoupment to offset an assessment to the extent certain taxes were improperly remitted during the same audit period. Upon that conclusion, the Tax Court entered the Order noted above.

The Comptroller then sought judicial review in the Circuit Court for Anne Arundel County. As in the Tax Court, there was no genuine dispute of material fact but only two issues of law – whether the corporation was a proper party to pursue the appeal to the Tax Court and whether the Tax Court erred in applying the doctrine of recoupment.

The Circuit Court found the LLC to be the functional equivalent of the corporation and held that there was little consequence as to which name was used. On the substantive issue, the court concluded that the only avenue for seeking a refund of the overpayments made during the audit period or the voluntary payment of the assessments under protest was the statutory claim for refund that Carroll neglected to file and, due to a statute of limitations, no longer could file. It determined that equitable or common law recoupment either was not applicable at all or could be raised only through a statutory request for refund. It therefore held that the Tax Court had no authority to do what it did. Upon that conclusion, the Circuit Court entered an Order reversing the Tax Court's decision and remanding the case for a decision consistent with the Circuit Court's Order and reasoning.

This appeal ensued. Carroll seeks an affirmance of the Tax Court decision requiring (1) an abatement of the assessments, (2) to the extent of that abatement, the return of the overpayments made during the audit period, and (3) the return as well of the payments made under protest, all by virtue of the application of equitable recoupment. The Comptroller responds to those demands and, in addition, though filing no cross-appeal, pursues his claim that Carroll's appeal to the Tax Court should have been dismissed.

DISCUSSION

Effect of Merger on Carroll's Right of Appeal to Tax Court

It is undisputed that at least the great bulk, if not all, of the transactions that led to the assessments at issue occurred while Carroll was operating in its corporate form. As noted, the audit period covered July 1, 2008 through June 30, 2012. It appears that the merger of the corporation into the LLC became effective on February 23, 2012.

The Comptroller calls attention to Md. Code, § 3-114(b) of the Corporations and Associations Article (CA), which provides that, when there is a consolidation or merger, the separate existence of each party to the merger, except the successor, ceases. As we observed, the corporate charter was not actually revoked until August 2014. Nonetheless, relying on *Atlantic Mill & Etc., Co. v. Keefer*, 179 Md. 496 (1941), and *Scott v. Seek Lane*, 91 Md. App. 668 (1992), the Comptroller argues that, upon the effective date of the

merger, the corporation lost its right to sue and insists that the Tax Court should have dismissed the appeal to it.

Neither case cited by the Comptroller is apposite. Both involved the forfeiture of a corporate charter for non-payment of taxes prior to the corporation filing an action in court, and both (as well as other cases cited in *Scott*) make clear that, once a corporation's existence has been terminated due to the forfeiture of its charter, it can neither sue nor be sued.

That does not create a state of utter impotence, however. Under CA § 3-515, the assets of the defunct corporation are transferred by operation of law to the corporation's Board of Directors (or a receiver, if one is appointed) who are vested with title to the assets of the corporation and have the powers to sue in the name of the corporation and to do "all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs." They may institute and carry on litigation on behalf of the defunct corporation.

A different procedure, but to the same effect, applies when a corporation ceases its separate existence because of a merger rather than the forfeiture of its charter. Under CA § 3-114 (d), if the articles of merger so provide, the successor entity "has the purposes and powers of each corporation party to the articles." Section NINTH of the Carroll Articles of Merger expressly provides that the surviving entity "shall possess any and all purposes and powers of the Merging Corporation." CA § 3-114 (f) further provides that the successor is liable for all the debts and obligations of the non-surviving entity and that

an existing claim, action, or proceeding by or against a non-surviving corporation "may be prosecuted to judgment as if the consolidation or merger had not taken place" or "on motion of the successor or any party, the successor may be substituted as a party."

The Maryland Rules provide a procedure for substituting parties in the courts when a corporation has merged, consolidated, or had its charter forfeited. *See* Rules 2-241, 3-241, and 8-401. There is no similar procedure articulated in the COMAR regulations applicable to the Tax Court, but one must be implied in order to implement § 3-114(f).

Although no one invoked such a procedure, throughout the proceedings before the Comptroller's Office, as late as four years after the merger (and alleged disappearance of the corporation), both the Comptroller and Carroll recognized that the corporation had a right to file and pursue a defense against the proposed assessments. *See* the January 20, 2016 hearing before the Comptroller's hearing officer and the November 1, 2016 *Notice of Final Determination*. It is somewhat of an anomaly for the Comptroller to officially recognize the corporation as the only party in interest by levelling the assessments against *it*, rather than the LLC, but then take the position that, though in existence for that purpose, the corporation was not in existence for purposes of pursuing an appeal. The Tax Court implicitly recognized that in summarily rejecting the motion to dismiss the appeal. We find no error in that decision.

Equitable Recoupment

The only issues presented by Carroll in its appeal to the Tax Court were whether Carroll (1) should receive a credit against the assessments imposed by the Comptroller for the overpayments it made during the audit period, and (2) should receive a refund of the payment it made under protest.

Though recognizing that it had made no claim for refund of the overpayments, Carroll argued that, because the overpayments occurred during the audit period, they were part of the "same transaction" and that it was entitled to claim the offset under the equitable doctrine of recoupment. It noted that the Tax Court had applied that doctrine in the *Alarm Services* case. With respect to the payment made under protest, Carroll argued that, as the assessments should be entirely vacated, no tax was due on them. It made no claim that the assessments were otherwise incorrect.

As he does here, the Comptroller responded that, under Maryland law, the only avenue for recovering taxes voluntarily paid, whether by mistake or coercion, is through the statutory remedy of a timely claim for refund and that the statute of limitations for filing such a claim had expired.

In its Memorandum Opinion, the Tax Court noted that Carroll was not seeking affirmative relief in the form of a refund but merely defensively to set off the overpayments against the assessments, which were lesser in amount than the overpayments. The Tax Court concluded that the cases relied on by the Comptroller that limited recovery of a voluntary tax payment to the statutory refund claim procedure were distinguishable, as they involved actions to recover the tax that had been paid, which was

not what Carroll was seeking. It found its 1985 decision in *Alarm Services,* where it had applied the recoupment doctrine to offset what came to be regarded as voluntary payments, to be persuasive. The Tax Court also rejected the Comptroller's claim that the recoupment doctrine could not be applied "across taxable periods," holding instead that there was only one relevant period – the four-year audit period – rather than the 48 monthly periods during which the overpayments actually were made.

We turn first to the Comptroller's argument. TG § 9-308(a) required Carroll, as a dealer, to file a motor fuel tax return for each month in which it sold motor fuel in Maryland. The return is due by the end of the next month. TG § 9-314(d) requires that any tax due on the product sold during the month be paid with the monthly return. The Comptroller therefore regards the assessments made against Carroll and any voluntary overpayments made by it during the audit period as being the cumulation of 48 separate monthly periods for which there was either or both an underpayment of taxes due for those months or an alleged voluntary overpayment of taxes not due. Each month, he claims, is a separate taxable period, and, even if equitable recoupment were to be regarded as a basis for crediting an overpayment against an underpayment, that is permissible only if the underpayment and overpayment were in the same taxable period.

The crux of the Comptroller's position is what has been termed the "voluntary payment rule," a common law principle of long standing in Maryland. It commenced as a rule that was general in nature and extended beyond the overpayment of taxes. In *Balt.*

& Susq. R.R. Co. v. Faunce, 6 Gill 69 (1847), where the plaintiff sought recovery of money mistakenly paid under a private contract, the Court of Appeals noted:

> "It is rightly said, that a party cannot recover money voluntarily paid with a full knowledge of all the facts, although no obligation to make such payment existed. If informed of the law which exempts him, he must abide the consequences of his folly, in abandoning the protection it afforded him – if ignorant, he was bound to acquire information. It is regarded as a gift without consideration."

That was the common law rule. As the Court noted in *Baltimore County v. Xerox Corp.*, 286 Md. 220, 226 (1979), the statutory refund remedy was enacted to modify and replace that rather harsh common law rule and, as a result, "a common law action will not lie to recover taxes erroneously paid under a mistake of law." *Id.*, quoting from *White v. Prince George's County*, 282 Md. 641, 651 (1978). It never could. Until the statute, there was **no** avenue of recovery; the statute provided one, but an exclusive one.

That principle of exclusivity has been applied on multiple occasions to the voluntary payment of taxes. In *Apostol v. Anne Arundel County*, 288 Md. 667, 672 (1980), the Court, building on prior cases, regarded it as "firmly established in this State" that "once a taxpayer voluntarily pays a tax or other governmental charge, under a mistake of law or under what he regards as an illegal imposition, no common law action lies for the recovery of the tax absent a special statutory provision sanctioning a refund." The Court added that "where there is a statutory authorization for a refund and a special statutory remedy set forth, **that remedy is exclusive**." *Id.* (Emphasis added). *See* also

Bowman v. Goad, 348 Md. 199 (1997); *Halle v. Anne Arundel*, 371 Md. 312 (2002); *Brutus 630 v. Town of Bel Air*, 448 Md. 355 (2016).

Here, there is, and long has been, a "special statutory provision sanctioning a refund" and a "special statutory remedy" for seeking such a refund. TG § 13-901(a)(1) and (2) permit a claim for refund to be filed by a claimant who "erroneously pays to the State a greater amount of tax, fee, charge, interest, or penalty than is properly and legally payable" or such a tax or other fee or charge that is "wrongfully assessed or collected in any manner."[3]

There are, however, time limits for filing the claim. TG § 13-1104(f) provides that a claim for refund of a motor fuel tax may not be filed after one year from the date of purchase or after October 1, if the claimant elects to file an annual claim for the 12-month period ending June 30. TG § 13-508 applies a separate time limit within which a taxpayer may seek a revision of an assessment of a motor fuel tax, namely 30 days after the notice of assessment is mailed. Marrying the statutory remedy set forth in TG § 13-901 as limited by § 13-1104 (f), with the common law rule, the Comptroller's position is that Carroll missed its only available remedy and the Tax Court had no authority to substitute another one.

[3] Section 13-901(f) enumerates some of the specific situations in which a claim for refund of motor fuel taxes may be filed pursuant to subsection (a)(3) but does not appear to limit the general right set forth in subsection (a)(1) or (2).

Carroll acknowledges that the statutes say what they say. Its position is that they apply only to the ability of a taxpayer to seek a **refund** of tax overpayments, which it claims it is not seeking, at least with respect to the monthly overpayments. It is not asking the Comptroller to repay any of that money but only to credit the overpayments against the assessment that arose for taxes due during the same period. Relying principally on *Imbesi v. Carpenter Realty*, 357 Md. 375 (2000), but also on the Tax Court's earlier decision in *Alarm* Services, it asserts that equitable recoupment is available for that purpose.

Imbesi addressed the question of whether a person (Carpenter), who acquired from a third party (7-UP) an enforceable note signed by a decedent (Imbesi) during his lifetime, could use that note as a set off against a debt owed by Carpenter to the estate of Imbesi when neither 7-UP nor Carpenter had filed a claim against the estate within the statutory time period. The relevant statute at the time provided that all claims against a decedent's estate were "forever barred" unless presented within nine months after the date of the decedent's death. The Circuit Court and this Court held that Carpenter could do so. The Court of Appeals disagreed and reversed that judgment.

The Court of Appeals first articulated the distinction between three different concepts – recoupment, setoff, and counterclaim. Recoupment, it said, is a diminution or complete counterbalancing of an adversary's claim "based on circumstances arising out of the same transaction on which the adversary's claim is based." *Id.* at 380. Setoff, in contrast, is a diminution or counterbalancing "arising out of a transaction other than that

on which the adversary's claim is based." *Id.* A counterclaim is the assertion of a right to have an affirmative judgment against the adversary "based upon a setoff or a recoupment." *Id.*

The Court regarded the claim in *Imbesi* as a setoff rather than a recoupment, which, if allowed, was most likely to require consideration of facts and circumstances of a separate transaction and complicate and prolong resolution of the estate's claim against the debtor, and largely for that reason refused to allow it even defensively. That was the effective holding in the case.[4]

The Court did note cases in other States that had allowed claims arising out of the same transaction (recoupment) to be used defensively against an estate notwithstanding a failure to file a timely claim, but, as it found the effort in *Imbesi* to be a setoff rather than a recoupment, it did not opine on whether Maryland would recognize a recoupment in an estate situation.[5] *See Beka v. Board of Ed.*, 419 Md. 194, 229 (2011) (*Imbesi* "did not address recoupment, but rather a set-off claim in an unrelated transaction that was statutorily barred"). *Imbesi* does not constitute authority for applying equitable

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[4] The Court did recognize that fraud, waiver, or estoppel could toll the substantive limitation period, but there was no such claim in that case.

[5] We do note that, in its discussion of those cases, the Court observed that, at least in some of them, the courts regarded the "nonclaim" statute as a statute of limitations, whereas the Maryland statute "is not the usual statute of limitations whose operation as a bar to the remedy may be variously obviated or abandoned, but a statutory bar which prevents the collection of the claim, unless the creditor shall bring suit on the claim within nine months of its rejection." *Imbesi*, at 385.

recoupment to what is now before us; nor does any other Maryland case. With respect to the particular remedy of equitable recoupment, it is an open question.

We understand that recoupment is an equitable principle and, as such, is a rule of fairness. At least in the absence of a statute precluding its use (or circumstances making its invocation inappropriate), it may be interposed to reduce or eradicate an adverse claim arising out of the same transaction, even when based on a claim that otherwise would be barred by a statute of limitations or that could not be affirmatively sought against the adverse claimant. *See Pines Plaza v. Berkley Trace*, 431 Md. 652, 674 (2013).

There are cases throughout the country that deal specifically with the issue actually before us – whether equitable recoupment applies to tax cases and, if so, under what circumstances. In four cases, the earliest in 1935, the U.S. Supreme Court has held that the doctrine of equitable recoupment applies in Federal tax cases heard in the U.S. District Courts, although the Court has waffled a bit on some of the procedural requirements for its application. *See Bull v, United States*, 295 U.S. 247 (1935); *Stone v. White*, 301 U.S. 532 (1937); *Rothensies v. Electric Battery Storage Co.*, 329 U.S. 296 (1946); and *United States v. Dalm*, 494 U.S. 596 (1990).

On the other hand, in *Commissioner v. Gooch Milling & Elevator Co.*, 320 U.S. 418 (1943), the Court held that the then-Board of Tax Appeals had no jurisdiction to apply equitable recoupment to an overpayment of income taxes in FY 1935 against a deficiency for FY 1936. The Opinion did not preclude the Board from applying the doctrine generally, *i.e.*, to allow a credit for overpayment of a tax in the same taxable year

as the deficiency, but only that it had no authority to apply the doctrine when it as based on an overpayment or underpayment in another year.

In the Federal world, that is now provided for, in part at least, by a statute enacted by Congress in 2006. *See* 26 U.S.C. § 6214, with respect to income and gift taxes.[6] Notwithstanding § 6214, the U.S. Tax Court still regards equitable recoupment as "a judicially created doctrine" that, under certain circumstances, allows a litigant to avoid the bar of an expired statutory limitation period. *Menard v. Commissioner of Internal Revenue*, 130 T.C. 54, 62 (2008). The doctrine, the U.S. Tax Court said, "prevents an inequitable windfall to a taxpayer or to the Government that would otherwise result from the inconsistent tax treatment of a single transaction, item, or event affecting the same taxpayer or a sufficiently related taxpayer." *Id.*

The Federal approach, emanating initially from *Bull*, has led several States to follow suit and recognize equitable recoupment in tax cases, although not all of them agree on the contours of the doctrine or have applied it in the particular case before

[6] Section 6214(b) provides: "The Tax Court in redetermining a deficiency of income tax or gift tax for any calendar year or calendar quarter shall consider such facts with relation to the taxes for other years or calendar quarters as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year or calendar quarter has been overpaid or underpaid. Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims."

them.[7] It appears that only Ohio has flatly rejected the doctrine in tax cases. *General Motors v. Limbach*, 616 N.E.2d 204 (1993). For an overview, as of 2002, of the landscape and the various sub-issues that surfaced when the doctrine was raised to defeat the application of a statute of limitations attached to a statutory remedy, *see* Mark S. Franklin, *State Application of the Doctrine of Equitable Recoupment*, 40 Brandeis L. J. 781 (2002).

The cases, and Mr. Franklin's law review article, point out that the issue here is not a simple one, of whether to adopt the doctrine or not. The courts that recognize the doctrine have had to wrestle with (1) the extent to which the tax collector also gets the benefit of it to the detriment of the taxpayer, and (2) if limited to "the same transaction," which most or all of them have held to be the case, how to define what that means. Those are significant policy issues, and the out-of-State courts, as well as the U.S. Supreme Court, have reached inconsistent conclusions regarding some of them. One thing, so far, seems certain: we are not aware of any State that has allowed equitable

[7] See *Vivigen v. Minzer*, 870 P.2d 1382 (N.M. 1994); *Estate of Kasishke v. Oklahoma Tax Commission*, 541 P.2d 848 (Okla. 1975); *Sprint Communications v. State Board of Equalization*, 47 Cal. Rptr.2d 399 (1995); *National Cash Register v. Joseph*, 86 N.E.2d 561 (N.Y. 1949); *Superior Air Products v. Director*, 9 N.J. Tax 463 (1988); *Indiana Department of State Revenue v. Smith*, 473 N.E.2d 611 (1985); *American Motors Corp. v. Wisconsin Department of Revenue*, 219 N.W.2d 300 (1974); *Fadner v, Commissioner of Revenue Services*, 917 A.2d 540 (Conn. 2007); *Allied Timber Co. v. Department of Revenue*, 677 P.2d 33 (Or. 1984); *American Life & Accident v. Commonwealth*, 173 S.W.3d 910 (Ky. 2004).

recoupment to permit reducing taxes due for one tax reporting period by overpayments made in a different tax reporting period.

This Court has never been shy about tackling difficult policy issues, but we are constrained from doing so in this case. As we have observed, the Court of Appeals has clearly and consistently held that the special statutory remedy for seeking relief from a voluntary overpayment of taxes is "**exclusive**" and that no common law alternative is permissible.

We are bound by that. If it is to be changed – if a judicially-created alternative is to be allowed – the Court of Appeals will have to do it and shape it. As we said in *Martinez v. Johns Hopkins Hosp.*, 212 Md. App. 634, 656 (2013), this Court "has no discretion but to follow the law as enunciated by the Court of Appeals." *See also USA Cartage v. Baer*, 202 Md. App. 138, 181, n.13 (2011), quoting from *Johns Hopkins v. Correia*, 174 Md. App. 359, 382 (2007): "Unless a case can be distinguished on its facts, this Court does not have the option of disregarding the Court of Appeals' decisions that have not been overruled, no matter how old the precedent may be." Until the Court of Appeals decides otherwise, "exclusive" means "exclusive."

Carroll seeks to escape the impact of that holding by claiming that *Apostol*, as well as its predecessors and its progeny, are distinguishable – that they all dealt with refund claims, where the taxpayer was seeking to receive a check from the Comptroller for the overpayments. Carroll is not asking for that; it simply wants to use at least part of those

overpayments defensively, to eradicate the assessment for taxes it currently owed. It is not looking to enhance its bank account but only to preclude a further drain on it.

If there is a distinction, it is one without a difference, at least in economic impact. The end objective is the same – to allow the taxpayer to receive back the economic value of the tax it voluntarily paid and reduce the coffers of the State by that amount. The Legislature has allowed that to happen, but only in the manner it chose. Equitable recoupment may be a legal basis for establishing an entitlement to a refund, but only if a refund claim is timely and properly filed. Unless and until the Court of Appeals determines otherwise, that is what "exclusive" means.

JUDGMENT OF CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.