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IN THE INDIANA TAX COURT

JOSEPH R. GUY, P.C.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 22T-TA-00005
	)	
INDIANA DEPARTMENT OF STATE REVENUE,	)	
	)	
	)	
Respondent.	)	

ORDER ON RESPONDENT'S MOTION TO DISMISS

FOR PUBLICATION
May 2, 2022

WENTWORTH, J.

The Indiana Department of State Revenue has moved to dismiss Joseph R. Guy, P.C.'s appeal, claiming that the Court lacks subject matter jurisdiction. The Court grants the Department's motion.

BACKGROUND

On November 1, 2021, Guy electronically filed a withholding tax return for the period from September 1, 2021, to September 30, 2021, via the Indiana Taxpayer Information Management Engine ("INTIME"). (See Pet'r Pet. Original Tax Appeal Final

Determination Indiana Dep't of State Revenue ("Pet'r Pet") ¶ 7.) That same day, Guy paid the corresponding tax liability of $688.26 to the Department. (See Pet'r Pet. ¶ 7.) See also IND. CODE § 6-3-4-8(a)-(b) (2022) (indicating that withholding tax is paid on a monthly basis).)

On December 7, 2021, the Department sent Guy a "Notice of Failure to File," stating that Guy had not submitted a withholding tax return for the period at issue and, if the return was not filed by January 6, 2022, the Department would prepare a BIA assessment, i.e., "a tax assessment based on the best information [the Department] ha[d]." (See Pet'r Resp. Dep't Mot. Dismiss ("Pet'r Resp. Br.") ¶ 1, Ex. A.) The Notice also stated that if Guy had a tax liability for the period at issue, "a 20% penalty may be assessed[] and interest [would] accrue from the date the return was due." (Pet'r Resp. Br., Ex. A.)

On December 13, 2021, Guy sent the Department a letter explaining that it had, in fact, filed a withholding tax return for the period at issue, but mistakenly labeled it for the October 2021 tax period. (See Pet'r Resp. Br. ¶ 2, Ex. B.) Guy attached its September and October 2021 payroll ledgers and the related INTIME payment receipts to the letter to show that it had already paid the withholding tax liability of $688.26 for the period at issue and $984.03 for the October 2021 tax period. (See Pet'r Resp. Br. ¶ 2, Ex. B.) Guy did not receive a response from the Department. (See Pet'r Resp. Br., Ex. C.)

On January 20, 2022, when using INTIME to file a withholding tax reconciliation form ("WH-3") for the December 2021 tax period, Guy discovered that the Department's records indicated there was an outstanding withholding tax liability of $1273.22 for the period at issue. (See Pet'r Resp. Br. ¶ 3, Ex. C.) Guy promptly emailed the Department,

restating the chronological record of events and declaring that it would "NOT BE ABLE TO SUBMIT the WH-3 until INTIME and [the Department] GET THE FACTS correct." (Pet'r Resp. Br., Ex. C at 1.) Less than 24-hours later, the Department instructed Guy to send a message through INTIME to receive assistance with the issue. (See Pet'r Resp. Br. ¶ 3, Ex. C at 4.) It is unclear whether Guy followed the Department's instructions. (See Pet'r Resp. Br. at ¶¶ 1-9.)

On February 11, 2022, the Department sent Guy a "Statement of Account" and a "Notice of Proposed Assessment," stating that Guy owed additional withholding tax, penalties, and interest in the amount of $1,409.77 for the period at issue. (See Pet'r Resp. Br. ¶¶ 4-5, Exs. D-E.) Additionally, the Proposed Assessment provided:

> You must send correspondence supporting your original return, pay the full amount assessed, or protest this assessment in writing within 60 days (by April 12, 2022). For more information on protesting the tax assessment, visit www.in.gov/dor/legal-resources/appeals.

(Pet'r Resp. Br., Ex. D (emphasis added).)

On February 15, 2021, Guy sent the Department another letter to explain that the BIA assessment had been erroneously issued:

> We **mislabeled** the month that we were paying [withholding] taxes on twice in 2021. The January withholding[tax return was] mislabeled as February. This mistake did not get worked out until August[] 2021 when the [Department] said I don't owe any money. . . . Unfortunately, we made the same **mislabeling** mistake in late October/early November when we were filing and paying for September state and county withholding[taxes].

(Pet'r Resp. Br. ¶ 7, Ex. F.) The Department responded by email the same day, confirming its receipt of Guy's letter and explaining that it may take "up to 15 business days for [the] response to be processed." (See Pet'r Resp. Br. ¶ 7, Ex. F at 2.)

On March 9, 2022, Guy received an INTIME message from the Department, which

in relevant part stated:

> We received a request to update[and] move funds for withholding dates 09-30-21/10-31-21[. W]e moved funds to [the September] date[,] but . . . [because a withholding tax return] was never filed[,] the balance is not updated[.] . . . [W]e can not [sic] remove the second [withholding tax return because it] needs to be amended as 0 to show the only one filed is for the amount that is [the] credit for the payment amount [of] $984.03[. B]elow [are the] steps for [filing an] amended return, then you can update and file the WH-3[. A]ll [withholding tax returns] have to be accurate, filed, [and] paid before you can upload . . . and file [the WH-3.]

(Pet'r Resp. Br. ¶ 8, Ex. G.) That same day, Guy filed an amended withholding tax return for the period at issue that reported a tax liability of zero. (See Pet'r Resp. Br. ¶ 8.) The next day, on March 10, the Department sent Guy a "Notice of Balance Due" that reduced Guy's withholding tax liability for the period at issue from $1266.52 to $578.26:

> Your partial payment has been received and processed by the Department. . . . The amount shown as balance due must be remitted to the [D]epartment prior to April 12, 2022[,] or your account will be subject to additional costs. Please note: this notice does not stop nor delay any further collection activity and your account may be forwarded for further action until such a time as the liability is paid in full.

(See Pet'r Resp. Br. ¶ 9, Ex. H (emphasis omitted).)

On March 21, 2022, Guy initiated this appeal. On April 20, 2022, the Department filed a motion to dismiss Guy's case for lack of subject matter jurisdiction pursuant to Indiana Trial Rule 12(B)(1). On April 28, 2022, after briefing on the motion was complete, the Court took the matter under advisement.

STANDARD OF REVIEW

When analyzing the merits of a motion to dismiss for lack of subject matter jurisdiction, the Court may consider the petition, the motion, and any supporting affidavits or evidence. Grandville Coop., Inc. v. O'Connor, 25 N.E.3d 833, 836 (Ind. Tax Ct. 2015).

The Court may weigh the evidence submitted to determine the existence of requisite jurisdictional facts, resolve factual disputes, and devise procedures to ferret out all of the pertinent jurisdictional facts. Id. The party opposing jurisdiction bears the burden of proving that the Court lacks subject matter jurisdiction. See Doe Corp. v. Honoré, 950 N.E.2d 722, 727 (Ind. Ct. App. 2011).

LAW

Subject matter jurisdiction, the power of a court to hear and determine a particular class of cases, can only be conferred upon a court by the Indiana Constitution or by statute. Grandville Coop., 25 N.E.3d at 836. As a court of limited jurisdiction, the Tax Court has exclusive jurisdiction over original tax appeals, i.e., any case that (1) arises under the tax laws of Indiana and (2) is an initial appeal of a final determination made by the Department. IND. CODE § 33-26-3-1 (2022). With respect to the first requirement, a case "arises under" Indiana's tax laws if an Indiana tax statute creates the right of action or the case principally involves the collection of a tax or defenses to that collection. Grandville Coop., 25 N.E.3d at 836. The Department does not dispute that Guy's case arises under the tax laws of Indiana. (See Resp't Mot. Dismiss Pet. & Req. Vacate Case Mgmt. Conf. ("Resp't Br.") at 1-6.)

The second requirement, that a case be an initial appeal of the Department's final determination, satisfies the principle, basic to all administrative law, that a party seeking judicial relief from an agency must first establish that all administrative remedies have been exhausted. See State Bd. of Tax Comm'rs v. Ispat Inland, Inc., 784 N.E.2d 477, 482 (Ind. 2003). But see First Am. Title Ins. Co. v. Robertson, 19 N.E.3d 757, 760-61 (Ind. 2014) (holding that under the Administrative Orders and Procedures Act (AOPA),

the exhaustion of administrative remedies requirement is a procedural error that does not implicate a trial court's subject matter jurisdiction), aff'g in part 990 N.E.2d 9, 12-13 (Ind. Ct. App. 2013). A "final determination" of the Department for purposes of the Tax Court's jurisdiction "is an order that determines the rights of, or imposes obligations on, the parties as a consummation of the administrative process." Garwood v. Indiana Dep't of State Revenue, 939 N.E.2d 1150, 1155 (Ind. Tax Ct. 2010), review denied (citation omitted).

ANALYSIS

The Department claims that "Guy's appeal is not ripe for consideration" and should be dismissed without prejudice because Guy has not appealed a final determination made by the Department. (See, e.g., Resp't Br. at 1.) In response, Guy asserts that its case should proceed, consistent with the jurisdiction conferred by Indiana Tax Court Rule 4, because it has appealed a final determination of the Department, i.e., the Notice of Balance Due issued on March 10, 2022. (See Pet'r Resp. Br. ¶ 9.)

Indiana Tax Court Rule 4(A)(1) provides that "the Tax Court acquires jurisdiction over the Department . . . upon the filing of a petition with the clerk of the Tax Court seeking to set aside a final determination of" the Department. Ind. Tax Court Rule 4(A)(1) (emphasis added). Several years ago, the Indiana Supreme Court explained that a taxpayer may receive a final determination from the Department in one of two ways. See State v. Sproles, 672 N.E.2d 1353, 1357 (Ind. 1996). First, "[t]he taxpayer can pay the tax, request a refund, and sue in the Tax Court if the request is denied." Id. (citing IND. CODE § 6-8.1-9-1 (1993)). "Alternatively, the taxpayer can protest the [] tax at the assessment stage and appeal to the Tax Court from a letter of findings denying the protest." Id. (citing IND. CODE § 6-8.1-5-1 (1993)). These two alternative remedies may

be pursued simultaneously. Id. See also IND. CODE § 6-8.1-9-1(h) (2022).

Here, the evidence before the Court fails to establish that the Notice of Balance Due constitutes a final determination. As previously mentioned, a final determination "is an order that determines the rights of, or imposes obligations on, the parties as a consummation of the administrative process." Garwood, 939 N.E.2d at 1155 (citation omitted). While the Notice of Balance Due did impose an obligation upon Guy, i.e., it required Guy to pay additional withholding tax for the period at issue, it did not constitute a final determination because Guy failed to initiate either of the Department's administrative processes under Indiana Code § 6-8.1-5-1 (to appeal an assessment) or under Indiana Code § 6-8.1-9-1 (to appeal the denial of a refund claim). (See Pet'r Resp. Br., Exs. A-H.) Therefore, the Notice of Balance Due could not constitute the consummation of the administrative appeal process, and Guy's case is not an original tax appeal subject to the Court's jurisdiction.

CONCLUSION

For the foregoing reasons, the Court does not have subject matter jurisdiction over Guy's case. Consequently, the Court GRANTS the Department's motion and DISMISSES Guy's case without prejudice.

SO ORDERED this 2nd day of May 2022.

Martha Blood Wentworth
Judge, Indiana Tax Court

DISTRIBUTION:
Joseph R. Guy, Benjamin B. Huang, Courtney L. Abshire