Circuit Court for Montgomery County
Case No. 465757-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2305

September Term, 2019

SCOTT A. WEBBER

v.

COMPTROLLER OF MARYLAND

Nazarian,
Arthur,
Shaw Geter,

JJ.

Opinion by Nazarian, J.

Filed: November 5, 2021

On March 13, 2019, the Maryland Tax Court issued a written decision affirming the Comptroller's assessments of taxes and interest against Scott Webber for his 2013 and 2014 tax returns. On April 15, 2019, thirty-three days after the entry of that order, Mr. Webber filed a petition for judicial review of the Tax Court's decision in the Circuit Court for Montgomery County. The Comptroller moved to dismiss the petition as untimely under Maryland Rule 7-203(a), which requires a petition for review to be filed within thirty days of the date the Tax Court sends the order to the parties. The circuit court denied the motion, reasoning that Rule 1-203(c)'s "mailbox rule" extended the filing deadline by three days. The circuit court went on to affirm the Tax Court's decision on the merits.

Mr. Webber appeals, and we disagree with the circuit court that the petition was timely. We vacate the judgment and remand with instructions for that court to dismiss the petition.

I. BACKGROUND

After Mr. Webber did not file timely tax returns in 2013 or 2014, the Comptroller issued estimated income tax assessments to him for those years. Mr. Webber filed revision claims on both assessments. The Comptroller conducted an informal review and affirmed both assessments. Mr. Webber filed two cases in the Maryland Tax Court, in which he sought review of the Comptroller's denials of his revision claims. The petitions were consolidated and on February 5, 2019, the Tax Court held a trial. On March 13, 2019, the Tax Court issued a written decision affirming the Comptroller's assessments of taxes and interest for 2013 and 2014, and modifying and reassessing penalties for 2013 and 2014 to

include penalties for late payments and for filing frivolous tax returns. *See* Maryland Code (1988, 2016 Repl. Vol.) §§ 13-701(a) and 13-705(a) of the Tax-General Article ("TG").

On April 15, 2019, thirty-three calendar days after the entry of the Tax Court's written decision, Mr. Webber filed a petition for judicial review in the circuit court. The Comptroller moved to dismiss the petition as untimely, arguing that the thirty-day period for filing a petition for judicial review under Rule 7-203(a) was triggered on March 13, 2019, the day the Tax Court's order was issued and mailed to the parties.

Mr. Webber opposed the Comptroller's motion in a filing titled "Line Providing Notice to the Court."[1] Although he expressly referenced "March 14," in substance, Mr. Webber did not dispute that March 13 was the operative date to trigger the thirty-day period for filing a petition for judicial review:

> 6. Petitioner's *Petition for Judicial Review* was to be filed with the Circuit Court within 30 days, starting from March 14, 2019.
>
> 7. April 14, 2019 is a Sunday.
>
> 8. MD Rule 1-203(a)(2) states that if:
>
> *"(2) the act to be done is the filing of a paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of the day, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or a day on which the office is not open during its regular hours."*
>
> ***
>
> 10. Petitioner's *Petition for Judicial Review* was to be filed

[1] In his "Line," Mr. Webber first took issue with the caption of the Comptroller's motion, which was labeled with the incorrect circuit court case number "4***56***757." The correct circuit court case number is 4***65***757, and the record for this case indicates that the Comptroller's motion *was* filed in case number 465757, and not in case number 456757, notwithstanding the error in the caption of the motion.

> with the Circuit Court on the first day the Clerk of the Court was open the entire day after Sunday, April 14, 2019.
>
> 11. The first day the Clerk of the Court was open the entire day after Sunday, April 14, 2019, was Monday, April 15, 2019.

(Emphasis in original.) But Mr. Webber miscalculated the thirty days—the thirty-day period did not end on Sunday, April 14, 2019. Instead, it ended on Friday, April 12, 2019.

The circuit court denied the Comptroller's motion to dismiss. Implicitly recognizing that the last day of the thirty-day period was April 12, 2019, the circuit court, *sua sponte*, reasoned that Maryland Rule 1-203(c) applied and extended the filing period by three days:

> Maryland Rule 7-203(a) states [] a petition for judicial review shall be filed within 30 days after the latest of (1) the date of the order or action of which review is sought; (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner. According to Tax § 13-529(c), the Tax Court is required by law to send its written order to each party to the appeal and the tax determining agency from which the appeal is taken. See Kim v. Comptroller of Treasury, 350 Md. 527, 533 (1998). Md. Rule 1-203(c) states that "whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period." Therefore, the time for filing the petition[] for judicial review is within 33 days of the date the Tax Court mailed the decision to the Petitioner.

Mr. Webber and the Comptroller then filed briefs addressing the merits of Mr. Webber's petition. In conjunction with those briefs, the Comptroller filed a second motion to dismiss and argued that Rule 1-203(c)'s mailbox rule does not apply. In his response, Mr. Webber argued that under Maryland Rule 2-534, the filing in the Tax Court

of his March 23, 2019 motion for reconsideration, titled "Motion To Dictate Grounds For Court Decision(s), Motion to Alter & Amend, Motion For Summary Judgment, Motion For New Trial, Request For Hearing," tolled the thirty-day period and that it began to run on April 8, 2019, the date the circuit court ruled on that motion. He asserted that his motion for reconsideration raised sixteen issues, and argued that it was the Tax Court's denial of the motion for reconsideration, and thereby its purported resolution of those sixteen issues, that served as the Tax Court's "final" decision:

> There can simply be no question that the **April 8, 2019** decision by the Tax Court for Appeal No. 17-IN-OO-0778(1-2) was the **FINAL DECISION** that set the clock running for appeal [notwithstanding the argument that the 'Final' Final Decision date will not occur until AFTER the Court disposes of ALL 16 matters presented in Petitioner's *Petition(s)*. The Petitioner received his copy of the decision on April 11, 2019, and filed an *Appeal* with this Circuit Court on **April 15, 2019**, seven (7) days following the signing of the Tax Court *Order*, and a mere four (4) days following receipt.

(Emphases in original.)

The circuit court never ruled on the Comptroller's second motion to dismiss, but went on to address the merits of Mr. Webber's petition. On October 1, 2019, the circuit court held a hearing, denied the petition for judicial review, affirmed the decision of the Tax Court on the merits, and, on October 9, 2019, entered a written order to that effect. On December 17, 2019, the circuit court denied Mr. Webber's subsequently-filed motion to alter or amend judgment and motion for a new trial. Mr. Webber timely appealed.

II. DISCUSSION

Mr. Webber, who appears *pro se*, seeks to raise twelve questions on appeal.[2] The

[2] Mr. Webber listed the following Questions Presented in his brief:

> QUESTION 1: Did the Lower Courts fail to properly apply the law when reviewing the Comptroller's failure to follow the law when developing the 'Final Determination' for tax years 2013 and 2014?
>
> QUESTION 2: Did the Lower Courts violate the Appellant's lawful rights to obtain valid discovery?
>
> QUESTION 3: Did the Lower Courts err and exceed their legal authority to require more than a properly signed and certified Maryland tax return, supplemented by a signed and certified Federal IRS tax return, as the legal basis for the determination of a Federal Adjusted Gross Income, sufficient to allow a Maryland return to be completed and processed?
>
> QUESTION 4: As a matter of law, did the Lower Courts err and exceed their legal authority to require copies of non-existent Federal documents as a condition to accept a fully executed Maryland tax return?
>
> QUESTION 5: Did the Lower Courts [and] the Tax Court err, abuse their discretion, and exceed their authority by allowing, considering, and ruling based on evidence and testimony submitted that fell outside the Tax Court's scope of authority for the Account Years before the Court[?]
>
> QUESTION 6: Did the Lower Courts err by basing their decisions and resulting ORDERs on non existent 'evidence'[?]
>
> QUESTION 7: Did the Lower Courts err and abuse their discretion by allowing the Respondent to willfully violate an Order of the Tax Court limiting the Respondent to documents specifically identified during a discovery hearing?
>
> QUESTION 8: Did the Tax Court exceed its legal authority and abuse its discretion in assessing a 'frivolous return' penalty for tax returns that are clearly not frivolous by any accepted definition?
>
> QUESTION 9: Did the Tax Court err, and violate MD Tax Court Rule 9(B) and TG §13-522 by refusing to request a Show

Comptroller rephrases them as three questions and adds a fourth: whether the circuit court erred in denying its motion to dismiss and in not dismissing Mr. Webber's petition for judicial review as untimely filed.[3] We do not reach the substantive questions because we

> Cause Order from the Circuit Court upon proper and timely request by the Petitioner?
>
> QUESTION 10: Did the Lower Courts err as a matter of law by not enforcing Tax Court Rule 11(B) which requires the Court to dictate a brief statement of the grounds for the court decision(s) upon motion of a party?
>
> QUESTION 10: Did the Lower Courts err as a matter of law by not enforcing Tax Court Rule 14(B) and COMAR Title 14, Subtitle 12, and T.G. §13-529(a) and related requirements to set forth, file, and include in the Record of the case, the Tax Court's findings of fact and conclusions of law on which it based its decision and order?
>
> QUESTION 11: Did the Tax Court err by refusing [to] alter and amend clearly erroneous court decision(s) following proper motion by Petitioner pursuant to MD Rule 2-534, and to order a new trial pursuant to MD Rule 2-533?
>
> QUESTION 12: Did the Tax Court err by refusing to answer and resolve all elements of dispute articulated in the Petition(s) over which the Tax Court had jurisdiction?

[3] The Comptroller phrased the Questions Presented as follows:

> 1. Did the circuit court err in denying the Comptroller's motion to dismiss the petition for judicial review, when the petition was filed more than 30 days after the entry and mailing of the Tax Court's final decision?
>
> 2. Did the Comptroller properly assess the taxpayer's 2013 and 2014 Maryland income tax liabilities, using the best information available to the Comptroller, after the taxpayer failed to file timely income tax returns for those tax years and ignored the Comptroller's notices and demands to file such returns?
>
> 3. Was the Tax Court correct in according no evidentiary weight to the taxpayer's delinquent, incomplete, and

agree that Mr. Webber's petition for judicial review was not timely. We vacate the judgment of the circuit court and remand with instructions for the circuit court to dismiss the petition for judicial review.

We review the circuit court's decision on a motion to dismiss *de novo*. *A.C. v. Maryland Comm'n on Civil Rights*, 232 Md. App. 558, 568 (2017) (citations omitted). "[I]ssues of statutory interpretation are legal issues for which we review for legal correctness." *Id.* at 569 (*citing Falls Road Comm'ty Ass'n v. Baltimore Cnty.*, 437 Md. 115, 134 (2014)).

A. This Court May Address The Question Even Though The Comptroller Did Not Cross-Appeal.

As an initial matter, we must decide whether we may address the timeliness question that the Comptroller raises even though he did not file a cross-appeal. The Comptroller acknowledges this potential procedural problem, and asserts that because the circuit court's final judgment on the merits was entirely favorable to the Comptroller, the Comptroller was neither required nor allowed to file a cross-appeal, and cites *Offutt v. Montgomery Cnty. Bd. of Educ.*, 285 Md. 557, 564 n.4 (1979) and *Paolino v. McCormick & Co.*, 314 Md. 575, 583–84 (1989). In those cases, the Court of Appeals explained that "an appeal or

> insufficient[] post-assessment tax "returns," and in assessing "frivolous return" penalties against the taxpayer for filing such documents?
>
> 4. Did the Tax Court properly reject the taxpayer's claim that he had been denied discovery, when the Comptroller voluntarily provide[d] to Mr. Webber copies of all non-privileged documents bearing on his 2013 and 2014 income tax accounts?

cross appeal is impermissible from a judgment wholly in a party's favor," *Paolino*, 314 Md. at 579 (*citing Offutt*, 285 Md. at 564 n.4), but "if the losing party appeals, the winning party may argue as a ground for affirmance matters resolved against it at trial." *Id.* This principle "is merely an aspect of the principle that an appellate court may affirm a trial court's decision on any ground adequately shown by the record." *Offutt*, 285 Md. at 564 n.4. "But one who seeks to attack, modify, reverse, or amend a judgment (as opposed to seeking to affirm it on a ground different from that relied on by the trial court) is required to appeal or cross appeal from that judgment." *Paolino*, 314 Md. at 579 (citations omitted).

We agree that the Comptroller was not required to file a cross-appeal in order to challenge the circuit court's denial of its motion to dismiss. All the same, the principle articulated by *Paolino* and *Offutt* doesn't apply squarely here. The Comptroller is not asking us to *affirm* the trial court's decision on an alternative ground—he asks us to *vacate* the circuit court's judgment on the ground that the circuit court should not have heard the petition for judicial review in the first place. That position can be construed as an effort to "attack, modify, reverse, or amend a judgment," something that, at least on the surface, *would* seem to require an appeal or cross-appeal.

The Comptroller didn't cite, and we didn't find, any cases that address this conundrum directly. But this situation is analogous to the one presented in *Sipes v. Board of Municipal and Zoning Appeals*, 99 Md. App. 78 (1994), in which we held that the appellees' failure to file a cross-appeal did not preclude them from raising the issue of standing in this Court. In *Sipes*, a salvage company filed an application with Baltimore

City's Board of Municipal and Zoning Appeals to alter an existing conditional use of a junk yard. *Id.* at 80. The Board approved the application. *Id.* A number of community organizations petitioned the circuit court to review the Board's decision. *Id.* at 80–81. The salvage company moved to dismiss on the ground that the organizations did not have standing. *Id.* at 81, 84. The circuit court denied the motion to dismiss and ultimately affirmed the Board's decision on the merits. *Id.*

The community organizations appealed and the salvage company, without filing a cross-appeal, raised the question of whether the circuit court had erred in failing to dismiss the petition on standing grounds. *Id.* at 82, 95. We held that it did, and remanded to the circuit court with instructions to dismiss the appeal. *Id.* at 100. We recognized that although standing is not jurisdictional in nature, it nevertheless "go[es] to the very heart of whether the controversy before the court is justiciable" and, therefore, that a party's failure to file a notice of cross-appeal should not prevent us from considering the issue, in the same way as the failure to file a notice of cross-appeal does not prevent us from considering a jurisdictional issue. *Id.* at 87. We also gave weight to the fact that the appellees had raised the standing issue in the circuit court. *Id.*

In this case, the question isn't standing but instead is the limitations period for filing a petition for judicial review. That question is analogous to the question of standing in that, had the Comptroller's motion to dismiss been granted, the circuit court would not have reached the merits of Mr. Webber's challenges to the Tax Court's decision. And as we explain below, the Comptroller's motion to dismiss should have been granted because the

circuit court was without discretion to extend the thirty-day period to file the petition. We may, therefore, consider the limitations question even though the Comptroller didn't file a cross-appeal, and we proceed to that issue next.

B. Mr. Webber's Petition For Judicial Review Was Not Timely Because He Filed It More Than Thirty Days After The Tax Court Issued And Mailed Its Decision.

Section 13-532(a)(1) of the Tax-General Article authorizes judicial review of decisions of the Maryland Tax Court. *See Kim v. Comptroller of Treasury*, 350 Md. 527, 532 (1998). The procedures for bringing a judicial review action are found at Maryland Rules 7-201, *et seq. See id.* Rule 7-203(a) sets forth the time a party has to file a petition for judicial review and provides that a petition must be filed within thirty days after the latest of *either* the date of the agency's order *or* the date the agency sent notice of the order to the petitioner, if such notice was legally required *or* the date the petitioner received such notice, if receipt was legally required:

> (a) Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:
>
> (1) the date of the order or action of which review is sought;
>
> (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
>
> (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

Md. Rule 7-203(a). Subsection (a)(2) of Rule 7-203 applies here: TG § 13-529(c) requires the clerk of the Tax Court to send notice to all parties of the Tax Court's decision in an

appeal by "mail[ing]" to them a certified copy of the Tax Court's written order:

> (a) In each appeal, the Tax Court shall issue a written order that sets forth its decision.
>
> (b) Each order of the Tax Court shall be filed with its clerk.
>
> (c) The clerk of the Tax Court shall certify the order in an appeal and *mail a copy* of the certified order to:
>
> (1) each party to the appeal; and
>
> (2) the tax determining agency from which the appeal is taken.

TG § 13-529 (emphasis added); *see Kim*, 350 Md. at 533. Under the plain language of Rule 7-203(a)(2) and TG § 13-529, a party has thirty days from the date the Tax Court mails the decision to each party and to the tax determining agency to file a petition for judicial review. *See Kim*, 350 Md. at 533 (holding that the date that the Tax Court had made an oral ruling was not the triggering date for the filing of the petition for judicial review and recognizing the triggering event for the filing of a petition for judicial review as "the entry and mailing of the written order . . . ."); *see also Roskelly v. Lemone*, 396 Md. 27, 41 n.18 (2006) (citing *Kim* with approval).

Although we have not found a case addressing the interplay between TG § 13-529 and Rule 7-203(a)(2), other cases have held petitions for judicial review of agency decisions untimely under similar statutes. In *Centre Insurance Co. v. J.T.W.*, the Court of Appeals held that the circuit court was required to dismiss as untimely two petitions for judicial review that were filed after the respective thirty-day periods expired. 397 Md. 71, 78 (2007). Section § 2-215(d) of the Insurance Article required a person to file a petition for judicial review within thirty days after the order of the Maryland Insurance

Administration "'was served on the persons entitled to receive it . . . .'" *Id.* at 82 (*citing* § 2-215(d) of the Insurance Article). The Court of Appeals rejected the petitioner's argument that the thirty-day period ran from the date he had *received* the order, and relied on cases in which the date of *mailing*—not its receipt—triggered the time period for filing a petition for judicial review. *Id.* at 83 (*citing Nuger v. State Ins. Comm'r*, 231 Md. 543, 546 (1963)); *id.* at 86–87 (*citing Renehan v. Public Service Comm'n*, 231 Md. 59, 61 (1963)).

Similarly, in *S.B. v. Anne Arundel Cnty. Dept. of Social Services*, this Court held that "the circuit court had no discretion to extend the thirty day deadline under Rule 7-203(a)(2), even by two days." 195 Md. App. 287, 309 (2010). The relevant order in *S.B.* was governed by § 10-221(c) of the State Government Article, which required the Office of Administrative Hearings to "promptly . . . deliver **or mail** a copy of the final decision or order" to the petitioner. *Id.* at 307 (alteration in original) (*quoting* § 10-221(c) of the State Government Article). We rejected the petitioner's argument that Rule 7-203(a)(3) defined the triggering date as the day he received the order. Instead, Rule 7-203(a)(2) set the triggering date as the date the order had been mailed. We went on to observe, that our holding was consistent with *Colao v. County Council of Prince George's Cnty.*, in which the Court of Appeals explained that the adoption of Rule 7-203 was to "abrogate[] the authority of the circuit court to shorten or extend the 30-day period for filing the petition." 346 Md. 342, 362 (1997). In *Colao,* the Court of Appeals held that the late filing of a petition for judicial review that was the result of a clerical error was subject to dismissal

under Rule 7-203. *Id.* at 363. The Court explained that Rule 7-203's deadline is "in the nature of an absolute statute of limitations, subject to waiver by failure of a respondent to raise the defense in a proper manner but not subject to discretionary extension." *Id.* at 364. Accordingly, the court held that the circuit court had erred in allowing the petitioners to seek review of an agency decision after the thirty-day period expired. *Id.* at 365.

In this case, the Tax Court issued its decision on March 13, 2019. It was mailed to the parties the same day. Thirty days from March 13, 2019 was Friday, April 12, 2019. Mr. Webber filed the petition for judicial review on Monday, April 15, 2019, thirty-three days after the Tax Court issued and mailed its decision, and the petition was untimely. The circuit court was without discretion to extend the thirty-day period and erred in denying the Comptroller's motion to dismiss. *Centre Insurance*, 397 Md. at 78; *Kim*, 350 Md. at 533; *Colao*, 346 Md. at 365; *S.B.*, 195 Md. App. at 309; *see also Sipes*, 346 Md. at 98–99 (holding that the circuit court erred in granting motion to intervene, where the motion to intervene was filed after the thirty-day period for filing a petition for judicial review had expired, and the petitioners in the initial, timely-filed petition for judicial review lacked standing).

C. Rule 1-203(c)'s "Mailbox Rule" Does Not Extend Rule 7-203's Thirty-Day Period.

The circuit court extended the filing period because, it found, the "mailbox rule" in Rule 1-203(c) added three days to the thirty-day period. We disagree. Maryland Rule 1-203(c) adds three days when the triggering event for that period is "service upon the party" of a document and when that "service is made by mail":

> (c) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period *after service upon the party* of a notice or other paper and *service is made by mail*, three days shall be added to the prescribed period.

Md. Rule 1-203(c) (emphasis added). This provides "[a]ll responding parties . . . the same amount of time from the triggering event within which to act." *Chance v. Washington Metropolitan Area Transit Authority*, 173 Md. App. 645, 656 (2007).

The Comptroller did not cite, and we did not find, any Maryland case that squarely addresses the applicability of Rule 1-203(c) to the petitions for judicial review of Tax Court decisions, although, as we explain below, several Maryland cases in analogous contexts provide guidance. Resolution of the question ultimately depends upon whether the Tax Court "mailing" a copy of the written order TG § 13-529(c) qualifies as "service . . . by mail" under Rule 1-203(c). We hold that it doesn't.

We addressed a similar question in *Chance*, where the question was whether Rule 1-203(c) applied to Section 9-737 of the Labor and Employment Article ("LE"), which governs the time period for filing a petition for judicial review from a decision of the Workers' Compensation Commission. 173 Md. App. at 652. Section 9-737 provided that an employer or employee "may appeal from the decision of the Commission provided the appeal is filed within 30 days after the date of the mailing of the Commission's order . . . ." LE § 9-737. We held that Rule 1-203(c) did not apply because "service by mail does not commence the running of the thirty-day appeal period under Section 9-737; rather the 'date of the mailing' does." *Id.* at 655. In other words, we recognized a distinction between

situations where the triggering event is "service by mail" versus "date of the mailing."

In reaching that conclusion, we relied *first* on our holding in *Kamara v. Edison Bros. Apparel Stores, Inc.*, 136 Md. App. 333, 337 (2001), that Rule 1-203(c) does not apply to the thirty-day time period for filing an appeal from a final judgment under Rule 8-202. *Chance*, 173 Md. App. at 654. Rule 8-202(a) provides that "notice of appeal shall be filed within 30 days after the entry of the judgment or order from which the appeal is taken," and in *Kamara* we reasoned that Rule 1-203(c) does not apply to extend the thirty-day period because "[t]he plain language of Rule 1-203(c) states that it applies to service by mail, not to an entry by the court." 136 Md. App. at 337. Although Rule 8-202 does not contain an explicit requirement that the court "mail" notice of final judgment to the party, Rule 1-324(a) did require the clerk to "send" a copy of the order:

> (a) Upon entry on the docket of (1) any order or ruling of the court not made in the course of a hearing or trial or (2) the scheduling of a hearing, trial, or other court proceeding not announced on the record in the course of a hearing or trial, *the clerk shall send* a copy of the order, ruling, or notice of the scheduled proceeding to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made.

Md. Rule 1-324(a) (emphasis added). *Kamara* observed that Rule 1-203(c) does not apply "even when mail is used, as it is in Rule 8-202, to notify the parties of the court's action . . . ." *Id.* at 338.

Second, *Chance* recognized the potential confusion caused by the terms "service" and "mailing"—that is, it acknowledged the possibility that those terms may "differ[] in form, but not in substance." 173 Md. App. at 655. To resolve that dilemma, *Chance*

examined "the purpose of Rule 1-203(c)" and concluded that it "is to provide an equalization factor, so that when a pleading or other paper is required to be served upon a party, the actual time for a response will be the same, regardless of the manner of service." *Id.* at 656. We looked specifically at Rule 1-321, which governs service of papers other than original pleadings. Under that Rule, service can be accomplished in either of two ways—by delivery or by mailing—and service by mail "is complete upon mailing." But a party's actual receipt by delivery, by definition, usually happens *earlier in time* than a party's receipt by mailing. Therefore, when a party has a prescribed time within which to act after service, the length of that period would differ based on whether they were served by delivery or mail. *Id.* at 655.

Take, for example, a situation in which the parties are required to file responses to a motion within fifteen days after service. If the motion is delivered to Party A by hand on January 1, Party A has fifteen days from that date to respond. If the motion is mailed to Party B on January 1, then, were it not for the operation of Rule 1-203(c), Party B would still only have fifteen days from the date of mailing to respond, even if Party B didn't receive the motion until several days after January 1. Rule 1-203(c) allows a cushion of three days to account for the extra time it takes a paper to be delivered by mail, thereby (roughly) equalizing the time that Party A and Party B have to respond to the same motion. *See id.* at 655–56 (citing a similar example from Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 21 (3d ed. 2003)); *see also* Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 40–41 (5th ed. 2019)).

In contrast, in cases where, as here, the triggering event is a single date—*i.e.*, the date on which the Tax Court's decision is mailed to *all* parties—all responding parties have the same amount of time to act. *See id.* at 656. In *Chance*, we held that under LE § 9-737, the "'date of the mailing' is the singular event from which the thirty-day appeal period" from an order of the Workers' Compensation Commission is measured, and that therefore, "Rule 1-203(c) is not needed to equalize the actual time within which an appeal can be noted." *Id.* at 657. Likewise, in this case, TG § 13-529(c) requires the clerk of the Tax Court to certify the Tax Court's decision and "mail a copy" of the order to (1) each party to the appeal and (2) the tax determining agency. This gives all parties and the tax determining agency (roughly) the same period of time in which to file a petition for judicial review under Rule 7-203(a)(2). Just as Rule 1-203(c) didn't apply in *Kamara* and *Chance*, it also doesn't apply here to extend the time to file a petition for judicial review under Rule 7-203(a) and TG § 13-529(c). *Kamara*, 136 Md. App. at 338; *Chance*, 173 Md. App. at 654–55; *see also Sterling v. Atlantic Automotive Corp.*, 399 Md. 375, 384 (2007) (holding that Rule 1-203(c)'s mailbox rule does not apply to the filing of a petition for writ of certiorari under Rule 8-302, which requires that the petition must be filed "not later than 15 days after the Court of Special Appeals issues its mandate"; reasoning that Rule 1-203(c) "refers to a prescribed period after service upon a party," and "the Court of Special Appeals . . . is not required to *serve* the mandate upon the parties as a prerequisite to its issuance or effective date." (emphasis in original)).

As he did in response to the Comptroller's second motion to dismiss, Mr. Webber

argues here that the date the Tax Court issued the order denying his motion for reconsideration—April 8, 2019—was the triggering date for the thirty-day period. But that date doesn't trigger the period: Rule 7-203(a)(1) provides that the "date of the order or action of which review is sought" is the triggering date. And the "order or action of which review is sought" in this case is the Tax Court's March 13 order affirming the Comptroller's assessments of taxes and interest for 2013 and 2014. Also, Mr. Webber's reliance on Maryland Rule 2-534 is misplaced—that Rule applies to motions filed in the circuit court, not to motions filed before administrative agencies such as the Tax Court. *Cf. Hercules Inc. v. Comptroller of the Treasury*, 351 Md. 101, 108–09 (1998) (holding that the time for appeal was continued after the taxpayer moved the Tax Court to withdraw its opinion in order to permit a motion for reconsideration, which was denied, and that the thirty-day period began to run on the date the original order was reinstated).

We will not consider Mr. Webber's assertions that the Clerk of the Tax Court did not in fact mail the March 13 order on the same day it issued, but instead mailed it on March 15, because he didn't raise that argument in the circuit court and thus didn't preserve it. Md. Rule 8-131(a). Instead, in his response to the Comptroller's first motion, his argument assumed that the triggering date was March 13, and in his response to the second motion, he argued that the triggering date was April 8. Neither response asserted that the Tax Court didn't mail the order on March 13. Mr. Webber also responds to the timeliness issue by asserting that the Comptroller's response to his petition for judicial review was itself untimely and that the Comptroller obtained the declaration of the Clerk of the Tax

Court through an improper *ex parte* communication.[4] Mr. Webber never raised those arguments in the circuit court either, and we likewise will not consider them. Md. Rule 8-131(a). But as to those assertions, we observe that (1) the timeliness of the Comptroller's response to the petition for judicial review is irrelevant to the question of whether the petition itself was timely and (2) the declaration of the Clerk of the Tax Court was not necessary to the circuit court's conclusion that the triggering date was March 13—as observed above, Mr. Webber did not dispute that the Tax Court's order was issued and mailed on March 13. Finally, Mr. Webber again raises his assertions about the Comptroller's motion to dismiss having been filed in the wrong case. As we observed above (p.2, n.1), our review of the record does not support that assertion, and in any event,

[4] Mr. Webber directs this argument at a declaration the Comptroller attached to its motion to dismiss. The declarant was the Clerk of the Tax Court, who attested that it is the "uniform habit and practice of the Clerk's office to mail certified copies of a written decision on the same day that it is dated." The Clerk also attested that he had "a specific recollection of the issuance and mailing of the certified copies of the Tax Court's written decision in this case" because of "an irregularity that occurred in [a] different, but related consolidated case[] involving [Mr. Webber] on the same day . . . ."

The Clerk went on to explain that the order in a related case had been filed and mailed the same day, but that it had been dated incorrectly: "[i]nstead of being dated March 13, *2019* the written decision for the 702 petitions inadvertently was dated March 13, *2018*." (Emphasis in original.) The Clerk explained that the office "immediately corrected the error by issuing a corrected written decision for the 702 petitions" that was signed by the judge and dated March 14, 2019, then certified and mailed to Mr. Webber and sent via interoffice mail to the Comptroller. But "[t]he written decision issued for the 778 petitions [*i.e.*, those at issue in this case] was correctly dated March 13, 2019 and mailed on that date to Mr. Webber and transmitted through interoffice mail to the Comptroller's counsel," and "[f]or that reason, there was no cause for the Tax Court to issue a corrected decision for the 778 petitions, and accordingly, none was issued."

Mr. Webber appears to concede that point in a subsequent filing.[5]

Finally, Mr. Webber also makes the following broad objection to the Comptroller's timeliness argument:

> For an amazing five [5] full pages of Appellee's Brief[pp.8-12] [the Comptroller] desperately attempts to find some way to disqualify or obscure the overwhelming factual evidence and issues for which he has no valid answers, by trying to argue whether the Appellant's *Petition* needed to be filed on Friday evening [4/12/19], rather than Monday morning [4/15/19], based on a *Final Order* by the Tax Court issued 4/8/19.[App.316]
>
> Appellee's problematic passage preserves his persistent pattern of petty and petulant pitter-patter, pushing possible procedural pursuits past proper points of process and protocol in present and past proceedings before this Honorable Court. This argument is literally a rehash of [the Comptroller's] decade-long obsession with looking for the smallest, most petty, technical reason to defeat the Appellant procedurally, without having to face – or address – the merits of the matters, and in doing so, [the Comptroller] shows incredulous [sic] disregard, not only to a struggling *pro se* litigant, but also to this Honorable Court, which must now waste additional precious time and resources settling technicalities, rather than resolving the substantive matters that must wait in line.

We hear Mr. Webber's frustration. The dismissal of his petition for judicial review

[5] On January 20, 2021, Mr. Webber filed in this Court a "Motion to Supplement Statements in Reply Brief." He apparently filed the motion in response to a letter he had received from the Comptroller, which he attached to his motion, asserting that his reply brief had made four false statements. Mr. Webber's motion to supplement again raises his assertions that the March 13 letter was not mailed until March 15; that the Comptroller obtained the declaration of the Clerk of the Tax Court through improper *ex parte* communication; that the Comptroller's response to his petition for judicial review was untimely filed; and that the Comptroller's motion to dismiss was filed in the wrong case (although he acknowledges that the motion was filed correctly). We grant the motion but reject the assertions he raises for the same reasons we have stated elsewhere.

because he missed a filing deadline by one business day seems a harsh outcome. But the Court of Appeals addressed that very concern in *Colao* by observing that the treatment of Rule 7-203(a)'s thirty-day filing period as an absolute state of limitations avoids lingering litigation challenges to decisions of administrative agencies. *Colao*, 346 Md. at 356. The Court observed that "the basic battle" in administrative agency decisions "is fought at the agency level," and went on to describe the limited nature of the role of the courts in reviewing those decisions:

> Lest this result seem harsh or unfair, it is worth remembering that one of the important goals of the new procedure was to make the judicial review process more efficient. The basic battle in these cases is fought at the agency level. Whether acting under an administrative procedures act or under common law principles, ***the court's role is essentially limited to assuring that the agency acted lawfully, that there was substantial evidence to support its finding, and that it was not arbitrary. This Court was concerned that these cases, having already been through an often exhaustive administrative process, not linger unnecessarily in the court system***. Making the 30-day requirement for filing the petition in the nature of an absolute statute of limitations, subject to waiver by failure of a respondent to raise the defense in a proper manner but not subject to discretionary extension, was in furtherance of that objective . . . .

Id. at 364 (emphasis added).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT TO PAY COSTS.

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

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2305s19cn.pdf