

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 732

SEPTEMBER TERM, 2015

---

WILLIAM M. CALPINO, JR., ET AL.

v.

COMPTROLLER OF THE TREASURY

---

Eyler, Deborah S.,  
Wright,  
Rodowsky, Lawrence F.  
(Retired, Specially Assigned),

JJ.

---

Opinion by Eyler, Deborah S., J.

---

Filed: April 26, 2016

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

William Calpino, Jr., and his wife, Kelly Calpino,<sup>1</sup> the appellants, appeal from a decision of the Circuit Court for Wicomico County affirming the decision of the Maryland Tax Court (“Tax Court”) to dismiss their appeal from a notice of final determination served on them by the Comptroller of the Treasury (“the Comptroller”), the appellee. They present nine questions,<sup>2</sup> which we have combined and rephrased as

---

<sup>1</sup> For ease of discussion, we shall refer to the Calpinos by their first names when necessary to distinguish between them.

<sup>2</sup> The questions as posed by the Calpinos are:

1. Did the [Comptroller] violate the procedure in MD Code, Tax-General § 13-409 . . . by adjusting the [Calpinos’] Federal Adjusted Gross Income Figure absent a Notice of Final Determination by the Internal Revenue Service?
2. Did the trial judge err by failing to require the [Comptroller] to produce evidence to support his accusations, assessments and actions, according to Md. Rule 2-514[?]
3. Did the [Comptroller] exceed the authority of Tax General Article § 13-401 . . . in assessing a deficiency judgment against the [Calpinos] and did the trial judge exceed his jurisdiction by affirming the validity of the deficiency by implication?
4. Is the [Comptroller] incorrect in extending authority to tax to monies that don’t result from revenue taxable activity?
5. Did the trial judge err by affirming the [Comptroller]’s statutory authority to adjust the [Calpinos’] Federal Adjusted Gross income figure so “it is truthful under Maryland statutes and the Internal Revenue Code”?
6. Did the Trial judge err by asserting that the state is not required to accept a federal adjusted gross income figure?
7. Did the trial court err in affirming the legal authority of the [Comptroller] to interpret the meaning to terms like “wages” in the Internal Revenue Code and apply those meanings to Federal concerns?
8. Did the [Comptroller] repeatedly ignore the clear mandate of Maryland Tax General § 10-107 . . . in its actions and assertions and did the trial judge err in failing to apply its provisions?

(Continued...)

one: Did the Tax Court err by dismissing the Calpinos' appeal? We answer that question in the negative and shall affirm the judgment of the circuit court.

### **FACTS AND PROCEEDINGS**

The Calpinos live in Salisbury. William works for Michael's Arts & Crafts and Kelly works for Peninsula Regional Medical Center.

In 2012, the Calpinos filed a joint Maryland income tax return for the year 2011, stating that they had no income, no wages, and no income tax due, and claiming that they were owed an income tax refund of \$507.28. Also that year, they filed an amended joint Maryland tax return for the year 2008, amending their originally reported adjusted gross income of \$63,472 to zero and claiming entitlement to an additional refund of \$3,360. In 2013, the Calpinos filed a joint Maryland income tax return for the year 2012, again stating that they had no income, no wages, and no income tax due.

By three letters dated July 24, 2013, the Comptroller advised the Calpinos that their 2008 amended tax return had been denied and that their 2011 and 2012 tax returns had been audited. Based upon available wage information reported to the Comptroller, it assessed taxes, interest, and penalties as follows:

---

(...continued)

9. Did the trial judge err in failing to apply the provisions of MD Rule 5-301 . . . in affording the [Comptroller] presumptions without statute or evidence?

---

	<b>2008</b>	<b>2011</b>	<b>2012</b>
Tax deficiency (including any refund paid in error)		\$3,442.28	\$4,048
Interest <sup>3</sup>		\$ 849	\$ 490
Frivolous Return Penalty <sup>4</sup>	\$500	\$ 500	\$ 500
Other Penalty <sup>5</sup>		\$ 861	\$1,012
<b>TOTAL</b>	<b>\$500</b>	<b>\$5,653<sup>6</sup></b>	<b>\$6,050</b>

The Calpinos filed an administrative appeal from the Comptroller’s assessments. At an informal administrative hearing before a hearing officer, the Calpinos took the position that they were required to report the same adjusted gross income on their Maryland returns as reported on their federal returns and that, because they had reported zero income to the IRS, they had fully complied with the law. They further argued that the wages they earned from their “private sector” jobs did not constitute “wages” within the meaning of that term in section 3401 of Internal Revenue Code (“IRC”) and, consequently, their earnings were not subject to income tax.

On March 19, 2014, the hearing officer issued a Notice of Final Determination and a written decision upholding the Comptroller’s assessments. The hearing officer rejected

---

<sup>3</sup> If an individual fails to pay income tax when due, the Comptroller “shall assess interest on the unpaid tax from the due date to the date on which the tax is paid.” Md. Code (1988, 2010 Repl. Vol.), § 13-601(a) of the Tax General Article (“TG”).

<sup>4</sup> TG section 13-705 permits the Comptroller to assess a penalty not exceeding \$500 for the filing of a frivolous tax return. A tax return that does not contain information that would permit the Comptroller to determine the amount of tax owed and that is based upon a position with “no basis in law or fact” is frivolous.

<sup>5</sup> If an individual fails to pay income tax when due, the Comptroller “shall assess a penalty not exceeding 25% of the unpaid tax.” TG § 13-701(b).

<sup>6</sup> The Comptroller rounded to this figure.

as frivolous the Calpinos’ argument that their wages were not income, noting that their position was directly contrary to controlling Maryland case law. She concluded that the Calpinos could not “escape State liability [for income tax] by relying on false information used on [their] federal return”; that the remuneration they received from their employers was “wages” as that term is defined under the IRC; that the assessment of the frivolous return penalty was proper; and that the imposition of a 25% penalty for the 2011 and 2012 tax years also was proper.

On April 11, 2014, the Calpinos appealed the final determination of tax liability to the Tax Court.<sup>7</sup> In a letter attached to their appeal, the Calpinos reiterated the same legal arguments raised before the hearing officer, namely, that the Comptroller lacks the authority and/or jurisdiction to assess a tax when taxpayers reported zero federal adjusted gross income on their federal return and transcribed that same figure onto their Maryland return; that because the IRS had accepted their 2011 and 2012 federal returns and their 2008 amended federal return, the Comptroller lacked authority to challenge information “accurately transcribed” from those returns; and that the Comptroller erred by assessing penalties against them because their returns were “accurate and comply with the law.” The Calpinos attached to their appeal copies of IRS “Account Transcripts” reflecting that the IRS had accepted their 2011 and 2012 federal tax returns.

---

<sup>7</sup> The original appeal was signed only by William. The Comptroller moved to dismiss the appeal on the basis that a final determination as to joint tax liability could not be appealed by one party. Thereafter, the Calpinos filed an amended appeal signed by both of them, which was accepted by the Tax Court.

The Comptroller moved to dismiss the Calpinos’ appeal for failure to state a claim. The Calpinos opposed the motion.

By order dated July 25, 2014, the Tax Court ruled that the Calpinos had “failed to state a legal basis upon which this Court may reverse the assessments” and dismissed the appeal.

The Calpinos petitioned for judicial review. The circuit court heard argument and, by order entered May 18, 2015, affirmed the Tax Court’s decision. This timely appeal followed.

### **DISCUSSION**

The Tax Court is not actually a court, but an administrative agency within the Executive Branch of the state that acts in a quasi-judicial capacity. *Comptroller of the Treasury v. Johns Hopkins Univ.*, 186 Md. App. 169, 180 (2009). A decision by the Tax Court is reviewed like any other final agency decision. *Green v. Church of Jesus Christ of Latter-Day Saints*, 430 Md. 119, 132 (2013). That is, we look through the decision of the circuit court on judicial review and review directly the decision of the Tax Court. *Id.* In the instant case, the Tax Court dismissed the Calpinos’ appeal for failure to state a claim with a legal basis. Thus, we assume the truth of the facts alleged in their appeal and assess whether they were entitled to any relief, as a matter of law.

In their appeal to the Tax Court, the Calpinos made three arguments, all raising legal issues: 1) that they were required to use the figures they had reported on their federal tax returns on their Maryland tax returns and that the Comptroller had no

authority to question those figures; 2) that the Comptroller had the burden of proving that the wages they earned were taxable wages; and 3) that a frivolous return penalty should not have been assessed because a “zero” return can comply with the law. These arguments lack merit and have been firmly rejected in prior decisions of this Court and the Court of Appeals. We address each in turn.

Pursuant to Md. Code (1988, 2010 Repl. Vol.), section 10-203 of the Tax General Article (“TG”), “Maryland adjusted gross income of an individual is the individual’s federal adjusted gross income for the taxable year as adjusted” pursuant to other provisions of Maryland law. “[T]he Comptroller is not required to accept the federal taxable income figure provided on a taxpayer’s federal tax return merely because that figure was accepted by the IRS,” however. *Comptroller of the Treasury v. Colonial Farm Credit, ACA*, 173 Md. App. 173, 183 (2007). Rather, the Comptroller “has the authority to adjust a taxpayer’s taxable income to ensure that it is truthful and accurate under the IRC.” *Bert v. Comptroller of the Treasury*, 215 Md. App. 244, 266 (2013); *see also Colonial Farm*, 173 Md. App. at 183 (Comptroller may “recalculate” a taxpayer’s income if it is apparent that the federal income figure is inaccurate). Thus, there is no merit to the Calpinos’ overarching contention that, because they reported zero federal adjusted gross income on their federal tax returns for the 2008, 2011, and 2012 tax years, they were allowed and, in fact, required to report zero Maryland adjusted gross income on their state tax returns and that the Comptroller could not question those figures.

The Calpinos also are incorrect that the Comptroller bore the burden of proof. Using the wage information reported to the Comptroller by the Calpinos’ employers, *see* TG § 10-911, the Comptroller recalculated the Calpinos’ taxable income and assessed taxes, interest, and penalties based upon that amount. The Comptroller’s tax assessment was *prima facie* correct. TG § 13-411. Thus, the “burden [was] on the [Calpinos] to show that the assessment [was] wrong.” *NIHC, Inc. v. Comptroller of the Treasury*, 439 Md. 668, 686 (2014). The only “evidence” presented by the Calpinos was copies of the IRS Account Transcripts showing that the IRS had accepted their 2011 and 2012 federal returns reflecting zero income. As already explained, however, “evidence” that the IRS accepted their federal returns was not a legal or factual basis upon which the Tax Court could hold that the wage information relied upon by the Comptroller was incorrect.

The Calpinos also did not raise a dispute of fact in the Tax Court with respect to the income figures relied upon by the Comptroller or otherwise argue that the assessment was improperly calculated. Rather, they made the legal argument that wages earned by them (and reported by their employers) were not taxable because they were not “employees” as that term is defined in the IRC. This argument lacks merit as a matter of law. As this Court explained in *Bert, supra*, the term “employee” as used in the IRC has uniformly been construed to include private wage earners. 215 Md. App. at 272-74.<sup>8</sup> As

---

<sup>8</sup> The term “employee” is defined at 26 U.S.C. § 3401(c) to “include[]” an “officer, employee, or elected official of the United States, a State, or any political subdivision thereof” and “an officer of a corporation.” While not entirely clear, it appears that the Calpinos are making the same argument raised around the country by tax protesters: that  
(Continued...)

such, the remuneration the Calpinos received for the performance of services were “wages,” *see* 26 U.S.C. § 3401(a) (defining the term “wages” to mean “all remuneration . . . for services performed by an employee for his employer”), and the Calpinos improperly excluded those wages from their tax returns. Because the Calpinos earned wages that were reported to the Comptroller and presented no factual dispute as to the amount of taxes assessed based upon their wages, they also had no basis upon which to challenge the assessment of interest and a 25% penalty on those amounts.

Finally, the Calpinos argue that, because they “transcribed” their federal adjusted gross income onto their Maryland return in compliance with the law and because that figure, as accepted by the IRS, was zero, their return was not frivolous as a matter of law. This argument was flatly rejected in *Bert, supra*, where we held that “the filing of ‘zero return’ tax forms clearly meets the requirements of TG § 13-705.” 215 Md. App. at 286.

For all of these reasons, the Calpinos failed to state a claim upon which the Tax Court could have granted any relief and the Tax Court did not err in dismissing their appeal.

**JUDGMENT OF THE CIRCUIT  
COURT FOR WICOMICO COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY THE APPELLANTS.**

---

(...continued)

the language of enlargement used in the IRC definition of “employee” actually is language of limitation. The *Bert* Court thoroughly disposed of this argument, citing the multitude of cases and the IRS’s guidance rejecting this proposition. We decline to repeat it here.