

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
23 REV 00587

Wayne Howard Gonzalez and Jaclyn Staple Gonzalez Petitioner, v. N.C. Department of Revenue Respondent.	FINAL DECISION ON MOTION FOR JUDGMENT ON THE PLEADINGS
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THIS MATTER comes before the undersigned on the Motion for Judgment on the Pleadings (“Motion”) pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure by Respondent North Carolina Department of Revenue (“Department”). On April 12, 2023, the Department filed the Motion. On April 27, 2023, the Petitioner filed its Response to the Respondent’s Motion.

After having carefully reviewed the record of this contested case, the undersigned now **GRANTS** the Department’s Motion for Judgment on the Pleadings.

JUDGMENT ON THE PLEADINGS STANDARD

This tribunal is authorized to grant judgment on the pleadings. N.C. Gen. Stat. § 150B 34(e). The purpose of judgment on the pleadings is to bring litigation to an expeditious and efficient conclusion on the merits “when all the material allegations of fact are admitted in the pleadings and only questions of law remain. When the pleadings do not resolve all the factual issues, judgment on the pleadings is generally inappropriate.” *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974). Further, when considering judgment on the pleadings, “[t]he trial

court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party. [. . .] All allegations in the nonmovant's pleadings, except conclusions of law, legally impossible facts, and matters not admissible in evidence at the trial, are deemed admitted by the movant for purposes of the motion.” Id.

ISSUE

Whether Petitioners’ claims for refunds of their North Carolina personal income taxes for tax year 2018 is time-barred by the applicable statute of limitations.

UNDISPUTED FINDINGS OF FACT

BASED UPON careful consideration of the record in this contested case, in accordance with the applicable rules and laws, the undersigned finds as follows:

1. At all pertinent times, Petitioners Wayne and Jaclyn Gonzalez have been residents of Gastonia, North Carolina.
2. The Department is a State agency in North Carolina responsible for administering the taxes imposed by Subchapter I of Chapter 105 of the North Carolina General Statutes.
3. Petitioners contested a Notice of Denial of Refund issued by the Department based on the statute of limitations.
4. The Petition admits the late filing of the returns and does not assert any statutory exception to the general statute of limitations.
5. The Petition states the following facts as the reason for disagreement with the Department’s Notice of Denial of Refund: “Taxes were always paid on time and always in excess

expecting refunds. Combination of being full time caregivers to 97-year-old frail mother & earlier tax identity theft contributed to late filing.”

6. As part of their pleadings, Petitioners admit the applicable term of statute of limitations, do not dispute the late filing of the refund request and admit that this Petition is a request for leniency in the application of the statute.

7. Petitioners pleaded as follows:

- a. “The state of North Carolina 2018 Tax Return Refund was Denied due to the late filing of the said return beyond the state deadlines. The Petitioner is requesting an "Exception/Leniency" in the application of this policy/penalty.”
- b. “The petitioner faced numerous and substantial obstacles to filing before the required deadlines....”
- c. “The statutes, rules and legal precedent, if known: Three Year Deadline for filing of tax returns.”

8. Section 105-241.6 of the North Carolina General Statutes provides the statute of limitations for a refund request of overpayment of the tax and a limited number of exceptions to the general statute of limitations. The pleadings in this case do not assert any of the limited exceptions allowed by statute. Rather, the pleadings admit to the late filing of the return and request leniency for personal circumstances of Petitioners.

9. North Carolina has a statute of limitations for requesting a refund for overpayment of the tax. In its relevant part, the statute provides: The general statute of limitations for obtaining a refund of an overpayment is the later of the following: (1) Three years after the due date of the return. (2) Two years after payment of the tax. The amount refunded

under this subdivision shall not exceed the portion of the tax paid during the two years immediately preceding the taxpayer's request for refund. N.C.G.S. § 105-241.6.

10. This statute also provides a closed list of exceptions to the general statute of limitations. Those limited exceptions only apply to cases involving: (1) a federal determination; (2) waiver; (3) worthless debts or securities; (4) capital loss and net operating loss carry backs; and (5) contingent events. N.C.G.S. § 105-241.6(b)

11. The tax return at issue was the 2018 North Carolina Individual Income Tax Return. The general due date of that return was April 15, 2019. See N.C. Gen. Stat. §105-155. Petitioners timely filed an Application for Extension for Filing Individual Income Tax Return. Consequently, their due date to file the 2018 Tax Return was extended to October 15, 2019. Therefore, three years after the due date of the return was October 15, 2022. The refund request was made on November 18, 2022, and is outside the statute of limitations, as admitted by Petitioners.

12. Petitioners' pleadings do not assert that that they made payments for their 2018 tax liability outside of tax year 2018. Petitioner's request for a refund, filed on November 18, 2022, is time barred by the general statute of limitations of two years after payment of the tax, as well.

13. Petitioners have admitted to the late filing of the refund request. Consequently, Petitioners' claim is barred by the statute of limitations provided in N.C.G.S. § 105-241.6 and the denial of the refund must be upheld.

14. In cases where statute of limitations defense is raised, the North Carolina Courts have said that "[a] judgment on the pleadings in favor of a defendant who asserts the statute of limitations as a bar is proper when, and only when, all the facts necessary to establish the

limitation are alleged or admitted.” *Benigno v. Sumner Constr., Inc.*, 278 N.C. App. 1, 8, 862 S.E.2d 46, 52 (2021), citing *Groves v. Cmty. Hous. Corp.*, 144 N.C. App. 79, 87, 548 S.E.2d 535, 540 and *Flexolite Elec., Ltd. v. Gilliam*, 55 N.C. App. 86, 88, 284 S.E.2d 523, 524 (1981).

15. Here, the facts necessary to establish that Petitioners’ claim is barred are pleaded and admitted by Petitioners in the Petition for a Contested Case Hearings and in Petitioners’ Prehearing Statement. Therefore, Judgement on the Pleadings is proper.

16. Petitioners do not dispute that the filing for the refund request is out of the statute of limitations. The Petition does not assert any allegation towards a statutory exception to the statute of limitations.

17. Therefore, even if viewing the facts in the light most favorable to Petitioners, the dismissal of the Petition is proper, and the denial of the refund must be upheld.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings, and jurisdiction and venue are proper. To the extent the tribunal’s Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the labels given. Any such Findings of Fact are hereby incorporated into this section as a Conclusion of Law. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).

2. This case involves the application and interpretation of N.C. Gen. Stat. § 105-241.6, which dictates the statute of limitations within which a taxpayer must request a refund of taxes from the Department. North Carolina General Statute § 105-241.6(a) states:

(a) General. – The general statute of limitations for obtaining a refund of an overpayment applies unless a different period applies under subsection (b) of

this section. The general statute of limitations for obtaining a refund of an overpayment is the later of the following:

- (1) Three years after the due date of the return.
- (2) Two years after payment of the tax.

3. Pleading a statute of limitations is an affirmative defense. N.C. Gen. Stat. § 1A-1, Rule 8(c). However, “[a]t the summary judgment stage, when a defendant asserts the statute of limitations as a bar to recovery, the burden shifts to the plaintiff to forecast at least some evidence that the claim accrued within the limitations period.” *Assurance Grp., Inc. v. Bare*, 245 N.C. App. 566, 782 S.E.2d 581 (2016) (citing *Georgia-Pacific Corp. v. Bondurant*, 81 N.C. App. 362, 363-64, 344 S.E.2d 302, 304 (1986)).

4. Petitioners timely filed an Application for Extension for Filing Individual Income Tax Return. Their due date to file their 2018 Tax Return was extended to October 15, 2019. Petitioners filed a request for refund of their 2018 North Carolina personal income taxes on November 18, 2022, over three years after the due date of October 15, 2022, and over two years after their taxes were remitted to the Department for 2018. Consequently, Petitioners’ November 18, 2022 request for refund of their 2018 taxes is time-barred by the statute of limitations under the plain terms of N.C. Gen. Stat. § 105-241.6(a).

5. Petitioners have not forecast evidence that any of the exceptions to the general rule in N.C. Gen. Stat. § 105-241.6(a) which are found in N.C. Gen. Stat. § 105-241.6(b) are applicable.

6. The Department was therefore correct in denying Petitioners their requested refunds as required by N.C. Gen. Stat. § 105-241.7(c1).

7. There being – a) no dispute on the late filing of the claim for refund; b) no statutory provision that entitles Petitioner to statutory exception; and c) no authority for this Tribunal to grant a hardship exception, this Tribunal is without jurisdiction to hear this case.

8. The Department is entitled to judgment as a matter of law and the dismissal of the Petition is proper.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to N.C. Gen. Stat. § 1A-1, Rule 56 of the North Carolina Rules of Civil Procedure, and N.C. Gen. Stat. § 150B-33(b), the undersigned hereby **GRANTS** Respondent's Motion for Judgment on the Pleadings and **DISMISSES** the claims in Petitioner's contested case petition **WITH PREJUDICE**.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the Administrative Procedure Act of North Carolina, N.C. Gen. Stat. § 150B-1 *et seq.*, and N.C. Gen. Stat. § 105-241.16, any party aggrieved by the Final Decision may seek judicial review by filing a Petition for Judicial Review in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in N.C. Gen. Stat. § 7A-45.4(b) through (f). Before filing a petition for judicial review, a taxpayer must pay the amount of tax, penalties and interest the Final Decision states is due.

The party seeking review must file the petition within 30 days after being served with a written copy of the Final Decision. In conformity with 26 N.C. Admin. Code § 3.0102, which incorporates the provisions of electronic service as defined in 26 N.C. Admin. Code § 3.0501, the Certificate of Service attached to this Final Decision shows the date of service on the parties.

N.C. Gen. Stat. § 150B-46 describes the contents of the petition for judicial review and requires service of the petition on all parties. Because the Office of Administrative Hearings is

required to file the official record in the contested case under review, the party seeking judicial review must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when the judicial review is initiated.

IT IS SO ORDERED.

This the 28th day of April, 2023.



Linda F. Nelson
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 28th day of April, 2023.



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