
IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2005
No. 36

HARFORD COUNTY, MARYLAND, et al.,

Petitioners

v.

SAKS FIFTH AVENUE DISTRIBUTION COMPANY,

Respondent

On Appeal from the Circuit Court for Harford County, Maryland
(Thomas E. Marshall, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

**BRIEF OF AMICUS CURIAE,
MONTGOMERY COUNTY, MARYLAND**

Charles W. Thompson, Jr.
County Attorney

Scott R. Foncannon
Associate County Attorney

Marc P. Hansen, Chief
General Counsel Division

101 Monroe Street, Third Floor
Rockville, Maryland 20850
(240) 777-6700

Karen L. Federman Henry
Principal Counsel for Appeals

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QUESTION PRESENTED

Does the Tax-Property Article require a local government to pay interest on a personal property tax refund where the error made by the reporting taxpayer was corrected through an amended report and not through an appeal to the tax court?

ARGUMENT

Upon electing a charter form of government, a county obtains certain legislative powers from the State. Md. Const. art. XI-A. The “Home Rule Amendment” evidenced an intent to secure to Maryland citizens “the fullest measure of local self-government” regarding local affairs. *State v. Stewart*, 152 Md. 419, 422, 137 A. 39, 41 (1927). In addition, the Home Rule Amendment mandates that the General Assembly expressly enumerate and delegate those powers exercisable by counties that elect a charter form of government. Md. Const. art. XI-A § 2. The legislature followed this directive by enacting the Express Powers Act, which endowed charter counties with a wide array of legislative powers over local affairs. Md. Ann. Code art. 25A (1998).

In 1948, Montgomery County became the first county in Maryland to adopt a charter form of government. *McCarthy v. Board of Education*, 280 Md. 634, 638, 374 A.2d 1135, 1137 (1977). Among the enumerated express powers, the County has the ability “[t]o provide for the prompt collection of all taxes due the county. . . .” Md. Ann. Code art. 25A, § 5(O). In addition, the County has the authority “[t]o rectify errors in the assessment of property; to provide for the reduction or abatement of assessments improperly made, and for the reimbursement of moneys paid in consequence of such errors.” *Id.*

Against this backdrop, the present case raises the question of the taxpayer's responsibility for accurately reporting the value of personal property for which the taxpayer has an obligation to pay taxes. In light of the record-keeping patchwork that many businesses create from purchased equipment and furniture, depreciation, and leasing arrangements, the taxpayer stands in the best position to ascertain which items of personal property fall within the company's tax obligation and which property may belong within another entity's responsibility. Instead of encouraging taxpayers to estimate or to guess high and then receive a windfall that includes a refund of the taxes paid plus interest, Montgomery County encourages this Court to read the tax law reasonably to require that a local government must pay interest on a refund only when the statute provides for it and that the law cannot be distorted to allow interest on a refund obtained from an amended return when the statute provides interest only after an appeal to the tax court.

The Tax-Property Article does not require a local government to pay interest on a personal property tax refund where the error made by the reporting taxpayer was corrected through an amended report and not through an appeal to the tax court.

General principles of statutory construction require that a statute be given its plain meaning and that it be read in context to effectuate the intent of the Legislature. *Armstead v. State*, 342 Md. 38, 56, 673 A.2d 221, 229 (1996). The interpretation given must use common sense to avoid illogical or unreasonable conclusions. *Frost v. State*, 336 Md. 125, 137, 647 A.2d 106, 112 (1994). Moreover, all words of a statute must be given effect and no portion of it may be rendered “meaningless, surplusage, superfluous, or nugatory.” *Jung*

v. Southland Corp., 351 Md. 165, 177, 717 A.2d 387, 393 (1998) (citations omitted). In construing the language, however, the court will “neither add nor delete words in order to give the statute a meaning not otherwise communicated by the language used. . . .” *Blind Industries v. Department of General Services*, 371 Md. 221, 231, 808 A.2d 782, 788 (2002). And the court will avoid forced or subtle interpretations of the law. *Caffrey v. Department of Liquor Control*, 370 Md. 272, 292, 805 A.2d 268, 279 (2002).

When construing a statute, the court will not place language in the law that the Legislature did not include simply to avoid a harsh result. *Leppo v. State Highway Administration*, 330 Md. 416, 423, 624 A.2d 539, 543 (1993) (citations omitted). And when the statute includes specific exceptions or exclusions, the court will avoid reading additional items into the statute. *Id.* Rather, the court reasonably may infer that the absence of a clear remedy reflects consideration and rejection of a remedy for the situation that occurred in a particular case. *See Philip Electronics North America v. Wright*, 348 Md. 209, 223, 703 A.2d 150, 156 (1997).

Despite these established principles, Saks expects to recoup interest on the tax refund that it obtained where its own inaccurate reporting of the value of its taxable assets caused the incorrect assessment and tax bill. The appellate courts of Maryland, however, consistently have held that no entitlement to interest exists without specific statutory authorization. *See MPTH Associates v. Department of Finance*, 308 Md. 674, 521 A.2d 757 (1987). In fact, common law did not recognize a right to a refund of taxes mistakenly paid. *Lady v. Prince George’s County*, 43 Md. App. 99, 102, 403 A.2d 1277, 1279 (1979). To

alter the common law, a statute must do so expressly, not by implication. *Hardy v. State*, 301 Md. 124, 131, 482 A.2d 474, 478 (1984) (citations omitted). In fact, the Court of Appeals has not based its decisions on the harm to the taxpayer, but consistently refers to the statute for guidance regarding changes to the common law principles.

When taxpayers voluntarily paid transfer taxes based on an error of law, even though they did so under protest, the Court would not allow a refund, because the statute did not provide one. *Rapley v. Montgomery County*, 261 Md. 98, 274 A.2d 124 (1971). On the other hand, where a taxpayer was entitled to a refund, but the statute did not provide a mechanism for obtaining the refund, the Court allowed the taxpayer to file an action in assumpsit to obtain relief. *Baltimore County v. Xerox Corp.*, 286 Md. 220, 406 A.2d 917 (1979). And to determine when the interest on a refund began running, the Court again referred to the statute and emphasized that "entitlement to interest on a tax refund is a matter of grace which can only be authorized by legislative enactment." *Comptroller of the Treasury v. Fairchild Industries, Inc.*, 303 Md. 280, 284, 493 A.2d 341, 343 (1985).

Maryland law plainly allows a refund of an overpayment of taxes that is corrected through an appeal to the tax court with "the same rate of interest that the taxes would have borne if the taxes were determined to be overdue." Md. Code Ann., Tax-Prop. § 14-611 (2001). While for Harford County this imposes an 18% rate of interest, Montgomery County would owe 8% interest under this section. *Id.* at § 14-603(a). Implicit in the statute is that the tax court makes the correction due to an error made by the county when calculating the tax owed. The present case involves no challenge to the county's calculations, but rather,

arises solely from the mistake made by the taxpayer in reporting tax responsibility for property it did not have to claim. The taxpayer then filed an amended return to correct the error—not an appeal to the tax court. While a refund is appropriate, payment of interest without statutory authorization punishes the local government through no fault of its own.

The collection of taxes typically requires a taxpayer to report personal property information accurately. Md. Code Ann., Tax-Prop. § 11-101 and § 11-102. It makes sense to impose a duty on the taxpayer to report correctly, because the taxpayer has the most information available regarding the personal property and the extent of the taxpayer's responsibility for reporting it. While in certain circumstances an error may not warrant a penalty, it should not achieve a windfall nor effect a drain on the public funds accrued through the collection of taxes. To do so would encourage errors and sloppiness, rather than promote accuracy in reporting. And in today's economy, allowing a taxpayer to earn 8% interest as a result of an erroneous report would create a tempting investment opportunity that even the most conscientious taxpayer might find hard to resist. In accordance with the long history of requiring the County to pay interest only when the statute specifically requires it to do so, this Court should leave any change to the personal property tax provisions to the Legislature.

CONCLUSION

A taxpayer has an obligation to report personal property accurately so that the tax assessment does not impose an incorrect tax on the property. If the taxpayer makes a

mistake, he can file an amended return and obtain a refund, but no interest. Only where an appeal is taken from the erroneous assessment can the taxpayer obtain a refund plus interest, upon showing that the statute applies to the facts that occurred in a particular case. Montgomery County requests that this Court adhere to that principle and disallow the payment of interest on a refund based on an amended return required by the taxpayer's own mistaken reporting of the personal property subject to the tax.

Respectfully submitted,

Charles W. Thompson, Jr.
County Attorney

Marc P. Hansen, Chief
General Counsel Division

Karen L. Federman Henry
Principal Counsel for Appeals

Scott R. Foncannon
Associate County Attorney

Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August, 2005, two copies of the foregoing Brief of Amicus Curiae were mailed by first-class mail, postage prepaid, to:

Robert S. McCord, County Attorney
Nancy Levy Giorno, Deputy County Attorney
Sean P. Carven, Assistant County Attorney
220 South Main Street
Bel Air, Maryland 21014
Attorneys for Petitioner Harford County, Maryland

Gregory A. Rapisarda
22 West Pennsylvania Avenue
Bel Air, Maryland 21014
Attorney for Petitioner City of Aberdeen

K. Donald Proctor
Margaret M. McKee
Proctor & McKee, P.A.
102 West Pennsylvania Avenue, Suite 505
Towson, Maryland 21204
Attorneys for Respondent Saks fifth Avenue
Distribution Company

Karen L. Federman Henry
Principal Counsel for Appeals

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Excerpts from Maryland Annotated Code

Art. 25A, § 5(O). *Assessments, Levy and Collection of Taxes (1998)*

To direct the class or subclass of improvements on land and personal property which shall be made subject to the county tax levy, and to provide for the levy thereupon and upon the value of land in accordance with Article 15 of the Declaration of Rights of the Constitution of Maryland as amended, of any sum which may be necessary to pay and discharge the principal and interest of any loan which may heretofore have been obtained, or which may hereafter be obtained by such county, according to law, and to create a sinking fund to meet the liabilities thus incurred, and levy upon the property so subject to taxation from time to time such sums as may be necessary to provide therefor; as well as to collect from such property so subject to the levy such sums as may be necessary for the support and maintenance of the county government.

To provide for the prompt collection of all taxes due the county; and for the sale of real estate, as well as leasehold and personal property, for the payment of the same.

To rectify errors in the assessment of property; to provide for the reduction or abatement of assessments improperly made, and for the reimbursement of moneys paid in consequence of such errors.

To levy and collect taxes for the organization, operation, maintenance of libraries, fire and ambulance services, and other municipal services and to authorize the purchase, sale, construction, maintenance, and operation of all real and personal property necessary or incidental to such services, and to establish, modify, amend and abolish special taxing areas for any of the purposes enumerated in this article, except that nothing herein contained shall be construed to permit the modification or abolition of existing special taxing areas performing municipal services, (other than furnishing fire protection or library service) and governed or administered by a citizen's committee or a commission elected or appointed independently of the county council.

To levy and collect taxes to provide for the payment of additional retirement or disability benefits to such former employees of the county as may, in the opinion of the county council, be entitled to receive such additional benefits.

Tax-Property Article (2001)

§ 11-101. Annual report required for certain persons.

(a) *Annual filing.* On or before April 15 of each year, a person shall submit a report on personal property to the Department if:

- (1) the person is a business trust, domestic corporation, limited liability company, limited liability partnership, or limited partnership;
- (2) the person is a foreign corporation, foreign limited liability company, foreign limited liability partnership, or foreign limited partnership registered or qualified to do business in the State; or
- (3) the person owns or during the preceding calendar year owned property that is subject to property tax.

(b) *Form and contents of report.* The report shall:

- (1) be in the form that the Department requires;
- (2) be under oath as the Department requires; and
- (3) contain the information that the Department requires.

§ 11-102. Reports on personal property.

(a) *In general.* The Department may require a person to submit to the Department a report that contains the information listed in subsection (b) of this section, if the person:

- (1) moves personal property to any county or municipal corporation from the county or municipal corporation where it was assessed;
- (2) moves personal property from outside this State to a county or municipal corporation inside this State; or
- (3) possesses, cares for, or manages any personal property that:
 - (i) is not assessed; or
 - (ii) the Department suspects is not assessed.

(b) *Contents of report.* The report shall contain:

- (1) a list of:
 - (i) all personal property assessable by the Department; and
 - (ii) all personal property assessable but not previously assessed by the Department that the person possesses, cares for, or manages; and
- (2) the name of each person who owns an item of the personal property.

§ 14-603. County, municipal corporation, and taxing district interest rates for full year property tax.

(a) *In general.* Except as provided in subsection (b) of this section and for estimated personal property tax in § 14-604 of this subtitle, the rate of interest for full year county or municipal corporation property tax or taxing district property tax is two-thirds of 1% for

each month or fraction of a month that the county or municipal corporation property tax or taxing district property tax is overdue.

* * *

§ 14-611. Interest on refunds after determination of an appeal.

Subject to § 14-919 of this title, on the final determination of an appeal under Subtitle 5 of this title, any money paid by a taxpayer that exceeds the amount properly chargeable under the determination shall be refunded at the same rate of interest that the taxes would have borne if the taxes were determined to have been overdue.