

MICHAEL J. HOLZHEID, *et al.*,

Plaintiffs,

v.

COMPTROLLER OF MARYLAND,
et al.,

Defendants.

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY
* Civil Action No. 24-C-15-005700

* * * * *

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AMENDED COMPLAINT**

In this civil action, the plaintiffs challenge the amount of the interest portion of income tax refunds received, or to be received, from the Comptroller of Maryland in response to the United States Supreme Court’s decision in *Comptroller of Maryland v. Wynne*, ___ U.S. ___, 135 S. Ct. 1787, 1803-06 (2015). However, instead of bringing their challenge through the exclusive administrative mechanism established by the General Assembly to hear such challenges – including an appeal to the Tax Court followed by judicial review, if necessary – the plaintiffs improperly bring an action for declaratory judgment, damages, and injunctive relief.

In *Wynne*, the Supreme Court held that Maryland’s personal income tax scheme, Md. Code Ann., Tax-Gen. §§ 10-103, 10-703, violated the dormant Commerce Clause of the federal constitution by failing to give Maryland residents an income tax credit against the “county” portion of Maryland income tax for taxes paid to other States. 135 S. Ct. at 1803-06. In anticipation of this outcome, in § 16 of the Budget Reconciliation and Fairness Act of 2014 (the “BRFA”) the Maryland General Assembly directed the

Comptroller to set the interest rate on tax refunds resulting from the *Wynne* decision according to a formula that results in a lower rate than that pertaining to other income tax refunds. In this action, the plaintiffs present constitutional challenges to the rate of interest established in the 2014 BRFA and seek refunds of interest that they claim is due for Maryland income taxes that they overpaid to the State.¹ Because the plaintiffs have failed to exhaust their exclusive administrative remedy, the Court should dismiss the action.

STATEMENT OF THE CASE

Factual Background

The named plaintiffs each filed Maryland income tax returns in prior years on which they reported income that was subject to income tax in both Maryland and another jurisdiction.² (Amend. Compl. ¶¶ 25, 30, 31, 37, 38, 39.) The plaintiffs paid income taxes to these other jurisdictions. (Amend. Compl. ¶¶ 27, 31, 39.) Each plaintiff did not

¹ Plaintiff Michael J. Holzheid filed the initial Class Action Complaint on November 13, 2015. On December 7, 2015, the parties filed a consent motion for extension of time to answer, which provided that the defendants would have until 30 days after the filing of an amended complaint to file their responsive pleading. (Dkt. No. 4/0.) The Court granted the consent motion on December 18, 2015. (Dkt. No. 4/1.) Plaintiffs Michael J. Holzheid, Bruce Feinerman, Jeffrey Grill, and Arielle Grill, filed the Amended Class Action Complaint on December 10, 2015.

² The facts set forth in this memorandum are based on the allegations contained in the Amended Class Action Complaint and the affidavit of Debora Gorman, Assistant Director, Compliance Division, Office of the Comptroller of Maryland, which is attached as Defendants' Motion to Dismiss Exhibit 1 ("Mot. Dismiss Ex. 1").

receive a credit on the Maryland income tax returns for the full amount of the taxes paid to the other jurisdictions. (Amend. Compl. ¶¶ 26, 27, 31, 32, 39.) The plaintiffs filed amended Maryland income tax returns on which they claimed an additional credit against the county portion of their Maryland personal income tax. (Amend. Compl. ¶¶ 27, 28, 31, 32, 39.) As a result of the additional credit, the plaintiffs claimed refunds of Maryland taxes that they claimed were mistakenly overpaid in prior years, along with applicable interest. (Amend. Compl. ¶¶ 27, 29, 32, 39.) Mr. Holzheid filed a refund claim for tax year 2009. (Amend. Compl. ¶ 27.) Mr. Feinerman filed refund claims for tax years 2010, 2011, 2012 and 2013. (Amend. Compl. ¶ 32.) The Grills filed refund claims for tax years 2008, 2009, 2010, 2011, 2012, 2013 and 2014. (Amend. Compl. ¶ 39.)

Mr. Holzheid has not, as of the filing of the complaint, received a tax refund for tax year 2009. (Amend. Compl. ¶ 43.) Mr. Feinerman has received refunds, with interest in amounts lower than he claims are due, for tax years 2010 and 2011. (Amend. Compl. ¶¶ 33, 34, 44.) Mr. Feinerman has not received, as of the filing of the complaint, refunds for tax years 2012 and 2013. (Amend. Compl. ¶ 35.) The Grills have received refunds, with interest in amounts lower than they claim are due, for tax years 2008, 2009, 2010 and 2011. (Amend. Compl. ¶ 44, 47, 49.) The Grills have not received, as of the filing of the complaint, refunds for tax years 2012, 2013 and 2014. (Amend. Compl. ¶ 47.)

Maryland's Statutory Scheme

Maryland law contains a simple and efficient set of procedures for persons to file for a refund of taxes paid. Tax-Gen. §§ 13-901 – 13-906. That process begins with the filing of a claim under oath on forms that are required by the Comptroller, along with supporting documentation. Tax-Gen. § 13-902. The Comptroller investigates and may, if requested by the claimant, conduct a hearing. Tax-Gen. § 13-904(a). The Comptroller will then provide the claimant notice of the determination of the claim for refund. Tax-Gen. § 13-904(b). The Comptroller then pays the claim for any allowed refund. Tax-Gen. § 13-905(a). In addition, the Comptroller will pay interest on the allowed refund, as sanctioned by the General Assembly. Tax-Gen. § 13-603.

If the Comptroller determines that any part of a refund claim is disallowed, the taxpayer may appeal that determination to the Maryland Tax Court. Tax-Gen. § 13-510(a)(6). Such appeal must be filed within 30 days of the date of the notice of determination. Tax-Gen. § 13-510(a). If the Comptroller does not make a determination on a claim for refund within 6 months after the claim has been filed, the taxpayer need not wait for the determination but may consider the claim disallowed and may file an appeal of the disallowance to the Maryland Tax Court. Tax-Gen. § 13-510(b).

Proceedings in the Maryland Tax Court are “heard de novo and conducted in a manner similar to a proceeding” in a Maryland circuit court proceeding without a jury. Tax-Gen. § 13-523. The Maryland Tax Court may issue rulings on questions of law

submitted by litigants, Tax-Gen. § 13-525, and may submit fact issues to a local circuit court for determination by a jury, Tax-Gen. § 13-526. The Tax Court has full power to hear, try, determine, or remand any matter before it. Tax-Gen. § 13-528. The Tax Court's final disposition of a matter must be set forth in a written decision and filed with the clerk of the court. Tax-Gen. § 13-529. *See Frey v. Comptroller*, 422 Md. 111, 182-86 (2011) (explaining Maryland tax procedures); *Groff v. Maryland*, 639 F. Supp. 568, 574-75 (D. Md. 1986) (same).

Final decisions of the Maryland Tax Court are subject to judicial review in accordance with the Maryland Administrative Procedure Act. Tax-Gen. § 13-532(a). Decisions of reviewing circuit courts are appealable to the State's intermediate appellate court, and from there are subject to discretionary review by the Court of Appeals and the Supreme Court of the United States. Md. Code Ann., State Gov't § 10-223(b); Md. Code Ann., Cts. & Jud. Proc. § 12-201; 28 U.S.C. § 1257(2); *Groff*, 639 F. Supp. at 575.

None of the plaintiffs have filed an appeal to the Maryland Tax Court of any determination made by the Comptroller on their respective refund claims. (Mot. Dismiss Ex. 1.)

ARGUMENT

THE PLAINTIFFS HAVE FAILED TO EXHAUST THEIR EXCLUSIVE ADMINISTRATIVE REMEDY AND THEREFORE THE COMPLAINT MUST BE DISMISSED.

This Court should dismiss the plaintiffs' amended complaint because this case involves "a clear failure to exhaust an available administrative remedy." *State Ret. & Pension Sys. of Md. v. Thompson*, 368 Md. 53, 66-67 (2002). When a plaintiff has failed to exhaust the administrative remedy provided by statute, the court must dismiss the action because the exhaustion doctrine bars the court from exercising jurisdiction. *Id.*; *Comptroller v. Zorzit*, 221 Md. App. 274, 296 (2015).

The Court of Appeals "has consistently treated the special statutory administrative remedies for the determination of tax questions to be exclusive or primary." *Furnitureland S., Inc. v. Comptroller*, 364 Md. 126, 133 (2001) (citations omitted). This includes determinations by the administrative body, here the Maryland Tax Court, of the constitutionality of a tax statute as applied as well as the enactment's constitutionality as a whole. *Prince George's County v. Ray's Used Cars*, 398 Md. 632, 651 (2007) (stating that the Court of Appeals "has consistently held that exclusive or primary administrative remedies must be pursued and exhausted, before resort to the courts, in cases presenting constitutional issues") (citations omitted); *White v. Prince George's Cnty.*, 282 Md. 641, 649 (1978); *id.* at 648-54 (action to recover taxes paid, based on claim that the actions of county to collect the tax violated the taxpayers constitutional rights, must proceed through the exclusive, comprehensive remedial scheme for the

refund of taxes erroneously paid); *Rapley v. Montgomery Cnty.*, 261 Md. 98, 103-10 (1971) (transfer taxes paid under protest and challenged as unconstitutional may not be recovered in a common law action); *Zorzit*, 221 Md. App. at 296 (citing *Furnitureland S., Inc.*, 364 Md. at 134 (holding that taxpayers who challenged tax lien on due process grounds were required to exhaust administrative remedy). Furthermore, as to claims under 42 U.S.C. § 1983, taxpayers must exhaust their administrative remedies prior to filing such an action in a court. *Strescon Industries*, 664 F.2d 929, 931 (4th Cir. 1998); *Mayor and City Council of Baltimore v. Vonage America, Inc.*, 544 F. Supp. 2d 458, 465 (D. Md. 2008); *Bancroft Info. Grp. v. Comptroller*, 91 Md. App. 100, 113-14 (1992).

Section 3-409 of the Declaratory Judgment Act provides that where “a statute provides a special form of remedy for a specific type of case,” a plaintiff must pursue the statutory remedy “in lieu of a proceeding under [the Declaratory Judgment Act].” Cts. & Jud. Proc. § 3-409. As the Court of Appeals has explained in applying this provision to the statutory scheme in Title 13 of the Tax-General Article, “where there exists a special statutory remedy for a specific type of case, and the Legislature intends that remedy to be exclusive or primary, a party may not bypass the special statutory remedy by bringing an action for a declaratory judgment or for equitable relief.” *Furnitureland S., Inc.*, 364 Md. at 133 (citations omitted). Thus, it has long been “well settled” that the applicable provisions of the Tax-General Article, when read in conjunction with § 3-409 of the Maryland Uniform Declaratory Judgment Act, “demonstrate[] the Legislature’s intent

that tax disputes be resolved through the procedures established in . . . §§ 13-510 through 13-529” of the Tax-General Article, rather than under the Declaratory Judgment Act. *Bancroft Info. Grp., Inc. v. Comptroller*, 91 Md. App. at 115 (citing Md. Code Ann., Cts. & Jud. Proc. § 3-409; Tax-Gen. §§ 13-514, 13-505); *see Zorzit*, 221 Md. App. at 296-97 (“The General Assembly has unambiguously expressed its intent to preclude judicial intervention in tax cases.”) (citing Tax-Gen. § 13-505) (prohibiting certain legal actions against the State or any officer or employee of the State to enjoin or prevent the assessment or collection of a tax)); Tax-Gen. § 13-514 (requiring a person to exhaust administrative remedies before appealing to the Maryland Tax Court)); and Tax-Gen. § 13-901(a)(2) (portions of the refund statute)).

Like the refund itself, “interest on a tax refund is a matter of grace which can only be authorized by legislative enactment.” *Comptroller v. Fairchild Indus., Inc.*, 303 Md. 280, 284 (1985).³ Consequently, because any question about interest is necessarily tied to a refund request, the same exclusive remedy for recovery of taxes paid must similarly apply to a request for interest on that refund. *Comptroller v. Science Applications Int’l Corp.*, 405 Md. 185, 195 (2008) (“Because the question of interest on the refund is part of the inquiry resulting from an appeal of the disallowance of the claim for refund, the Tax Court had jurisdiction to consider the interest issue . . .”).

³ In *Fairchild* the only issue appealed and adjudicated before the Maryland Tax Court was the issue of interest on the refund, entitlement to the refund of the tax not being in dispute and having been paid prior to the initiation of the appeal.

Maryland law provides an exclusive administrative remedy for taxpayers aggrieved by the Comptroller's actions with respect to their tax refund claims: appeal to the Maryland Tax Court, followed by judicial review as necessary. The procedures set out in Maryland law are recognized as providing for a "plain, speedy and efficient remedy" for taxpayers who disagree with the Comptroller's determinations. *Zorzit*, 221 Md. App. at 300-01 ("The Maryland tax code provides a full range of administrative procedures. Administrative remedies are not inadequate so as to authorize judicial intervention before the exhaustion of the remed[ies] merely because [they are] attended with delay, expense, annoyance, or even some hardship." (internal citations and quotation marks omitted).) *See Strescon Industries v. Cohen*, 664 F.2d at 931 (requiring plaintiffs to exhaust state administrative remedies on their federal constitutional claims); *Vonage America, Inc.*, 544 F. Supp. 2d at 465 (same). This is the same process that was followed by the taxpayers in *Wynne*. *Wynne*, 135 S. Ct. at 1793 (reciting that the Comptroller denied the refund claim, the Hearings and Appeals Section of the Comptroller's Office slightly modified their assessment, the "Maryland Tax Court also affirmed, but the Circuit Court for Howard County reversed on the ground that Maryland's tax system violated the Commerce Clause"). Those taxpayers were ultimately able to not only make, but to prevail on, their constitutional challenges. *Id.*

The plaintiffs' action is based solely on their claim for additional interest on certain refund claims they have made to the State of Maryland. They contest the validity

and application of certain statutory provisions that, by legislative grace, permit interest under certain circumstances on income tax refunds. Each of the plaintiffs is alleged to have filed income tax refund claims with the State. Each of the plaintiffs is alleged to either have received the income tax refund and some interest, or the plaintiffs anticipate receipt of such income tax refund and some interest. All of the plaintiffs further allege that they are due more interest than they have been paid or will be paid.

As described above, it is precisely because the General Assembly enacted a remedial scheme for a taxpayer to recover taxes erroneously paid, and interest on those erroneously paid taxes, that the plaintiffs have any right to seek a refund. The plaintiffs themselves rely on this remedial scheme to allege “a vested property interest in any and all interest that accrues on a tax refund.” (Amend. Compl. ¶ 2.) It is this same remedial scheme that provides an efficient and precise manner to appeal the disallowance of the plaintiffs’ claims. The plaintiffs cannot escape or avoid the legal requirement that they exhaust the exclusive and primary administrative remedies provided for in Maryland’s tax statutes to recover that refund or the interest they claim is due on that refund. There exists no permissible basis upon which the plaintiffs can legally avoid the remedial scheme and pursue relief in this civil action. Instead, their “administrative remedy must be exhausted before resort to the courts.” *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 484 (2011); see *Board of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 443 Md. 199, 222 (2015) (stating that “absent a specific legislative


grant of review authority or immediate and irreparable harmful legal consequences, our administrative law jurisprudence requires a party to exhaust all exclusive administrative remedies and await a final administrative decision before filing suit in the circuit court”).

CONCLUSION

The motion to dismiss should be granted.

Respectfully submitted,

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Attorney General of Maryland



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January 8, 2016

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* * * * *

CERTIFICATION OF CUSTODIAN OF RECORDS

I, Debora Gorman, Assistant Directory, Compliance Division, Comptroller of Maryland, hereby certify that:

1. I am over eighteen years of age and competent to testify in this matter.
2. I am the Assistant Director, Compliance Division, and Custodian of Records or am otherwise qualified to administer the records for the Compliance Division, Comptroller of Maryland.
3. I have conducted a thorough search of the records of the Comptroller of Maryland in regards to the taxpayer accounts of the Michael J. Holzheid, Bruce Feinerman, Jeffrey Grill and Arielle Grill ("Plaintiffs").
4. The records of the Comptroller of Maryland do not evidence the Plaintiffs ever filing appeals of any determinations made by the Comptroller of Maryland on their respective refund claims or the claims for interest, as described in the Amended Complaint filed in the above captioned matter, pursuant to Annotated Code of Maryland, Tax General §13-508.

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.**

Signature and Title: *Diana Goussard*, *Custodian of Records and
Assistant Director, Compliance
Division*

Dated: *January 7, 2016*