

Circuit Court for Baltimore County
Case No. C-03-CV-22-001611

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1837

September Term, 2022

IN THE MATTER OF SEOUL GYM & CAFÉ,
INC.

Berger,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 15, 2024

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited as persuasive authority only if the citation conforms to Md. Rule 1-104(a)(2)(B).

On a petition for judicial review of a business’s challenge to a tax assessment, the business advanced arguments that it had not made in the Tax Court. The circuit court affirmed the Tax Court. On appeal to this Court, the business has advanced another argument that it did not make in the Tax Court. We affirm.

I. BACKGROUND

Seoul Gym & Café, Inc., operated a Korean-inspired spa in Baltimore County. In 2015, the Comptroller of Maryland began an audit of Seoul Gym’s taxes. The audit revealed that the business received a total of \$1,555,992.39 in admission charges between January 1, 2012, and March 31, 2016.

The Comptroller determined that the admission charges were subject to the State admissions and amusement tax and that Seoul Gym owed a tax deficiency of \$126,223.14, in addition to interest and penalties. Seoul Gym requested a revision of the assessment. The Comptroller denied the revision in a Notice of Final Determination on July 19, 2018.

Seoul Gym filed an administrative appeal in the Maryland Tax Court. It asserted that the doctrines of laches or estoppel should apply, because, it said, “the [C]omptroller was aware of the type of business being run and waited years to address the issue.” Seoul Gym asserted that it would advance additional defenses “as appropriate.”

At the hearing before the Tax Court, Seoul Gym argued that the doctrine of laches should apply because of the Comptroller’s delay in informing Seoul Gym that it should be paying the admissions and amusement tax. In addition, it asserted that it had relied on

the advice of its accountant and had not intentionally failed to remit the taxes. It made no other arguments to the Tax Court.

The Comptroller responded that the doctrine of laches did not apply to the State. He also argued that his responsibility is limited to administering the Tax-General Article and collecting taxes that are due and that his responsibilities did not extend to providing tax advice to taxpayers.

The Tax Court agreed with the Comptroller, finding that the doctrine of laches did not apply in this case. It affirmed the tax assessment. In light of Seoul Gym's testimony that it had relied on the advice of its accountant, the Tax Court reduced the penalty assessment by half. In addition, because of the Comptroller's delay in reporting a final determination, the Tax Court abated one year's worth of accrued interest.

Seoul Gym filed a petition for judicial review in the Circuit Court for Baltimore County, arguing for the first time that a portion of the tax period covered by the assessment was outside the statute of limitations. The Comptroller responded that any argument about the statute of limitations was waived for two reasons: first, because Seoul Gym had not raised a limitations defense in the Tax Court and was thus precluded from raising the issue for the first time on judicial review; and second, because during the audit, Seoul Gym had signed documents that affirmatively waived any statute of limitations defense.

After a hearing, the circuit court denied the petition for judicial review. The circuit court determined that the limitations issue was not raised in or ruled on in the Tax Court and therefore could not be addressed on judicial review.

Seoul Gym filed a timely appeal to this Court. Its primary position on appeal is that the waivers deprived it of due process because they were not signed knowingly or intelligently.

II. QUESTIONS PRESENTED

Seoul Gym has presented three questions on appeal, which we have consolidated into two for clarity and concision:

1. Whether this Court may consider arguments raised for the first time in the Circuit Court and in this Court which were not raised before the Tax Court.
2. Whether the Tax Court erred in affirming the Comptroller's assessment.¹

¹ Seoul Gym phrased its issues as follows:

1. Whether the Taxpayer's procedural due process issue warrants judicial review as a matter, which is "necessary or desirable to guide the [Tax Court] or to avoid the expense and delay of another appeal," under Md. Rule 8-131(a) where (i) the Comptroller's Waivers did not clearly notify the Taxpayer as to the consequences of signing the Waivers (the Taxpayer has a right not to be imposed of the A&A tax for more than four years from the Comptroller's date of an action to recover, and there could be [] certain months in which the A&A tax could not be imposed if the Taxpayer does not sign the Waivers), (ii) accordingly, the Taxpayer did not understand there could be a certain months in which the Comptroller could not charge the A&A tax unless it signed the waivers, (iii), thereby, the Taxpayer signed the Waivers during its tax audit without understanding the consequences (i.e., knowingly and intelligently), (iv) the Taxpayer did not raise the due process issue as a defense in the Tax Court due to its ignorance of the consequences, and (v) the Taxpayer first learned the consequences of the waivers after the Circuit Court rendered its decision?

III. DISCUSSION

“Because the Tax Court is an administrative agency, its decisions are reviewed under the same appellate standards generally applied to agency decisions.” *Comptroller of Treasury v. Johns Hopkins Univ.*, 186 Md. App. 169, 181 (2009). “We review the decision of the Tax Court, not the ruling of the circuit court on judicial review.” *Id.* In conducting that review, this Court determines “if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions,” and “if the administrative decision is premised upon an erroneous conclusion of law.” *Comptroller of Treasury v. Taylor*, 465 Md. 76, 86 (2019).

Seoul Gym concedes that “there was no error committed by the Tax Court.” It acknowledges that the questions it has presented to this Court were not raised in the Tax Court. However, it urges us to exercise discretion under Maryland Rule 8-131(a) to consider its due process and limitations issues for the first time on appeal.

“Ordinarily,” a Maryland appellate court “will not decide any” issue, other than certain jurisdictional issues, “unless it plainly appears by the record to have been raised in

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2. If this Appellate Court determines to exercise its discretion to hear this case, whether the Taxpayer was violated of its due process right due to the insufficient notice on the Comptroller’s Waivers based on the facts listed in Question 1?
 3. If the Taxpayer is found to be violated of its due process right, pursuant to Md. Code, Tax-Gen. § 13-1102(a) which states “an action to recover...may not be brought after 4 years from the date on which the tax is due,” whether the Comptroller’s imposition of the A&A tax was erroneous in terms of the duration which was more than five years from the date of assessment?

or decided by the trial court.” Md. Rule 8-131(a). The rule “applies to appellate review of administrative proceedings.” *Comptroller of Treasury v. Jalali*, 235 Md. App. 369, 389 (2018). Thus, in cases that originated in the Tax Court, this Court ordinarily restricts its review to the record before the Tax Court and will not review issues presented for the first time on judicial review. *See, e.g., id.* at 388-89.

“[T]he animating policy behind Rule 8-131(a) is to ensure fairness for the parties involved and to promote orderly judicial administration.” *McDonell v. Harford County Housing Agency*, 462 Md. 586, 602 (2019) (quoting *Jones v. State*, 379 Md. 704, 714 (2004)); *accord Comptroller of Treasury v. Jalali*, 235 Md. App. at 389. “An appellate court must consider these ‘twin goals’ before reviewing an unpreserved issue.” *McDonell v. Harford County Housing Agency*, 462 Md. at 602 (quoting *Jones v. State*, 379 Md. at 714).

Unfair prejudice can result when a party seeks appellate review of an issue that a lower tribunal could have addressed. *Comptroller of Treasury v. Jalali*, 235 Md. App. at 389. A new argument engenders unfair prejudice “if its validity depended upon evidence not adduced at the trial level.” *Jones v. State*, 379 Md. at 714. To consider such an argument “would be manifestly unfair” to the party that “had no opportunity to respond to the argument with [its] own evidence to the contrary.” *Id.*

Seoul Gym argues that reviewing the limitations and due process issues would not result in unfair prejudice to the Comptroller. In support of that argument, Seoul Gym focuses primarily on its asserted ignorance of the meaning of the waivers, claiming that

its failure to raise the issues in the Tax Court was not an attempt to gain a strategic advantage. Seoul Gym’s argument ignores the impact on its opponent of asserting these new arguments for the first time only after the Tax Court has ruled. Because Seoul Gym presented no argument or evidence relating to either the statute of limitations or due process in the Tax Court, the Comptroller had no opportunity to respond to these arguments with its own evidence. For this Court to exercise its discretion to consider these issues for the first time on appeal would be “manifestly unfair” to Seoul Gym’s opponent. *Jones v. State*, 379 Md. at 714.²

In addition to considering whether it would be unfair to allow a party to raise an unpreserved issue on appeal, “[an] appellate court should consider whether the exercise of its discretion” under Rule 8-131(a) “will promote the orderly administration of justice.” *Id.* at 715. “This simply means that the Rule seeks to prevent the trial of cases in a piecemeal fashion, thereby saving time and expense and accelerating the termination of litigation.” *Id.* We would not promote orderly judicial administration by remanding cases to the Tax Court to decide issues that “could have been easily advanced” but were never raised. *Comptroller of Treasury v. Jalali*, 235 Md. App. at 390.

² Seoul Gym argues that the Comptroller had the opportunity to rebut the statute of limitations argument in the circuit court when it attached copies of the waivers to its motion. That argument lacks merit. “We look through the decision of the circuit court and review the decision of the Tax Court directly.” *Zorzit v. Comptroller*, 225 Md. App. 158, 169 n.8 (2015). Consequently, for purposes of our review, it doesn’t matter what the Comptroller did in the circuit court. In any event, the circuit court did not consider the merits of the waivers, because Seoul Gym did not raise its statute of limitations argument in the Tax Court.

Relying on *McDonell v. Harford County Housing Agency*, 462 Md. 586 (2019), Seoul Gym argues that its unpreserved due process argument is “worthy” of appellate review because the effects of a review might be felt by many other Maryland taxpayers who have signed similar waivers. *McDonell* is inapposite.

In *McDonell* the Court considered a due process challenge to the termination of public housing vouchers even though the self-represented litigant had arguably failed to raise the issue at the agency level. *Id.* at 602-03. The Court recognized that it would be a “rare instance[], out of the ordinary,” where an appellate court chose to address an unpreserved issue. *Id.* at 602. Nonetheless, the Court reasoned that even if the issue had not been adequately preserved, no one would be unfairly prejudiced, because “[a]ll relevant evidence necessary for making that determination already exist[ed] in the record.” *Id.* at 603. Moreover, the Court reasoned that the “‘orderly administration of justice’ militate[d] toward reviewing the issue,” because it was “both necessary and desirable to give [local public housing agencies] more guidance regarding proper informal hearing procedures” that precede the termination of the housing vouchers on which “[a]pproximately 94,000 Maryland households” relied “to keep a roof over their heads[.]” *Id.* (quoting *Jones v. State*, 379 Md. at 715).

McDonell is a bit different from this case. As previously explained, the record in this case, unlike the record in *McDonell*, does not contain “all relevant evidence necessary for making” a purely legal determination. Moreover, a question relating to the waiver of limitations does not have the same public importance as a question about the

procedures that the Constitution requires before a local public housing agency can evict residents of public housing.

Seoul Gym argues that a due process violation occurred because the waivers did not sufficiently put it on notice of what it was waiving and, therefore, that the waivers were not knowing and intelligent. It argues that it did not receive copies of the signed waivers until the Comptroller provided them in the circuit court in response to the petition for judicial review. As a result, it argues, it could not raise its due process argument in the Tax Court.

We do not find this argument to be persuasive. Seoul Gym’s failure to raise the due process argument in the Tax Court was not because of the contents of the waivers, but because Seoul Gym failed to raise a statute of limitations defense. Had it done so, the Comptroller would have produced the waivers and Seoul Gym could have presented its due process argument to the Tax Court, preserving it for this Court’s review.

In summary, we decline to consider the due process and statute of limitations arguments. As Seoul Gym concedes that the Tax Court did not commit an error, we conclude that the Tax Court did not err in affirming the Comptroller’s assessment.

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