Circuit Court for Anne Arundel County
Case No. C-02-CV-20-001089

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0946

September Term, 2020

COMPTROLLER OF MARYLAND

v.

FC-GEN OPERATIONS INVESTMENTS, LLC

Friedman,
Shaw,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.
Concurring Opinion by Friedman, J.

Filed: February 3, 2022

FC-GEN Operations Investments, LLC ("FC-GEN") made estimated tax payments in the amount of $601,467 to the Comptroller of Maryland ("Comptroller") based upon its projected income for the 2012 tax year. FC-GEN determined that it had a taxable loss and, as a result, did not owe income tax to the Comptroller (with a minimal exception).[1] Due to the loss, FC-GEN sought the return of the $598,131 in overpaid estimated tax payments by submitting Maryland 2012 Form 510, 510C, and Schedules K-1 to the Comptroller. The Comptroller initially denied the refund on the basis that is was untimely, but on appeal to Comptroller's Office of Hearings and Appeals, the refund was denied due to ineligibility of FC-GEN's nonresident individual members included on its Form 510C. FC-GEN appealed and the Maryland Tax Court ("Tax Court") found that FC-GEN complied with the tax form instructions and applicable tax statutes and regulations in ordering that FC-GEN is entitled to a refund in the amount of $598,131 without interest. The Circuit Court for Anne Arundel County affirmed. This appeal followed.

The Comptroller presents us with four questions on appeal:

1. Is FC-GEN precluded from claiming a tax refund for itself, when the applicable regulations limit a pass-through entity to seeking a refund on behalf of its members?

2. Does Maryland's "voluntary payment" rule bar the refund of overpaid tax for any members of a pass-through entity, when the pass-through entity's refund claim fails to comply with applicable regulations?

3. Did the Tax Court err in excusing the deficiencies in FC-GEN's refund claim, consistent with the federal "informal claim" doctrine, when no

[1]FC-GEN owed $3,336 that it was required to pay as a guaranteed payment on behalf of one of its nonresident individual members.

Maryland appellate court has adopted that doctrine as a matter of Maryland state tax law and when the claim did not provide enough information for the Comptroller to determine the members' refunds?

4. May the Comptroller retain an overpayment of pass-through entity tax, free from equitable estoppel, when the members of the pass-through entity failed to properly claim the refund?

For the reasons below we affirm.

FACTS AND PROCEDURAL HISTORY

FC-GEN is a pass-through entity that operates long-term care medical facilities and provides ancillary healthcare services. In the 2012 tax year, FC-GEN had four individual nonresidents of Maryland, twenty nonresident pass-through entities, two resident pass-through entities, one trust, and one not-for-profit foundation. For federal income tax purposes, FC-GEN is treated as a partnership.

Under Maryland Regulations, pass-through entities that are expected to have a total tax imposed exceeding $1,000 for the taxable year are required to pay estimated taxes. Md. Code Regs. (hereinafter "COMAR") 03.04.07.03B. FC-GEN made estimated payments totaling $601,467 for the 2012 tax year, based on its projected 2012 income. FC-GEN's projections proved inaccurate, however, as it had a taxable loss instead of income for the 2012 tax year. As a result of this loss, FC-GEN sought the return of its estimated payments. After obtaining an extension to file its tax return, FC-GEN timely filed a Maryland 2012

Form 510[2], Maryland 2012 Form 510 Schedules K-1[3], and a Maryland 2012 Form 510C ("Composite Return").[4]

According to FC-Gen's tax return form, Form 510, FC-GEN had a taxable loss attributable to Maryland of $729,863. FC-GEN sought a return of $598,131.[5] FC-GEN did not seek the return of $598,131 on its Form 510 return, as line 20—the line where a pass-through entity must enter the "Amount TO BE REFUNDED"—has a qualifier stating "[c]omplete line 20 only if there are no nonresident members." As a result, FC-GEN also submitted its Composite Return where it claimed the $598,131 on Form 510C, line 17 entitled "Overpayment TO BE REFUNDED."

A pass-through entity may file a composite return on behalf of all or some of its nonresident members. COMAR 03.04.02.04A(1). Nonresident members of the pass-through entity qualify to be included in a composite return if they are a nonresident

[2] A Form 510 is the Maryland Pass-Through Entity Income Tax Return form.

[3] A Form 510 Schedule K-1 is a form that contains a pass-through entity member's information.

[4] The parties dispute whether the Composite Return was filed on September 13, 2013 with the Form 510 and Schedules K-1 or whether the Composite Return was filed later and received by the Comptroller in January 2016. The extension to file a return extended the statute of limitations for claiming a refund to October 15, 2016. *See* Md. Code, § 13-1104 of the Tax-General Article. The Tax Court found FC-GEN's witness to be credible when testifying about filing the Composite Return with the other forms. Regardless of whether the Composite Return was filed in September 2013 or in January 2016, the Composite Return was filed within the statute of limitations period.

[5] This is the total amount of estimated payments made, $601,467, less the guaranteed payment of $3,336 made on behalf of Mr. Steven Fishman.

individual that only earns income in Maryland from the pass-through entity filing the composite return. COMAR 03.04.02.04B. The requirements for filing a composite return are outlined in COMAR 03.04.02.04C. The requirements for filing a composite return include the requirement of a statement of verification that the nonresident individuals included in the composite return qualify to be included under section B of the regulation. COMAR 03.04.02.04C(1).

In order to determine who was eligible to participate in the Composite Return, FC-GEN sent its individual nonresident members a 2012 Composite Election Form ("Election Form"), which included the criteria necessary to be included in a composite return. The Election Form contained the following relevant provisions:

> For your convenience, we describe below general information regarding the criteria for eligibility to be included in a composite return for a specific partner entity type. The specific criteria vary from state to state. *Please consult with your tax advisor to determine for each state whether you are eligible to be included in the composite return.*
>
> * * *
>
> B) You (and/or your spouse) did not have any income that was sourced to the state which the partnership's income was sourced, other than the income from the partnership. . . .

Of all the nonresident individuals, only two indicated that they were eligible to be included in the Composite Return, Christopher Sertich and Michael Jones. The tax advisors for Mr. Jones and Mr. Sertich submitted the completed Election Forms to FC-GEN. There is no cover letter from the tax advisors in the record.

Along with the Form 510 and Form 510C, FC-GEN issued Schedules K-1 to its members. None of the Schedules K-1—except Mr. Fishman's—showed a value for the member's distributive pro rata share of the estimated nonresident tax paid by FC-GEN. Additionally, Section D entitled "Nonresident Tax" on the Schedule K-1 was left blank on every member's—except Mr. Fishman's that listed $3,336 due to the guaranteed payment.

FC-GEN timely submitted its Form 510, Schedules K-1, and Composite Return to the Comptroller. After years of email, telephone, and fax communications between FC-GEN and the Comptroller regarding the status of FC-GEN's refund request, the Comptroller ultimately denied FC-GEN's refund request on March 17, 2017, on the grounds that the statute of limitations had expired. FC-GEN timely appealed to the Comptroller's Office of Hearings and Appeals. During the hearing before the Comptroller's Office of Hearings and Appeals, the Comptroller's representative acknowledged that the refund request was indeed timely, yet asserted that the refund should still be denied on the grounds that the two nonresident members identified in the Composite Return were ineligible to be included in the Return. Later, on July 26, 2018, the Comptroller issued a Notice of Final Determination denying FC-GEN's refund on the basis argued by the Comptroller's representative.

On August 23, 2018, FC-GEN appealed to the Tax Court to request an order that the Comptroller issue its requested refund and order interest to be paid. The Tax Court ordered the Comptroller to issue a refund to FC-GEN in the amount of $598,131 finding that FC-GEN "properly followed the Maryland Tax Form instructions" and "complied with

the applicable tax laws" in requesting its refund. The Tax Court denied the request for interest and FC-GEN did not appeal the denial. The Comptroller appealed to the circuit court, which affirmed the Tax Court's order. The Comptroller timely appealed to this Court.

STANDARD OF REVIEW

We review the Tax Court's decision, not the decision of the circuit court. *Comptroller v. Johns Hopkins Univ.*, 186 Md. App. 169, 181 (2009) (citing *Comptroller v. Clise Coal, Inc.*, 173 Md. App. 689, 696–97 (2007)). The Maryland Tax Court is "an adjudicatory administrative agency." *Gore Enter. Holdings, Inc. v. Comptroller*, 437 Md. 492, 503 (2014) (cleaned up) (quoting *Frey v. Comptroller*, 422 Md. 111, 136 (2011)). As such, the Tax Court is given the same level of deference as other administrative agencies. *See Gore Enter. Holdings, Inc.*, 437 Md. at 503. When reviewing Tax Court decisions, we will not substitute our judgment for the expertise of the Tax Court. *See Frey*, 422 Md. at 137.

We review the Tax Court's factual findings, inferences therefrom, and findings of mixed fact and law under a substantial evidence standard. *Id.*; *see also Johns Hopkins Univ.*, 186 Md. App. at 181. So long as the record provides substantial evidence to support the Tax Court's decision, we will affirm. *See Johns Hopkins Univ.*, 186 Md. App. at 181. Under the substantial evidence standard, we will uphold the Tax Court's decision if reasoning minds could come to the same decision. *Id.* "Even if the Tax Court does not state the reasons for its decision, reversal is not required "if the record discloses substantial

evidence supporting the decision."" *Id.* (quoting *Bethlehem Steel Corp. v. Supervisor of Assessments of Baltimore Cnty.*, 38 Md. App. 543, 546 (1978)). As explained in *Frey*,

> Although we retain the power to review administrative decisions, judicial review of these decisions is narrow. We shall not substitute [our] judgment for the expertise of those persons who constitute the administrative agency.

422 Md. at 137 (internal quotations omitted) (citing *People's Couns. for Baltimore Cnty. v. Loyola Coll. in Maryland*, 406 Md. 54, 66 (2008)). *Frey* elaborated on how we review the agency's legal conclusions when interpreting a statute or regulations:

> Just as we defer to an agency's factual findings, we afford great weight to the agency's legal conclusions when they are premised upon an interpretation of the statutes that the agency administers and the regulations promulgated for that purpose. This deference, however, extends only to the application of the statutes or regulations that the agency administers. When an agency's decision is necessarily premised upon the application and analysis of caselaw, that decision rests upon a purely legal issue uniquely within the ken of a reviewing court.

422 Md. at 138 (cleaned up).

DISCUSSION

The Comptroller argues that FC-GEN is not entitled to the refund because FC-GEN did not comply with the statutory and regulatory provisions to claim a refund. The Tax Court rejected this contention, holding that FC-GEN "properly followed the Maryland Tax Form instructions" and "complied with the applicable tax laws" in requesting its refund. Under the applicable standard of review, if there is substantial evidence in the record to support this decision, we will affirm. *See Johns Hopkins Univ.*, 186 Md. App. at 181.

Compliance with Applicable Statutes, Regulations, and Instructions

According to Maryland Code, § 10-816 of the Tax-General (hereinafter "Tax-Gen") Article, "[e]ach corporation and each partnership that reasonably expects estimated income tax for a taxable year to exceed $1,000 shall file a declaration of estimated income tax." A pass-through entity that is required to file quarterly estimated income tax returns shall pay "at least 25% of the estimated income tax shown on the declaration or amended declaration for a taxable year." Tax-Gen §10-902(a)(1). FC-GEN complied with these rules. Based upon its projected 2012 income, FC-GEN paid $601,467 in estimated tax payments.

Tax-Gen Article, § 10-102.1(d)(3) states that each pass-through entity's tax imposed is limited to the sum of all the nonresident individuals and nonresident entities "distributive cash flow". Figuring out this sum involves a three-step multiplication and addition process. First, each nonresident individual's taxable income is multiplied by "the lowest rate of income tax for an individual under Tax-General Article, §10-106.1." COMAR 03.04.07.02C. Second, each nonresident individual's taxable income is multiplied by "the top marginal State tax rate of an individual under Tax-General Article, §10-105(a)." *Id.* Third, the nonresident taxable income of each nonresident entity is multiplied by the tax rate for a corporation. The "distributive cash flow" is the sum of these three numbers. *Id.*

FC-GEN had no taxable income for the 2012 tax year. Although no tax was due, FC-GEN was still required to file an annual tax return. COMAR 03.04.07.03C. In filing its tax return, FC-GEN sought to receive a refund for the estimated payments made in anticipation of an income that would have mandated taxes be paid. *See* COMAR 03.04.07.03. The Comptroller's regulations state that "[i]f the pass-through entity is

required to file estimated tax returns, the annual return shall *reconcile* the total estimated taxes paid with the total tax liability computed on the return." *Id.* (emphasis added). FC-GEN paid $601,467 in estimated tax payments of which only $3,336 were ultimately due. With a $598,131 overpayment in estimated taxes, FC-GEN sought a refund.

Even though the estimated taxes paid should be reconciled with the taxes owed, the Comptroller denied FC-GEN's request to refund the overpaid estimated tax payments and asks us to do the same. Yet not only did FC-GEN comply with the above statutes, it complied with the tax form instructions, as well. Substantial evidence supports the finding that FC-GEN followed the instructions in completing its Form 510 by entering "0" on line 20, entitled "Amount TO BE REFUNDED" because the instruction above line 20 required the taxpayer to complete line 20 only "if there are no nonresident members." Because FC-GEN had nonresident members, it properly did not complete line 20.

The Comptroller asserts that FC-GEN did not properly follow instructions in completing the Schedules K-1 because FC-GEN failed to include the members' distributive or pro rata share of estimated nonresident tax payments made by FC-GEN, with the exception of Mr. Fishman's, whose Schedule K-1 showed his share was $3,336. Accordingly, Section D, entitled "Nonresident Tax" was blank on every Schedule K-1, except Mr. Fishman's. Andres Aviles, the Comptroller's tax form manager, was asked in deposition whether, if there was no tax due, Section D on the Schedule K-1 would be left blank or contain an entry. Aviles answered "[i]t depends. If there is a tax due, yes [there would be entries], but if there isn't any, you know, those fields just stay blank." Mr. Aviles

reiterated this point over 20 times in his deposition testimony. But later, Mr. Aviles corrected his testimony on an errata sheet stating "[e]ven if no tax is due, the K-1 should list the member's distributive or pro rata share . . . ." A court may consider inconsistencies in the both the deposition testimony and the errata sheet. *See MEMC Elec. Materials, Inc. v. BP Solar Int'l., Inc.*, 196 Md. App. 318, 350–52 (2010). The Tax Court considered the deposition testimony and the errata sheet and concluded that FC-GEN properly followed the instructions on the tax return documents. The Tax Court must have found the original deposition testimony persuasive and consistent with the requisite regulations and form instructions in concluding that the Schedule K-1 instructions were properly followed. We defer to the Tax Court's finding because our review of the record reflects that substantial evidence supports this conclusion.

Ineligibility and Verification of Eligibility for Composite Return

Using an alternative theory to support its denial of the refund, the Comptroller asserts that FC-GEN is barred because there are two ineligible nonresident members on the Composite Return and FC-GEN did not properly verify their eligibility under COMAR 03.04.02.04C(1). The parties have stipulated to and the Tax Court recognizes in its memorandum and order that, unbeknownst to FC-GEN at the time of filing, the two nonresident members included in the Composite Return, Mr. Jones and Mr. Sertich, were not eligible because they received Maryland income from sources other than FC-GEN. In refusing to accept the Comptroller's theory, the Tax Court determined that FC-GEN complied with the necessary regulations, and thus complied with the filing requirement

under COMAR 03.04.02.04C(1) that FC-GEN verify the eligibility of its members for the Composite Return.

There is substantial evidence in the record to support this conclusion. FC-GEN sent its individual nonresident members an Election Form that listed eligibility requirements to be included in the Composite Return and also advised the individual nonresidents to seek consultation with their tax advisors to complete the form. Mr. Sertich and Mr. Jones themselves did not return their forms; rather, their tax advisor provided the completed Elections Forms to FC-GEN on their behalf. The Comptroller asserts these circumstances were not enough to verify that Mr. Sertich and Mr. Jones were eligible. The Tax Court rejected the Comptroller's assertion during the evidentiary hearing before the Tax Court.

> THE COURT: Well one second about it. What else was the taxpayer – the taxpayer to do with regard to qualifying these two individuals? I mean their tax attorney, or tax counsel, apparently, you know, forwarded the requested paperwork and forms to the taxpayer and they relied on what the individual's taxpayers had indicated.
>
> So what other due diligence were they required to do?
>
> MR. SINGERMAN[6]: So to that question, I would respond that they could've made a phone call and confirmed that there was no other income.

The Tax Court evidently found that FC-GEN was entitled to rely on the actions of the tax advisors for the individuals in determining that the individuals met the eligibility requirements, and did not consider it necessary that FC-GEN take the additional step of

[6] Mr. Singerman was counsel for the Comptroller.

making a phone call to the tax advisor to reiterate the eligibility requirement about other Maryland income.

We are mindful of the instruction in *Frey* that "we afford great weight to the agency's legal conclusions when they are premised upon an interpretation of the statutes that the agency administers and the regulations promulgated for that purpose." 422 Md. at 138 (citing *People's Couns. for Baltimore Cnty. v. Surina*, 400 Md. 662, 682 (2007)). Thus, we defer to the Tax Court's interpretation of the legal regulations as well as its factual findings. There was evidence that after the forms containing instructions were sent to FC-GEN's members and their tax advisors transmitted the required paperwork to FC-GEN. This led to the Tax Court's determination that these circumstances were sufficient for FC-GEN to meet the filing requirements for the Composite Return under COMAR 03.04.02.04C. The Tax Court declined to read the Comptroller's regulations to require that FC-GEN make follow-up telephone calls to inquire about the members' Maryland income. We defer to the Tax Court's interpretation of these tax regulations.

Proper Claimant of Estimated Payments

The Comptroller also asserts that FC-GEN is not the proper claimant of the refund in this case. Under Tax-Gen Article, § 13-901(a), a refund claim may 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[.]" The Comptroller asserts that FC-GEN is not the proper claimant for the return of estimated taxes in this case because FC-GEN pays taxes *on behalf of* nonresident members and thus did not pay the taxes itself. COMAR

03.04.07.03D(1); *see also* Tax-Gen § 10-102.1(c)(1) (stating that "[w]ith respect to a pass-through entity that pays the tax imposed under subsection (b)(1) of this section . . . the tax shall be treated as a tax imposed on the nonresident or nonresident entity members that is paid on behalf of the nonresidents or nonresident entities by the pass-through entity"). We do not agree. FC-GEN is seeking a return of its overpaid estimated payments. In order to determine whether FC-GEN is the proper claimant for the refund in this case, we must decide whether or not estimated tax payments are considered taxes paid—thus being paid on behalf of nonresident members and not itself.

The Supreme Court of the United States has provided guidance on this issue in *Rosenman v. U.S.*, 323 U.S. 658 (1945). "The Government does not consider such advances of estimated taxes as tax payments. They are, as it were, payments in escrow." *Id.* at 662.[7] The Supreme Court based its holding on the finding that the estimated payments in *Rosenman* were kept in separate accounts from other taxes and, more specifically, that estimated payments are not treated as taxes paid when it comes to collection of interest on such payments. *See id*. at 662–63. The I.R.S. declines to pay interest for overpayment of estimated taxes because estimated tax payments are not considered to be taxes paid, but merely a deposit to be held.[8] *See id.* The Supreme Court

[7] A federal statute now prescribes when federal estimated tax payments are considered to be taxes paid. *See* 26 U.S.C.A. § 6513(b)(2) (West 2020). However, no such statute exists in Maryland.

[8] The Supreme Court of Pennsylvania declined to extend the holding of *Rosenman* to their state income tax statute regarding estimated payments because in Pennsylvania, the

further noted that the Government cannot have it both ways—estimated payments cannot be treated as taxes paid in one case and be treated as deposits paid to relieve the Government from paying interest in other cases. *See id.* at 663. In Maryland, the Comptroller—similarly to the United States Internal Revenue Service—is not required to pay interest on overpayments of estimated taxes. Tax-Gen § 13-603(b)(iii).

In its reply brief, the Comptroller tries to assert that the estimated tax payments in this case should be considered taxes paid because FC-GEN filed a request for an extension of time to file. In doing so, the Comptroller cites *Dantzler v. U.S. I.R.S.*, which held that remittances of estimated payments made in conjunction with filing a request for an automatic extension of time to file a return are considered taxes paid. 183 F.3d 1247, 1251 (11th Cir. 1999). *Dantzler* is readily distinguishable. In coming to its holding, the "[m]ost important" statute the *Dantzler* court relies upon specifically enumerates when estimated income tax payments become taxes paid. *See id*. at 1250. That statute, 26 U.S.C.A. § 6513(b)(2), provides: "[a]ny amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for

Department of Revenue pays interest on overpayments of estimated taxes and, according to the Commonwealth, the estimated taxes are not kept in separate accounts. *See Mission Funding Alpha v. Commonwealth*, 173 A.3d 748, 760 (Pa. 2017). This Court does not have information before it on whether or not estimated payments are kept in separate accounts, but overpayments of estimated income tax are not subject to interest. Tax-Gen § 13-603(b)(iii). The fact that no interest is due on overpayment of estimated income tax is persuasive on this Court to extend the holding of *Rosenman* to apply to our state income tax law.

filing such return)." The Comptroller has not cited to such a requirement in the state of Maryland. Indeed, the Comptroller admits that the appellate courts have not yet considered whether—or when—estimated payments are to be considered taxes paid or deposits.

The Comptroller urges us to apply the *Dantzler* rationale because the Tax-Gen Article, § 10-107 provides that "[t]o the extent practicable, the Comptroller shall apply the administrative and judicial interpretations of the federal income tax law to the administration of the income tax laws of this State." The Court of Appeals has not interpreted § 10-107 so broadly. In *Lyon v. Campbell* it held that Tax-Gen Article, § 10-107 "does not require Maryland courts to follow federal precedent regardless of differences between the relevant state and federal statutes[.]" 324 Md. 178, 185 (1991). The interpretations of comparable income tax laws may provide guidance but are not binding on this Court. *See id.*

Unlike federal law, there is no Maryland statute specifying when estimated tax payments become "taxes paid." COMAR 03.04.07.03C(4) states that "[a]n extension of time to file an annual return may not extend the time for payment of any tax due." This regulation is irrelevant here because no tax was due upon the extension of time to file and this regulation—or any other regulation—does not address when estimated payments become taxes paid. Additionally, unlike *Dantzler*, there was no estimated payment made in conjunction with the request for an extension of time to file a return. To the contrary, the parties stipulated that FC-GEN's request for extension to file its tax return was filed without any additional estimated payments.

We do not understand Tax-Gen Article, § 10-107 to mean that the Eleventh Circuit's interpretation in *Dantzler*, relying on a statute that does not similarly exist in Maryland, will bind either the Comptroller or this Court. Accordingly, as the Supreme Court did in *Rosenman,* we treat the estimated tax payments in this case as deposits and not taxes paid. 323 U.S. at 662–63. Since FC-GEN is seeking the return of estimated tax payments, FC-GEN is a proper claimant of the refund and is not prohibited from doing so under COMAR 03.04.07.03D(4) (stating that [o]verpayments of *tax* shown on the annual return may not be . . . [r]efunded to the pass-through entity") (emphasis added).

Voluntary Payment Rule

The Comptroller also asserts that the voluntary payment rule precludes a refund in this case. The common law rule known as the 'voluntary payment doctrine' prohibits recovery of a payment made to the State unless a common law exception or statutory provision applies that allows for the refund. *See Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355, 359 (2016). Mistake of law is not an excuse to avoid the voluntary payment doctrine. *See id*. at 359–60. However, common law exceptions to the voluntary payment rule include fraud, mistake of fact, and duress. *Id.* at 361–62 (citing Colin E. Flora, *Prac.'s Guide to the Voluntary Payment Doctrine*, 37 S. Ill. U. L.J. 91, 98–109 (2012)). Money is voluntarily paid when the payments are made with full knowledge of the facts. *See Baltimore & S.R. Co. v. Faunce*, 6 Gill 68, 76 (Md. 1847) (stating that voluntary payments made with full knowledge of the facts cannot be recovered).

The Tax Court firmly rejected the Comptroller's voluntary payment rule argument, and we reject it, as well. FC-GEN made estimated payments based upon projected income for 2012. FC-GEN made these payments without full knowledge of what its actual income—and corresponding taxes—would be for 2012. Thus, the voluntary payment rule is inapplicable when payments were made without full knowledge of the facts.

Equitable Remedies

There is no indication to support the Comptroller's assertion that the Tax Court applied the informal claim doctrine, as the Tax Court found that FC-GEN complied with the applicable tax laws. Additionally, there is no need to consider FC-GEN's arguments that equitable remedies, the informal claim doctrine, or the Abandoned Property Act apply, as we affirm the finding of the Tax Court that FC-GEN "complied with the applicable tax laws in the filing of its refund claim."

CONCLUSION

We affirm the Tax Court's order that FC-GEN is entitled to a refund in the amount of $598,131.

JUDGMENT OF THE MARYLAND TAX COURT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

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Concurring Opinion by Friedman, J.

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Courts defer to the legal determinations of administrative agencies. Specifically, courts defer to the agency's interpretation of the statutes that it administers; to its interpretation of the regulations it has promulgated; and to other legal interpretations within the agency's subject matter expertise.[1] The reasons given for this legal deference include:

[1] In the federal system, these categories of deference are referred to, respectively, as *Chevron* deference, *Auer* deference, and *Skidmore* deference. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984); *Auer v. Robbins*, 519 U.S. 452, 461 (1997); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The exact contours, requirements, and degree of deference required in each category is complex and contested, but the specifics are not necessary to my present analysis.

In the Maryland state system, we don't have such a rigid taxonomy of deference, but we generally apply the same kinds of deference to the same kinds of administrative agency legal decisions. *Bd. of Physician Quality Assur. v. Banks*, 354 Md. 59, 68-69 (1999) (stating that, generally, an administrative agency's interpretation of a statute which it administers is entitled to weight and that the expertise of an agency in its own field should be respected); *see Kor–Ko Ltd. v. Md. Dep't of the Env't*, 451 Md. 401, 410-12 (2017) ("When an agency interprets its own regulations or the statute the agency was created to administer, we are especially mindful of that agency's expertise in its field. When the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order.") (cleaned up); *Md. Transp. Auth. v. King*, 369 Md. 274, 289 (2002) ("[A]gency rules are designed to serve the specific needs of the agency, are promulgated by the agency, and are utilized on a day-to-day basis by the agency. A question concerning the interpretation of an agency's rule is as central to its operation as an interpretation of the agency's governing statute. [A]n agency is best able to discern its intent in promulgating a regulation ….") (internal citation and quotation omitted); ARNOLD ROCHVARG, MARYLAND ADMINISTRATIVE LAW, §§ 19.3, 19.5 (2011) (discussing deference given to an administrative agency's interpretation of statutes and regulations, and explaining the relevance of agency expertise when determining appropriate degree of deference); Carly L. Hviding, Note, *What Deference Does It Make? Reviewing Agency Statutory Interpretation in Maryland*, 81 MD. L. REV. ONLINE 12, 21-29 (2021) [hereinafter *What Deference Does It Make?*] (asserting that while Maryland courts almost always give *Auer*-like deference to administrative agency interpretations of their own regulations, courts inconsistently give either *Skidmore*-like deference or no deference at all to other types of agency interpretations).

that by delegating authority to the agency, the legislature also intended to give it the power to act with the force of law; that by requiring the agency to draft regulations, the legislature intended to have its interpretation of those regulations prevail; or simply that the agency possesses significant subject matter and practical expertise to which courts should defer.[2] As a result, Maryland courts will defer to, for example, MVA's interpretation of driver's license statutes,[3] or MDE's interpretation of environmental regulations that it has

[2] Cass R. Sunstein, *Chevron Step Zero*, 92 VA. L. REV. 187, 193, 195-98 (2006); *Chevron, U.S.A., Inc.*, 467 U.S. at 843-44 (stating that Congress sometimes explicitly or implicitly delegates law-interpreting power to an agency, and that "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer"); *Kisor v. Wilkie*, 139 S.Ct. 2400, 2412-14 (2019) (stating that Congress' delegation of lawmaking powers to an administrative agency presumably includes the power to authoritatively interpret its own regulations because (1) the agency is in a better position to reconstruct its original meaning; (2) the agency is in a better position to make the underlying policy judgments considering its subject matter expertise and political accountability; and (3) uniformity and consistency is developed through agency interpretations rather than piecemeal litigation); *U.S. v. Mead Corp.*, 533 U.S. 218, 234-35 (2001) (reaffirming that an administrative agency's interpretation, whatever its form, may merit some deference given the "specialized experience and broader investigations and information" available to an agency) (internal citation omitted). Although the Maryland cases are generally silent about the reasons for the deference, I think it is fair to assume that it arises from the same reasons given in these federal authorities. *See What Deference Does It Make?*, *supra* note 1, at 25-28 (asserting that Maryland courts give legal deference for similar reasons, particularly agency technical and subject matter expertise).

[3] *Motor Vehicle Admin. v. Aiken*, 418 Md. 11, 27 (2011) ("This case involves the ALJ's interpretation and application of the Statute, which the MVA administers. Accordingly, we will review the ALJ's decision for legal correctness, giving appropriate weight to the MVA's interpretation of the Statute."). *Cf. Cosby v. Dep't of Human Res.*, 425 Md. 629, 639 (2012) (reviewing the ALJ's determination, which was based on interpretation of the statute the Department administers, for legal error, and giving "appropriate weight" to the Department's interpretation of the statute).

promulgated,[4] or to legal interpretations made by MDH in issues about which it has subject matter expertise, that is, legal determinations related to health.[5] That all makes sense to me.

An anomalous situation exists with respect to our tax laws. The General Assembly has delegated tax authority to the Comptroller.[6] The Comptroller promulgates tax regulations.[7] The Comptroller designs the tax forms.[8] And the Comptroller employs the State's tax experts. Given all this, it seems obvious to me that courts ought to be giving deference to the legal determinations of the Comptroller. In fact, historically, our courts did just that.[9]

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[4] *Kor–Ko Ltd.*, 451 Md. at 420 ("We are reviewing the MDE's interpretation of its own regulations. Accordingly, we defer to the MDE's interpretation of 'premises' and conclude that it is permissible legally.") (cleaned up).

[5] *Oyarzo v. Md. Dep't of Health & Mental Hygiene*, 187 Md. App. 264, 290 (2009) (stating that courts should "defer to agencies' decisions in promulgating new regulations because they presumably make rules based upon their expertise in a particular field" and that it is particularly relevant for "agencies working in the area of health and safety, which rely extensively on their specialized knowledge of that area in promulgating regulations") (internal citation omitted).

[6] MD. CODE, TAX-GEN. ("TG") § 2-102 ("[T]he Comptroller shall administer the laws that relate to [taxes, including the income tax.]").

[7] TG § 2-103 ("[T]he Comptroller shall adopt reasonable regulations … to administer the provisions of the tax laws."); COMAR 03.04 (regulations related to income tax).

[8] TG § 2-104(a)(1) ("[T]he Comptroller shall design the returns and other forms that, on completion, provide the information required for the administration of the tax laws.").

[9] *Palm Oil Recovery, Inc. v. Comptroller*, 266 Md. 148, 159-60 (1972) (Comptroller's interpretation of tax statute is entitled to "great weight"); *Comptroller v. Joseph F. Hughes Co.*, 209 Md. 141, 145 (1956) (Comptroller's interpretation of tax regulations given "great weight"); *Macke Co. v. Comptroller*, 302 Md. 18, 22-23 (1984) (discussing weight given to Comptroller's interpretations generally); *Comptroller v. John*

At some point, however, courts stopped deferring to the Comptroller and began deferring, instead, to the legal determinations of the Maryland Tax Court. *See, e.g., Frey v. Comptroller*, 422 Md. 111, 138 (2011); *Comptroller v. Blanton*, 390 Md. 528, 533-35 (2006); *Comptroller v. Johns Hopkins Univ.*, 186 Md. App. 169, 188-89 (2009) (declaring, without further explanation, that "we give deference to the Tax Court's application of [the relevant code section], not the Comptroller's, as the Tax Court is the agency charged with interpreting and applying the Maryland tax code"). I don't know why the change was made.[10] To me, it doesn't make sense. The Maryland Tax Court didn't receive the delegation of tax authority. The Maryland Tax Court didn't write the regulations. The Maryland Tax Court didn't design the tax forms. And although the individual judges of the Maryland Tax Court may have tax expertise, the only formal requirements for appointment are geographic and political (and that at least two members must be lawyers).[11] None of

C. Louis Co., 285 Md. 527, 542-44 (1979) (same); *Scoville Serv., Inc. v. Comptroller*, 269 Md. 390, 396 (1973) (same); *Comptroller v. Am. Cyanamid Co.*, 240 Md. 491, 504-05 (1965) (same); *Frank J. Klein & Sons, Inc. v. Comptroller*, 233 Md. 490, 493 (1964) (same); *Comptroller v. M.E. Rockhill, Inc.*, 205 Md. 226, 233 (1954) (same); *John McShain, Inc. v. Comptroller*, 202 Md. 68, 73 (1953) (same).

[10] Although this is just a guess, I note that the change from deferring to the Comptroller to deferring to the Maryland Tax Court occurred roughly contemporaneously with the Court of Appeals' decision in *Shell Oil* that, despite its name, the Maryland Tax Court is an administrative agency. *Shell Oil Co. v. Supervisor of Assessments*, 276 Md. 36 (1975). Perhaps someone erroneously thought that because the Maryland Tax Court is an administrative agency, it must receive deference.

[11] TG §§ 3-106(a)(2) (chief judge and at least one other member must be members of the bar); (a)(3) (requiring at least one member from Baltimore City, one member from Eastern Shore, one member from Western Shore); (b) (prohibiting more than three judges from the same political party).

the reasons that courts defer to administrative agencies exist with respect to the Maryland Tax Court.[12]

I think that we have lost the thread. Maryland courts should be giving deference to the Comptroller not the Maryland Tax Court.[13] I note that this issue is presented in *Broadway Servs., Inc. v. Comptroller*, a case which is currently pending in the Court of Appeals. Case No. 019 (Sept. Term 2021). Perhaps the Court will choose to address the issue and either explain or correct the identity of the agency to which deference is owed.

I, however, am a judge of an intermediate appellate court. The governing precedents are unequivocal in requiring legal deference to the Maryland Tax Court. *See Frey*, 422 Md. at 138; *Blanton*, 390 Md. at 533-35. Because the majority has applied that deference as the mandatory precedents require, I concur.[14]

[12] For what it is worth, I think that federal administrative law works the same way. That is, federal courts defer to the interpretation of the *substantive* federal administrative agencies that set policy, not the *adjudicatory* federal administrative agencies that can review the application of those policies to individual parties. JAMES T. O'REILLY, ADMINISTRATIVE RULEMAKING, §§ 18:3, 9 (2021) (describing federal court deference to the "Secretary" of substantive federal administrative agencies).

[13] Finally, I note that, under Maryland's plural executive system, the Comptroller is an independent executive branch official. MD. CONST., Art. VI, § 1. By delegating tax authority to the Comptroller, *see* TG §§ 2-102, 2-103, 2-104, rather than to an agency under the purview of the Governor, the General Assembly made a choice. It seems to me that courts undermine that choice—at least a little, at least theoretically—by deferring, instead, to the legal determinations of the Maryland Tax Court, whose members are appointed by the Governor. TG § 3-106(a)(1).

[14] I don't know and don't consider whether the outcome in this case would have been different if we had deferred to the Comptroller's legal decisions.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0946s20cn.pdf