UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0734

September Term, 2015

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WILBUR H. FRIEDMAN, *et al.*

v.

COMPTROLLER OF THE TREASURY

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Meredith,
Leahy,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: May 25, 2016

Wilbur H. and Victorine R. Friedman ("the Friedmans"), appellants, challenge a decision by the Maryland Tax Court upholding the Comptroller of the Treasury's (appellee) assessment that they erroneously subtracted foreign pension income on their 2008 tax return and, consequently, underpaid their 2008 income tax. On July 16, 2015, the Circuit Court for Montgomery County upheld the decision of the tax court. The Friedmans appealed to this Court and now raise the following issues for our review:

I. Whether the tax court incorrectly ruled that the Comptroller may assess interest or penalties on sums in his possession and applied to a future tax year.

II. Whether the Comptroller denied the taxpayers equal protection of the law in violation of the Maryland Constitution in auditing some, but not all, returns claiming a pension subtraction.

III. Whether the tax court properly quashed the Friedmans' discovery requests.

For the reasons set forth below, we affirm the judgment of the circuit court.

## BACKGROUND

Mr. Friedman is an attorney, licensed to practice in Connecticut. In 2008, the Friedmans filed a Maryland income tax return in which they claimed $39,297 in pension income subtractions from their taxable income. Of these subtractions, $21,456 was attributable to Mr. Friedman's federal pension, while $17,841 was attributable to pension income received by Mrs. Friedman from the Chilean government. The Friedmans subtracted this pension income after reading the Comptroller's 2008 resident tax instruction booklet, which stated:

> You may be able to subtract some of your taxable pension and retirement annuity income. This subtraction applies only if:
>
> a. you were 65 or over or totally disabled, or your spouse was totally

disabled, on the last day of the tax year, AND

b. you included on your federal return taxable income received as a pension, annuity or endowment from an "employee retirement system." [A traditional IRA, a Roth IRA, a simplified employee plan (SEP), a Keogh Plan or an ineligible deferred compensation plan does not qualify.]

Comptroller of Maryland, *Maryland 2008 State & Local Tax Forms & Instructions*, at 5.[1]

After the pension subtractions, the Friedmans calculated their total Maryland income tax to be $2,723. And after applying $5,967 in credits, the Friedmans determined that they had overpaid $3,244, and asked that that sum be used to pay their tax liability for the next taxable year. The Comptroller applied the overpayment to the 2010 tax year.[2]

The Friedmans' tax return was one of the 2.78 million Maryland income tax returns filed with the Comptroller for the 2008 tax year. Comptroller of Maryland, *Personal Income Tax Statistics of Income – Tax Year 2008*, at 11 (January 3, 2011), *available at* http://finances.marylandtaxes.com/static_files/revenue/statisticsofincome/individual/2008_Personal_SOI.pdf. Of the returns filed, 472,612 reported pension income, half of which took the pension subtraction. *Id.* at 15.

In 2011, the Comptroller developed enhanced compliance techniques that allowed it to better evaluate tax returns for discrepancies between federal and state tax filings.

[1] Apparently as a result of the Friedmans' persistence, in 2012, the Comptroller added "or foreign retirement income" after the words "deferred compensation plan" in the list of types of plans that do not qualify for the exclusion.

[2] The Friedmans filed their return after the 2009 tax year, so they requested that any refunded overpayment be applied to 2010 estimated taxes.

After comparing the Friedmans' federal tax return with their Maryland tax return, on March 1, 2012, the Comptroller determined that the Friedmans owed additional tax in the amount of $1,415.91 plus interest and penalties resulting from their ineligibility to receive the pension income subtraction on Mrs. Friedman's Chilean pension income.

On June 25, 2012, the Comptroller's Office of Hearings and Appeals held a hearing, in which the Friedmans disputed their tax liability. The Comptroller issued a notice of final determination on May 16, 2013, affirming the Friedmans' tax liability and the interest assessed, but waiving the penalty. The Friedmans filed an appeal in the Maryland Tax Court on June 12, 2013.

The tax court set a hearing for December 11, 2013. The Comptroller requested that the Friedmans produce certain documents by August 30, 2013. When the Friedmans failed to comply with the discovery request, the Comptroller asked the tax court to issue a subpoena *duces tectum* ordering the Friedmans to produce the documents by October 24, 2013. The Friedmans complied with the subpoena.

On November 12, 2013, one month before the scheduled hearing, the Friedmans requested that the Comptroller produce numerous documents by December 3, 2013. Before the Comptroller responded, the Friedmans requested that the tax court issue a writ of summons for Comptroller Peter Franchot and a subpoena *duces tectum* to the Comptroller, requesting that he disclose certain documents related to the pension income subtraction program. The Comptroller received the subpoena on November 20, 2013, and filed a motion to quash in the tax court two days later, asserting, with regard to the

summons, that the Comptroller Franchot did not have personal knowledge of the proceedings and that exceptional circumstances did not exist to warrant the testimony of an executive officer, and, with regard to the subpoena, that the Friedmans failed to comply with relevant rules of procedure applicable to discovery requests. On November 26, 2013, the tax court granted the Comptroller's motion to quash, and on December 6, 2013, the Friedmans filed a motion to vacate the order granting the motion to quash. After a hearing on March 19, 2014, the tax court denied the motion to vacate.

The Friedmans conducted no further discovery in the tax court prior to the merits hearing, which was rescheduled to September 10, 2014. But, shortly after requesting the subpoena, the Friedmans sent Public Information Act ("PIA") requests to the Comptroller and the Maryland Tax Court.[3] From the Comptroller, the Friedmans requested records relating to 1) staffing at the Office of the Comptroller; 2) legal advisories issued by the Comptroller regarding the pension subtraction; 3) the Comptroller's opinions regarding foreign social security and international agency pensions; and 4) the Comptroller's opinions regarding interest and penalties. The Comptroller provided the Friedmans with 441 pages of records in response to their requests.

In their subsequent letters to the Comptroller, the Friedmans requested, among other things, 1) records concerning subpoenas of the Comptroller and motions to quash filed by the Comptroller; 2) documents describing the Comptroller's abilities to

[3] The Public Information Act was then codified at § 10-604 *et seq.* of the State Government Article ("SG"), Md. Code (1984, 2009 Repl. Vol., 2013 Supp.).

determine whether a taxpayer met the criteria for claiming the pension exclusion before and after 2008; and 3) the Comptroller's rationale for allowing or excluding certain forms of pension income from the pension subtraction. The Comptroller found no records responsive to the first request, and directed the Friedmans to search the Maryland Tax Court records. Regarding the second and third requests, the Comptroller denied inspection of any responsive documents because he determined that the documents would either disclose techniques and procedures for law enforcement investigations or would contain opinions, deliberations, or advice rendered for the purpose of assisting the decision making process of a government employee. The Maryland Tax Court notified the Friedmans that it did not possess an electronic database of motions to quash and their resolution, and that a search of the paper records would take 233 hours and cost approximately $7,000.[4]

On September 10, 2014, the tax court held a merits hearing on the Friedmans' tax liability. The Friedmans argued that because they relied on the instructions contained in the Comptroller's 2008 income tax instruction booklet, quoted *supra*, the assessment should not be enforced. They claimed that the instruction booklet was misleading because it did not specifically state that foreign pension plans did not qualify for the subtraction. The Friedmans also argued that because other taxpayers were likely

[4] The Friedmans sent a similar request to the Office of the Attorney General, who notified the Friedmans that the search and documents would cost approximately $14,500 due to the lack of an electronic catalogue of such motions.

inappropriately subtracting non-eligible pension income in prior years, it was unfair for the Comptroller to enforce the law against them at that time.

Mr. Friedman testified and agreed, however, that that there was no language in the instruction booklet that stated that a foreign pension could be excluded from Maryland taxable income and that there was no tax treaty with Chile and no federal statute that required excluding Mrs. Friedman's pension from taxable income. Mr. Friedman conceded that the couple could not exclude Mrs. Friedman's Chilean pension income from their Maryland taxable income under Maryland law. With regard to the assessment of interest, the Friedmans contended that, because they had chosen to apply their overpayment in 2008 to the 2010 tax year and the Comptroller had those funds in its possession, the Comptroller was not authorized to charge interest on the deficiency.

The Comptroller's witnesses, Kimberly Cordish and Christopher Rasmussen, testified that in late 2011, the Comptroller developed a new matching program for audit purposes that allowed staff to analyze different sources of data to find discrepancies, for example, by comparing state and federal tax returns. The Comptroller used the matching program to scrutinize the returns for tax year 2008, the earliest year within the three-year statute of limitations. This program allowed the Comptroller to efficiently check the claimed pension subtractions for compliance for the first time. Prior to its implementation, the Comptroller had no easy way of determining if taxpayers were erroneously claiming the pension subtraction apart from partaking in the time- and resource-intensive process of auditing each return individually.

The Comptroller's witnesses testified that the implementation of the matching program did not alter how the Comptroller had been interpreting the statute governing the pension subtraction. The matching program also did not target any particular type of pension, pensions from any particular source, or pensions received by any particular class of individuals.

At the conclusion of the hearing, the tax court rendered a bench opinion, affirming the income tax assessment and concluding that Mrs. Friedman's pension was not subject to the subtraction and that the Comptroller did not violate equal protection in its enforcement of the law. The court stated that the Comptroller "couldn't possibly physically . . . audit [all] 400,000 returns dealing with the pension exclusion. So to suggest that there [was] aberrational enforcement by the Comptroller [was] just not [borne] out by the facts of this case." The court acknowledged that it was deciding the case based on the language of the statute, which excluded foreign pensions from the subtraction, and gave no weight to the language of the instruction manual because it did not have the force of law.

Although the court found reasonable grounds to abate any penalty assessed, that action had already been taken by the Comptroller's hearing office. The court, however, did not find good cause to abate the interest and rejected the Friedmans' contention that they should not be assessed interest because the State was in possession of their money. Instead, the Court found that the Friedmans had voluntarily requested that the 2008

overpayment be applied to future tax years, and that those funds could not be applied to make up for the deficiency on their 2008 taxes.

The Friedmans filed a timely petition for judicial review in the Circuit Court for Montgomery County. At the conclusion of a hearing held on May 4, 2015, the court ruled in favor of the Comptroller on all issues. After judgment was entered on July 16, 2015, the Friedmans noted their appeal to this Court on July 23, 2015.

## DISCUSSION

Because the tax court is an adjudicative administrative agency, its decisions are subject to the same standards of judicial review as the adjudicatory decisions of other administrative agencies as provided by the Maryland Administrative Procedure Act. *See* Md. Code (1988, 2010 Repl. Vol., 2015 Supp.), Tax-General Art. ("Tax-Gen.") § 13-532(a) (incorporating §§ 10-222 and 10-223 of the State Government Article of the Maryland Code); *NIHC, Inc. v. Comptroller of Treasury,* 439 Md. 668, 682 (2014). When reviewing an administrative decision from the Maryland Tax Court, we generally review that decision directly, not the decision of the circuit court. *Supervisor of Assessments v. Stellar GT*, 406 Md. 658, 669 (2008) (Citation omitted).

A reviewing court must affirm the tax court if its order "is not erroneous as a matter of law" and if the order "is supported by substantial evidence appearing in the record." *CBS Inc. v. Comptroller of the Treasury*, 319 Md. 687, 697-98 (1990) (quoting *Ramsay, Scarlett & Co. v. Comptroller,* 302 Md. 825, 834 (1985)). Under the substantial evidence standard, a "reviewing court may not substitute its judgment for the expertise of

the agency; [the court] must review the agency's decision in the light most favorable to it; . . . the agency's decision is prima facie correct and presumed valid; and . . . it is the agency's province to resolve conflicting evidence" and to draw inferences from that evidence. *Ramsay, Scarlett & Co.*, 302 Md. at 834-35. As with other agencies, a reviewing court will afford great weight to the Comptroller's "legal conclusions when they are premised upon an interpretation of the statutes that [it] administers and the regulations promulgated for that purpose." *Frey v. Comptroller of Treasury,* 422 Md. 111, 138 (2011), *cert. denied,* 132 S.Ct. 1796 (2012).

With regard to the Friedmans' equal protection claim, we undertake an "independent constitutional appraisal" of an agency's decision when infringement of a constitutional right is implicated. *Watkins v. Sec'y, Dept. of Pub. Safety & Corr. Services*, 377 Md. 34, 46 (2003) (citing *Crosby v. State*, 366 Md. 518, 526 (2001)). Special rules limit judicial fact-finding and purpose determination when gauging the constitutionality of governmental action under rational basis equal protection scrutiny. *See e.g. Heller v. Doe*, 509 U.S. 312, 320 (1993) (For equal protection purposes, a governmental choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data); *Mountain Water Co. v. Montana Department of Public Service Regulation*, 919 F. 2d 593, 597 (9th Cir. 1990) ("In our review of governmental purposes . . . we need not rely upon those purposes the legislature, litigants, or district court have espoused. . . .").

## I. Assessment of Interest

By statute, each Maryland resident who is required to file a federal income tax return must file a Maryland income tax return and pay the tax calculated as due on his or her Maryland income tax return. *See* Tax-Gen. § 10-805(a), -901. The General Assembly has provided that elderly and disabled residents can subtract certain retirement income from their adjusted gross income for taxation purposes. Tax-Gen. § 10-209. Not all retirement income qualifies for the subtraction. A taxpayer may only subtract, among other things, "the cumulative or total annuity, pension, or endowment income from an employee retirement system included in federal adjusted gross income." § 10-209(b)(1). The "employee retirement system" referenced in the previous sentence has a specific meaning, *viz.*, a plan "(i) established and maintained by an employer for the benefit of its employees; and (ii) qualified under § 401(a), § 403, or § 457(b) of the Internal Revenue Code[.]" § 10-209(a)(1).

Although the Friedmans challenge the Comptroller's assessment on equal protection grounds as "aberrational enforcement," discussed in part II, *infra*, they do not contend that Mrs. Friedman's Chilean pension was a plan qualified under § 401(a), § 403, or § 457(b) of the Internal Revenue Code and do not argue that the subtraction should have applied to her pension income based on the language of § 10-209.[5] However, the

[5] Below, the Friedmans argued that the Comptroller should not be able to assess a deficiency because his "deceptive" instruction booklet induced them to subtract Mrs. Friedman's foreign pension. We note that the booklet suggested that a taxpayer "*may* be able to subtract" pension income. (Emphasis added). It did not use unqualified or

(Continued . . . )

Friedmans do argue that the Comptroller lacked authority to assess interest and a penalty in this circumstance because the State was in possession of funds—in the form of an overpayment of estimated taxes that the Friedmans requested be applied to the 2010 tax year—sufficient to cover their deficient payment.

In most circumstances, employers are required to withhold employee income tax and pay that tax to the Comptroller in trust. Tax-Gen. § 10-906(a), (b). For retirement income, unless the taxpayer specifically requests that income tax be withheld from a retirement distribution, income tax is not required to be withheld from that payment. Tax-Gen. §§ 10-907(b), -908(c). If income tax is not withheld, for whatever reason, a taxpayer is required to file a declaration of estimated income tax and pay quarterly estimated income tax if the taxpayer's anticipated tax liability will exceed $500 for that year. Tax-Gen. §§ 10-815(a), -820(b), -902(a); COMAR 03.04.01.02A.

If a person overpays taxes through either withholding or through estimated taxes, the individual may claim a credit against the income tax for a taxable year. Tax-Gen. § 10-701. The overpayment may be applied to current year estimated income tax, and if the overpayment equals or exceeds the estimated tax liability for the first estimated tax installment, an estimated tax declaration is not required. COMAR 03.04.01.02A(3).

(. . . continued)
absolute language. Further, as the tax court correctly stated, the language of statute controls over the Comptroller's instruction booklet. Even an affirmative misrepresentation by an employee would not preclude the Comptroller from enforcing § 10-209 against a taxpayer. *See Hecht v. Crook*, 184 Md. 271, 283 (1945) (holding that a misrepresentation by government employee could not "extend the benefits of the [statute] to persons ineligible thereto").

If a taxpayer, as in this case, fails to remit the full amount of tax due, the Comptroller is required to assess the deficiency. Tax-Gen. § 13-401. Under these circumstances, the Comptroller is also required to "assess interest on the unpaid tax from the due date to the date on which the tax is paid." Tax-Gen. § 13-601(a).

In the tax years at issue in this appeal, the Friedmans did not have tax withheld from their retirement income, and they applied their claimed overpayment from the 2008 return to the 2010 tax year. The Friedmans first argue that their choice to apply their overpayment to the following year was not voluntary because they did not know that they had failed to pay their taxes in full. However, the Friedmans are "presumed to know the law regardless of conscious knowledge or lack thereof, and are presumed to intend the necessary and legitimate consequences of their actions in its light." *Benik v. Hatcher*, 358 Md. 507, 532 (2000) (citing *Samson v. State*, 27 Md. App. 326, 334 (1975)). "Just as a motorist is presumed to know the law regulating the use of motor vehicles, *Flohr* [*v. Coleman*, 245 Md. 254, 267 (1967)], [and a] landlord presumed to know the requirements of the City Code pertaining to the habitability of leased premises," *id.*, so too is an attorney presumed to know the laws which subject income to taxation. The tax court determined that the Friedmans voluntarily requested that their claimed overpayment be applied to the 2010 tax year. The Friedmans cannot avoid paying the interest that the statute requires the Comptroller to assess pursuant to § 13-601. We see no error in the tax court's determination.

The Friedmans also argue that the Comptroller, under its own regulations, was required to apply the overpayment first to any delinquent taxes, i.e., the deficiency in their 2008 tax return.[6] The Friedmans requested that the Comptroller apply their overpayment to the 2010 tax year when they submitted their 2008 return. Yet, the Comptroller did not assess a delinquency until 2012. The Comptroller could not have applied the overpayment to a delinquency that did not yet exist.

Finally, the Friedmans ask us to recognize the "use of money" principle, under which "interest is paid on a tax overpayment for the time the government has the use of the taxpayer's money. Interest is collected, similarly, for the time the taxpayer has the use of the government's money." I.R.S., *Rev. Proc.* 60-17, 1960-2 C.B. 942 (IRS RPR 1960). It is difficult to understand the Friedmans' argument—that the Comptroller should not be allowed to charge interest because the State had interest-free use of the

[6] Income tax payments received by the Comptroller shall be applied as follows:

(1) Payments accompanying timely filed returns shall be applied to the tax liability for the period covered by the return;

(2) Payments accompanying late filed returns shall be applied to the tax liability for the period covered by the return, and then to any penalty and interest assessed by the Comptroller;

(3) All other payments shall be applied to the earliest delinquent tax year in the following manner:

(a) First to any penalty,

(b) Second to accrued interest, and

(c) Third to the unpaid tax.

COMAR 03.04.04.01A.

overpayment—when the Friedmans were required by law to either pay estimated taxes for 2010 or transfer the overpayment to the Comptroller. Remitting funds to the Comptroller, as required by statute, can hardly constitute "interest-free" use. For the above reasons, we agree with the decision of the tax court regarding the interest assessed.[7]

## II. Equal Protection

Article 24 of the Maryland Declaration of Rights provides:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Maryland courts consistently interpret Article 24 similarly to the Fourteenth Amendment to the United States Constitution. *Tyler v. City of College Park*, 415 Md. 475, 499 (2010). Thus, "the concept of equal protection is embodied in the due process requirement of Article 24." *Id.*

Where the government action at issue neither interferes with a fundamental right nor implicates a suspect classification, the test for determining whether a statute violates the equal protection component of Article 24 is whether the government action has a

[7] The Friedmans also ask us to consider the penalty that was initially assessed but later abated by the Comptroller. They acknowledge that the issue is moot, but argue that a judgment on the appropriateness of the penalty will prevent harm to the public interest. *See Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274, 292 (2015). We note that the Comptroller has modified the instruction booklet on which the Friedmans relied in subtracting the pension income, making the recurrence of this issue improbable. The penalty issue is not of sufficient magnitude to warrant review of a moot question.

rational basis. This is "the least exacting and most deferential standard of constitutional review," under which a "classification will pass constitutional muster so long as it is rationally related to a legitimate governmental interest." *Tyler*, 415 Md. at 501 (Citations omitted). "In general, we will uphold a statute subject to rational basis review against an equal protection challenge unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the court may conclude only that the governmental actions were arbitrary or irrational." *Id.* (Citations omitted). The Court of Appeals has noted that a classification having a reasonable basis does not offend equal protection "merely because it is not made with mathematical nicety or because in practice it results in some inequality." *Bowie Inn, Inc. v. City of Bowie*, 274 Md. 230, 241 (1975) (citing *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911); *Adm'r, Motor Veh. Adm. v. Vogt*, 267 Md. 660, 671 (1973)). Further, the government is not required to "attack" all aspects of a problem at the same time; rather, the government "may select one phase of a problem and apply a remedy there, neglecting for the moment other phases of the problem." *Id.* at 241.

The Court has described rational basis review as "'the paradigm of judicial restraint,'" and stated that "'[t]he Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process [and] that . . . judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.'" *Tyler*, 415 Md. at 502 (Citations omitted). For this reason, under rational basis review, the challenged action is presumed

to be constitutional. *Lonaconing Trap Club, Inc. v. Maryland Dept. of Env't*, 410 Md. 326, 343 (2009). And, "[w]here there are plausible reasons for the [government] action, the court's inquiry is at an end." *Tyler*, 415 Md. at 502 (Citation omitted).

The General Assembly, when passing a revenue measure, may classify taxpayers differently, and may impose varying tax burdens on different groups. *Villa Nova Night Club, Inc. v. Comptroller of Treasury*, 256 Md. 381, 391 (1970). "It is only when the attempted classification has no reasonable basis in the nature of the businesses classified and burdens are imposed unequally on taxpayers between whom there is no real difference that the courts will interfere." *Id.* "It has long been recognized that taxation is a practical affair, *Frank J. Klein v. Comptroller*, 233 Md. 490, 494 (1964), and that 'only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes' can the presumption of constitutionality be rebutted." *Hooks v. Comptroller of Treasury*, 265 Md. 380, 388 (1972) (Citation omitted).

The Friedmans argue that the Comptroller's assessment violated the equal protection considerations in Article 24 because it constituted "aberrational enforcement." The Friedmans contend that, by not specifically stating that foreign pension income was *not* subject to the subtraction, and by not enforcing discrepancies between federal and state tax returns in prior years, the Comptroller selectively enforced the law in a discriminatory manner. We find no merit in this contention.

The Friedmans do not argue that the alleged selective enforcement infringed a fundamental right or was based on a suspect classification. Instead, they argue that the Comptroller's actions constitute aberrational enforcement of the type found unconstitutional by the Supreme Court in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, W. Va.*, 488 U.S. 336 (1989), where a county tax assessor's practice of determining property values as of the time of the property's last sale resulted in highly unequal valuations for two identical properties that were sold years or decades apart.

However, the circumstances of *Allegheny* "involved a clear state law requirement clearly and dramatically violated." *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2084 (2012). Indeed, the Supreme Court later described *Allegheny* as "the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992). In essence, the taxing authority's assessment methods failed rational basis review. None of the other cases cited by the Friedmans involve selective enforcement of the type alleged here, and they do not support the Friedmans' position. *See, e.g.*, *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 108 (2003); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 572 (1949); *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 35-36 (1907).

Administrative considerations, like those presented by the Comptroller in this case, can rationally justify a tax-related distinction. *Armour v. City of Indianapolis, Ind.*,

132 S. Ct. 2073, 2081 (2012) (citing *Carmichael v. Southern Coal & Coke Co.,* 301 U.S. 495, 511-12 (1937) (upholding tax exemption for businesses with fewer than eight employees as rational in light of the "[a]dministrative convenience and expense" involved)); *see also Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973) (administrative cost of taxing corporations versus individuals constituted rational basis for different taxation schemes); *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 90 (1940) (differential treatment of two types of deposits was rationally based on the differences in the difficulties and expenses of tax collection).

The Comptroller presented clear evidence that the volume of returns and lack of administrative capacity prevented it from finding and enforcing each instance of an improperly claimed pension subtraction. The Comptroller's witnesses stated that, until the office implemented the matching program, it did not have an easy way to verify a taxpayer's claimed subtraction without conducting a full audit of the tax return, and it did not have the resources to conduct audits of each return. Starting in 2011, the Comptroller was able to use his new matching program to catch discrepancies between state and federal tax returns, such as the mistake made by the Friedmans. The Comptroller's testimony demonstrated that there was a rational basis, based on administrative considerations, for the Comptroller's assessment of tax delinquency against the Friedmans for the 2008 tax year, but not for prior years, and not for all other taxpayers who claimed the subtraction. For this reason, we uphold the decision of the tax court on the Friedmans' equal protection claim.

## III. Discovery and Public Information Act Requests

"An appeal before the Tax Court shall be heard de novo and conducted in a manner similar to a proceeding in a court of general jurisdiction sitting without a jury." Tax-Gen. § 13-523. The tax court has adopted rules of procedure to further the execution of its duties. *See* Tax-Gen. § 3-105; COMAR 14.12.01.01, *et seq.* It follows that the discovery principles applicable to trial courts generally are also applicable to the tax court. Accordingly, in administering the discovery rules, the tax court is "'vested with a reasonable, sound discretion in applying them, which discretion will not be disturbed in the absence of a showing of its abuse.'" *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 405-06 (1998) (quoting *Kelch v. Mass Transit Admin.*, 287 Md. 223, 229 (1980)).

The Friedmans requested a writ of summons for Comptroller Franchot and a subpoena *duces tecum* covering numerous classes of documents for the period of 2006 to 2012. The tax court quashed the summons and subpoena in an order dated November 26, 2013. The Friedmans asked the tax court to vacate that order, and the court held a hearing on the issue on March 19, 2014. At the hearing, the Friedmans contended that the requested discovery was relevant to their "aberrational enforcement" argument. The Friedmans wanted to know the reason that 1) "the comptroller had not changed the text of the instruction booklet for so many years," 2) the circumstances under which the comptroller charges "interest and penalties on money timely in his possession to other people," and 3) the reasoning behind the Comptroller's authorization of the subtraction

for two other pension systems, "those that receive foreign social security payments and those that receive pensions from international organizations."

The tax court, however, did not agree that the information the Friedmans sought was relevant. The court stated:

> I don't believe the information sought is relevant to a decision in this case. The Court will decide this case based on the statutes and the law and not the instruction booklet. As far as the interest and penalty argument, Mr. Friedman, that you made, that will be a matter before the Court at the time on the merits hearing. And the Court does not see any relevancy with respect to the discovery that you seek in terms of making a decision in the merits hearing.

The Friedmans now argue that the tax court abused its discretion in quashing their discovery requests, and that the tax court erred in failing to draw an adverse inference from the Comptroller's assessment because it failed to provide discovery. They also ask that we remand this case for the tax court to receive further evidence. The Comptroller responds that the tax court correctly exercised its discretion by quashing an irrelevant and unreasonable discovery request, and that the Friedmans should not be allowed to return to the tax court because they already had an opportunity to introduce evidence they received from Public Information Act requests in the tax court, and they had failed to do so.

Turning to the tax court's decision to quash the summons and subpoena, we observe that "absent a showing that a court acted in a harsh, unjust, capricious and arbitrary way, we will not find an abuse of discretion." *Dashiell v. Meeks*, 396 Md. 149, 178 (2006). In this case, the court was not under any obligation to allow discovery because, for equal protection purposes, the purpose behind governmental action is not

subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data. *See Heller*, *supra*, 509 U.S. at 320. In this case, the court had a reasonable basis to conclude that the subpoena and summons would not aid it in reaching a decision. In consideration of the role of rational speculation in equal protection cases and the deference to the substantial discretion afforded to the tax court to make decisions concerning discovery, we cannot say that the tax court erred or abused its discretion in granting the motion to quash and denying the corresponding motion to vacate. For the same reason—that equal protection claims are not subject to courtroom factfinding—we will not remand for additional discovery. Further, because we find no abuse of discretion in the granting of the motion to quash, we see no error in the tax court declining to draw an adverse inference from the Comptroller's unwillingness to provide discovery.

The Friedmans also argue that the Comptroller improperly denied their requests for records under the Public Information Act ("PIA"), then codified at § 10-604 *et seq.* of the State Government Article ("SG"), Md. Code (1984, 2009 Repl. Vol., 2013 Supp.), at the time of the tax court proceedings in this case.[8] The Comptroller contends that the tax court is not a proper forum to contest a denial under the PIA.

[8] The PIA currently appears as Title 4 of the General Provisions Article of the Maryland Code. *See* Md. Code (2014, 2015 Supp.), § 4-101 *et seq.* of the General Provisions Article ("G.P."). The revision substantially reorganized the PIA, but did not change any of the relevant language. For the sake of consistency, we cite to the sections of the State Government Article where applicable. *See ACLU Found. of Maryland v. Leopold*, 223 Md. App. 97, 103 n.3 (2015).

Pursuant to the PIA statute then in effect, a person who had been denied inspection of records could seek administrative review of the denial through the procedures outlined in Maryland's Administrative Procedure Act, codified at Title 10, Subtitle 2 of the State Government Article. *See* SG § 10-622. Alternatively, the requestor could seek judicial review by filing a complaint with the circuit court. *See* SG § 10-623. This contrasts with the jurisdiction of the tax court:

> The Tax Court has jurisdiction to hear appeals from the final decision, final determination, or final order of a property tax assessment appeal board or any other unit of the State government or of a political subdivision of the State that is authorized to make the final decision or determination or issue the *final order about any tax issue*….

Tax-Gen. § 3-103(a) (Emphasis added).

In a letter denying inspection of certain documents, the Comptroller informed the Friedmans that they could appeal his decision through the administrative or judicial methods described above.[9] The Friedmans did not follow the procedure outlined in either § 10-622 or § 10-623, and instead argued to the tax court that the denials of their PIA requests and discovery attempt prejudiced their ability to demonstrate the Comptroller's aberrational enforcement techniques. Because the tax court is empowered to only hear

[9] The Comptroller asserted that the denials were authorized under SG §§ 10-615, -618(f), now codified at GP §§ 4-301, -351.

appeals from final decisions about "tax issues," we agree with the Comptroller that the tax court was not the proper forum to decide the propriety of the PIA denials.

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