Circuit Court for Anne Arundel County
Case No. C-02-CV-17-001285

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2184

September Term, 2017

COMPTROLLER OF THE TREASURY

v.

LEADVILLE INSURANCE COMPANY

Berger,
Reed,
Shaw Geter,

JJ.

Opinion by Reed, J.

Filed: March 26, 2019

Following an audit of Macy's Retail Holding, Inc. ("MRHI"), the Comptroller for the Treasury ("the Comptroller") assessed Leadville Ins. Co. ("Appellee"), a wholly owned subsidiary of Macy's, Inc., $23,831,054.34 in tax, penalties, and interest on intercompany interest payments it received from MRHI during the 1996-2003 tax years. The Comptroller's assessment was upheld by the Comptroller's Hearings and Appeals Section following an informal hearing. Appellee appealed the decision to the Tax Court and subsequently filed a motion for summary judgment seeking a determination that the assessment was in error, which was ultimately granted.

On appeal to the Circuit Court for Anne Arundel County, the decision by the Tax Court was affirmed. The Comptroller filed a timely appeal. In bringing its appeal, Appellant presents two questions for our review, which we have rephrased for clarity:[1]

> I. Did the Tax Court err in concluding that Appellee qualifies as an insurance company under Title 6 of the Insurance Article and is therefore exempt from corporate income tax in Maryland?

[1] Appellant presented the following two questions for appellate review:

> I. Did the Tax Court err in concluding that Leadville qualifies as an insurance company under Title 6 of the Insurance Article, thereby exempt from corporate income tax, when it is not authorized to operate as an insurance company in Maryland and receives no insurance premiums from any Maryland insured?
>
> II. Is Leadville, an unauthorized insurer regulated by Title 4 of the Insurance Article, liable for corporate income tax, when it earns interest income from an affiliate operating in Maryland?

II. Is Appellee liable for corporate income tax under Title 4 of the Insurance Article?

For the following reasons, we vacate the decision of the Circuit Court for Anne Arundel County and remand to the Tax Court for proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Leadville Insurance Company ("Appellee") is a wholly-owned subsidiary of Macy's, Inc. ("Macy's"), the parent company for the Macy's franchise, which operates hundreds of department stores under various trade names throughout the United States, including Maryland. In 2010, the Comptroller for the Treasury ("the Comptroller") audited Macy's Retail Holdings, Inc. ("MRHI"), another affiliate of Macy's. MRHI is a holding company incorporated in New York that owns and oversees the management of various Macy's department stores, including those in Maryland. Appellee, incorporated in Vermont, is a "captive insurance company"[2] that provides insurance for Macy's subsidiaries and affiliates, including MRHI. At all relevant times, Appellee was licensed by the insurance commissioner in Vermont but did not hold a certificate of authority from the Maryland Insurance Commissioner to engage in the insurance business in Maryland.

During the Comptroller's audit of MRHI, it was discovered that MRHI had claimed deductions for substantial amounts of interest paid to Appellee. During its review of

[2] Under Vermont law, a "captive insurance company" refers to "any pure captive insurance company . . . formed or licensed under the provisions of this chapter." Vt. Stat. Ann. tit. 8, § 6001(5) (2018). A "pure captive insurance company" is defined as "any company that insures risk of its parent and affiliated companies or controlled unaffiliated business." *Id.*, § 6001(15).

Appellee's business activities, the Comptroller noted the disparity between Appellee's premium receipts and its intercompany interest revenue. From 1996 to 2003, Appellee earned over $2 billion in intercompany interest and $52 million in insurance revenue. Additionally, Appellee paid premium receipts taxes in Vermont but paid no premium receipts tax or corporate tax in Maryland despite earning substantial revenue from interest payments apportioned to Maryland. As a result, the Comptroller assessed Appellee $23,831,054.34 in tax, penalties, and interest on the intercompany interest payments it received from MRHI during the 1996-2003 tax years.

In response to the Comptroller's assessment, Appellee requested an informal hearing before the Comptroller, objecting to the income tax assessments. On December 14, 2010, the Hearings and Appeals Section of the Comptroller's office conducted an informal hearing to consider the protest. At the hearing, Appellee argued that it was an insurance company under Title 6 of the Insurance Article and, therefore, exempt from paying income tax under Tax-General § 10-104. However, Appellee conceded that it had not paid any Maryland premium tax; had not held a license to carry on business in Maryland from the Maryland State Department of Assessments and Taxation; had not held a certificate of authority from the Maryland Insurance Commissioner; had not conducted or solicited any business activities in Maryland; did not have any agents in Maryland; had not derived any income from Maryland residents or entities attributable to insurance premiums; and had not investigated any risks or claims in Maryland. At the conclusion of the hearing, the hearing officer concluded that the intercompany interest payments were taxable and the corporate tax exemption at Tax-General § 10-104(4) did not apply to Appellee.

Appellee timely appealed the Comptroller's final determination to the Tax Court, amended its petition of appeal, and moved for summary judgment. On March 30, 2017, the Tax Court granted Appellee's motion for summary judgment in a two-page memorandum, citing its earlier decision in *National Indemnity Co., Successor in Interest to Wesco Financial Ins. Co. v. Comptroller of the Treasury*, No. 14-IN-OO-0433 (Md. Tax Apr. 24, 2015).[3] Aside from its citation of *National Indemnity*, the Tax Court memorandum simply listed the Comptroller's assessment and Appellee's argument that, as a Title 6 insurance company, it is exempt from income tax.

The Comptroller appealed to the Circuit Court of Anne Arundel County, which upheld the Tax Court's decision. The circuit court ruled that Appellee was entitled to summary judgment and that Appellee, as either a Title 6 or Title 4 insurance company, was exempt from corporate income tax from 1996 to 2003. This timely appeal followed.

STANDARD OF REVIEW

On appeal of a decision involving the Tax Court, this Court reviews the Tax Court's decision, not the decision of the Circuit Court. The review of the Tax Court's decision is

[3] The Tax Court's memorandum stated, in part:

> This case concerns an issue already addressed by this court in *National Indemnity v. Comptroller of the Treasury*. In *National Indemnity*, this Court held that the plain language of the statute at issue, the respondent's own regulations and other published guidance provided that insurance companies similar to the petitioner were not subject to Maryland income tax.
>
> The Court sees no reason to distinguish this case from *National Indemnity* and will rely on the analysis therein. Hence this Court finds that the Respondent's assessment of corporate income tax, penalty, and interest was contrary to Maryland law and, therefore, in error.

given the same standard of review as an administrative agency. *See Gore Enterprise Holdings v. Comptroller of the Treasury*, 437 Md. 492 (2014).

The review of an administrative agency's decision involves a three-stage process. First, this Court must determine *de novo* whether the Tax Court recognized and applied the correct law. Then this Court must examine whether there was substantial evidence to support the Tax Court's factual findings. Finally, this Court must determine if the Tax Court correctly applied the law to the facts as found. *See United Parcel Services, Inc. v. Comptroller of the Treasury*, 69 Md. App. 458 (1986).

The Comptroller contends that where an appellate court reviews a motion for summary judgment involving a question of law, this Court's review is plenary. *Manekin Constr., Inc. v. Maryland Dep't of Gen. Servs.*, 233 Md. App. 156, 172 (2017). As such, the Comptroller argues that in considering whether the movant is entitled to judgment, this Court must presume the Comptroller's assessment is correct and the taxpayer (in this case, Appellee) bears the burden of rebutting the presumption of correctness. *See* Md. Code Ann., Tax-Gen. § 13-411. Furthermore, the Comptroller argues that absent affirmative evidence in support of the relief being sought by the taxpayer or an error apparent on the face of the proceedings in front of the Tax Court, the decision on appeal shall be affirmed. *See* Tax-Gen. § 13-528(b).

Simply put, the proposed standard of review offered to this Court by the Comptroller is wrong. Instead, this Court reviews an administrative agency's decision to grant summary judgment for legal correctness. Here, this Court must determine whether the Tax Court erred in determining, as a matter of law, that Appellee is exempt from corporate income

tax under Title 6 of the Insurance Article. While this Court reviews the facts in the light most favorable to the non-moving party, it will neither presume that the Comptroller's assessment was correct nor that Appellee bore the burden of rebutting such a presumption.

DISCUSSION

i. Corporate Tax Exemption under Title 6

A. Parties' Contentions

The Comptroller contends that Appellee does not qualify under the corporate tax exemption for insurance companies "subject to taxation under Title 6 of the Insurance Article." The Comptroller argues that as an unauthorized insurer, Appellee is instead regulated by Title 4 of the Insurance Article and thus cannot qualify for an exemption under Title 6.

In arguendo, the Comptroller asserts that even if Appellee is deemed an authorized insurer, Appellee would still be unable to exempt itself from its corporate tax requirements under Title 6 for a litany of reasons. First, the Comptroller notes that Appellee has never collected any direct premiums allocable to Maryland. The Comptroller also contends that Appellee should be considered a financial institution like a bank and not treated as an insurance company. The Comptroller rejects Appellee's claim that its status as an insurance company in Vermont should be recognized by Maryland. Finally, the Comptroller emphasizes that Appellee has never written insurance contracts in Maryland and thus should not be deemed "subject to taxation" under Title 6.

Appellee contends that summary judgment was proper because there are no material facts in dispute, specifically arguing that Appellee is entitled to relief under either Title 6

or Title 4. Under Title 6, Appellee argues that it is exempt from corporate taxation even though it does not possess a certificate of authority because it is not required to have such a certificate to engage in reinsurance transactions. Appellee relies on the General Assembly's intent in passing legislation as far back as 1963 to assert that, as an insurance company that engages in reinsurance transactions, it is subject to Title 6 taxation and is therefore exempt from corporate income taxation. While we agree that Appellee is an insurance company, we find that Appellee is not subject to Title 6 taxation.

B. Analysis

In Maryland, an income tax is imposed on the taxable income of each corporation. Md. Code Ann., Tax-Gen. § 10-102. Consistent with constitutional limits, Maryland taxes all foreign corporations based on the portion of its income that is derived from or reasonably attributable to its in-state trade or business. Tax-Gen. § 10-402(a).

However, Maryland treats insurance companies different than other corporations operating within the State. Pursuant to § 6-102 of the Insurance Article, insurance companies pay a tax on all new and renewed premiums that are allocable to the State and that are written during the preceding tax year. This statute imposes the tax on all ***authorized*** insurance companies (emphasis added). *See Insurance Comm'r of State of Md. v. Bankers Indep. Ins. Co.*, 326 Md. 617 (1991). For such insurance companies, the premium receipts tax is the only tax they pay; insurance companies "subject to taxation under Title 6 of the Insurance Article" are exempt from the Maryland corporate income tax. Md. Code Ann., Tax-Gen. § 10-104(4). For those insurance companies that are unauthorized under § 6-102

of the Insurance Article, taxes are instead imposed subject to Title 4 of the Insurance Article.

1. Does Appellee qualify as an authorized insurer?

The Comptroller contends that Appellee is an unauthorized insurer and therefore cannot qualify for the corporate income tax exemption under Title 6. Appellee argues that it is an authorized insurer and therefore does qualify for the exemption.

In Maryland, insurance companies are classified as to their place of legal origin. Domestic insurers are those that are formed under the laws of Maryland, while foreign insurers are formed under another state's laws. In addition to being classified as to place of origin, insurance companies are classified as "authorized" or "unauthorized." An authorized insurer "holds a valid certificate of authority." On the flip side, an unauthorized insurer "does not hold a certificate of authority." In Maryland, a "certificate of authority" means that the Maryland Insurance Commissioner has granted the insurance company a certificate allowing it to "engage in the insurance business." Md. Code Ann., Tax-Gen. § 1-101(j).

Appellee concedes in its brief that it does not hold a certificate of authority issued by the Maryland Insurance Commissioner. With that said, Appellee emphasizes that it is not required to possess a certificate of authority under Title 4 of the Insurance Article in order to engage in reinsurance transactions. Because Appellee is authorized to engage in reinsurance transactions, Appellee believes it is an authorized insurer even without a certificate of authority.

The fact that Appellee is authorized to engage in reinsurance transactions and that it is not required to possess a certificate of authority are irrelevant to this Court's determination of whether Appellee is an "authorized insurer" under the Insurance Article. Section 1-101(rr) makes clear that an "unauthorized insurer" is "an insurer that does not hold a certificate of authority [issued by the Maryland Insurance Commissioner]." Simply put, an insurance company that does not possess a certificate of authority is "unauthorized." The fact that Appellee concedes that it possesses no such certificate makes this Court's finding simple: Appellee is an unauthorized insurer.

2. If Appellee is an unauthorized insurer, does Title 6 of the Insurance Article apply?

In this case, the Tax Court granted summary judgment to Appellee based on § 10-104(4) of the Tax Code, which exempts from corporate income tax those insurance companies that are subject to taxation under Title 6 of the Insurance Article. According to § 6-101(a)(1), "a person engaged as principal in the business of writing insurance contracts, surety contracts, guaranty contracts, or annuity contracts" is subject to taxation under Title 6. However, Title 6 excludes from its reach unauthorized insurers, who are instead subject to taxation in accordance with Title 4. *See* Md. Code Ann., Ins. § 6-101(b) ("The following persons are not subject to taxation under [Title 6, Subtitle 1]: . . . (4) an unauthorized insurer, who is subject to taxation in accordance with Title 4, Subtitle 2 of this article."). As previously discussed, the Insurance Article defines an "unauthorized insurer" as an insurer that "does not hold a certificate of authority." Md. Code Ann., Ins. § 1-101(rr).

Appellee implies in its brief that the structure of the statute in question is worth review. While Appellee makes a valiant effort to show us that unauthorized insurers can

be separated into two distinct categories, the unambiguous drafting of the statute explicitly illustrates otherwise. The use of the comma after "an unauthorized insurer" is read as a full-stop; in other words, unauthorized insurers are not subject to taxation under Title 6. The language after the comma is then read as providing the alternative to taxation under Title 6. In this case, it simply states that because an unauthorized insurer is not subject to taxation under Title 6, it is subject to taxation in accordance with Title 4, Subtitle 2. This Court does not need to determine which unauthorized insurers are subject to Title 4 or 6; the statute makes clear that *all* unauthorized insurers are subject to Title 4. As such, the Tax Court erred in ruling that the exemption provided by Title 6 applies to Appellee.

ii. Application of Title 4

A. Parties' Contentions

The Comptroller asserts that Appellee is subject to corporate taxation as an unauthorized insurer under Title 4 of the Insurance Article. In doing so, it relies on statutory interpretation of Tax General §10-104(4). The Comptroller notes that the Maryland legislature did not tax any unauthorized insurers until 1963, and the Legislature's actions in 1997 indicate its intent to tax authorized and unauthorized insurers differently; namely by providing corporate tax exemptions for authorized insurers under Title 6, but not to unauthorized insurers under Title 4. The Comptroller also points to the minimal amount of premiums Appellee receives in arguing that Appellee should be required to pay corporate income tax.

Appellee contends that Title 6 should apply. However, if Appellee is not subject to taxation under Title 6, it believes it is still afforded corporate tax relief under Title 4

because the premium receipts tax placed on Appellee "is instead of all other taxes," including corporate income tax. In support of its Title 4 argument, Appellee relies on the General Assembly's intent and the Comptroller's regulations and instructions. Specifically, based on the legislative history regarding the taxation of insurance companies in Maryland, Appellee asserts that it is exempt from corporate income taxation, and is instead responsible only for a premium receipts tax. Appellee notes that while it only receives a small portion of its revenues in the form of premiums, the mere fact that it is *subject* to a premium receipts tax means it should be exempt from paying all other taxes.

B. Analysis

As an unauthorized insurer under § 6-102 of the Insurance Article, taxes are imposed subject to Title 4 of the Insurance Article. However, the Tax Court failed to address the implications of Title 4 when determining Appellee's tax status. Instead, the Tax Court's Memorandum and Order simply stated:

> This case concerns an issue already addressed by this Court in *National Indemnity v. Comptroller of the Treasury*. In *National Indemnity*, this Court held that the plain language of the statute at issue, the respondent's own regulations and other published guidance provided that insurance companies similar to petitioner were not subject to Maryland income tax.

The Tax Court in *National Indemnity* provided no analysis or discussion regarding the applicability of Title 4; there, the Tax Court simply provided analysis pertaining to Title 6 tax implications. While the circuit court in this case did discuss Title 4 – ultimately deciding that Title 4 provides a corporate tax exception to insurance companies such as Appellee – this Court's review is focused solely on the decision-making of the Tax Court.

Just as we defer to an administrative 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. *See Frey v. Comptroller of Treasury*, 422 Md. 111, 138 (2011) (citing *People's Counsel for Baltimore County v. Surina*, 400 Md. 662 (2007)). In this case, however, there is no indication that the Tax Court fully considered Appellee's Title 4 tax implications. As the Tax Court acts as an administrative agency and is tasked with administering the tax statutes of the State of Maryland, it would be illogical for this Court to preemptively determine the implications of Title 4 without first allowing the Tax Court to do so. As such, we believe the best course of action is to vacate the decision of the circuit court and remand for the Tax Court to determine whether Title 4 provides an exception for Appellee.

Accordingly, the judgment of the Circuit Court for Anne Arundel County is vacated and this case is hereby remanded to the Tax Court for proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED, CASE REMANDED TO THE TAX COURT; COSTS TO BE SPLIT BY THE PARTIES.