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IN THE
INDIANA TAX COURT

B.L. REEVER TRANSPORT, INC., CHARLES PAAR, d/b/a SANDMAN SERVICES, and LELAND WILKINS, d/b/a LOST RIVER TRUCKING,	)	
Petitioners,	)	
v.	)	Cause No. 20T-TA-00009
INDIANA DEPARTMENT OF STATE REVENUE,	)	
Respondent.	)	

ORDER ON RESPONDENT'S MOTION TO DISMISS

FOR PUBLICATION
January 27, 2021

WENTWORTH, J.

B.L. Reever Transport, Inc., Charles Paar (d/b/a Sandman Services), and Leland Wilkins (d/b/a Lost River Trucking) have appealed the Indiana Department of State Revenue's denials of their claims for a refund of motor carrier fuel tax ("MCFT") remitted during the 2016 and 2017 tax years. The matter is currently before the Court on the

Department's Indiana Trial Rule 12(B) motion to dismiss. Upon review, the Court denies the Department's motion.

BACKGROUND

The Petitioners are three small business motor carriers (the "Motor Carriers") that haul the property of others in interstate commerce. (See Pet'rs' Notice of Claim Original Tax Appeal: Small Tax Case ("Pet'rs' Pet.") ¶¶ 17, 20, 23.) During the years at issue, they logged a varying number of miles and thus consumed different amounts of fuel while hauling property on Indiana's highways, including the Toll Road. (See Pet'rs' Pet. ¶¶ 18, 21, 24.) As a result, each of the Motor Carriers remitted quarterly payments to the Department for the MCFT. (See Pet'rs' Pet. ¶ 6.) See also IND. CODE § 6-6-4.1-4(a) (2016) (requiring that the MCFT "be paid quarterly by the carrier to the department").

In November and December of 2018, the Motor Carriers filed three separate claims seeking refunds of the portion of MCFT remitted with respect to their consumption of fuel on the Toll Road for the years at issue. (See Pet'rs' Pet. ¶¶ 6, 8-9, Exs. 1-3.) Specifically, Paar sought a refund of $22.93 for the 2016 tax year, Wilkins sought a refund of $3.04 for the 2016 tax year, and B.L. Reever sought a refund of $8.02 for the 2017 tax year. (See Pet'rs' Pet. ¶ 6.)

On February 15, 2019, after the Department was "unable to process" their refund claims, the Motor Carriers filed protests. (See Pet'rs' Pet. ¶¶ 10-12; see also, e.g., Pet'rs' Pet., Ex. 1 at 1.) While their three protests were pending, they also filed a single appeal with this Court on March 15, 2019. (Pet'rs' Pet. ¶ 13.) The Court, in keeping with the parties' subsequent agreement, issued an order dismissing that appeal on June 21, 2019. (See Pet'rs' Pet. ¶¶ 13-14.) Nearly a year later, on February 5, 2020, the Department

denied all of the Motor Carriers' protests. (Pet'rs' Pet. ¶ 15, Exs. 4-6.)

On May 4, 2020, the Motor Carriers initiated this original tax appeal as a small tax case, claiming that they were entitled to a refund of the MFCT remitted during the years at issue, plus interest, because the Toll Road was not a "highway" for purposes of the MCFT. (See, e.g., Pet'rs' Pet. at 4-6.) On July 6, 2020, the Department moved to dismiss their appeal pursuant to Indiana Trial Rule 12(B).[1] The Court held a hearing on the motion remotely on December 16, 2020. Additional facts will be supplied, as necessary.

LAW AND ANALYSIS

The Department has asked the Court to dismiss the Motor Carriers' appeal for two reasons. First, the Department claims that their appeal must be dismissed pursuant to Indiana Trial Rule 12(B)(1) for a lack of subject matter jurisdiction. (See, e.g., Hr'g Tr. at 12-28.) Second, the Department contends that Indiana Trial Rule 12(B)(6) compels the dismissal of this appeal because the Motor Carriers failed to state a claim upon which relief may be granted. (See, e.g., Resp't Mot. Dismiss ("Resp't Br.") at 3-8.)

I. Subject Matter Jurisdiction

Subject matter jurisdiction refers to a court's constitutional or statutory power to hear and determine a particular type of case. D.P. v. State, 151 N.E.3d 1210, 1213 (Ind. 2020). When a court does not have subject matter jurisdiction, any judgment that it renders is void. State Bd. of Tax Comm'rs v. Ispat Inland, Inc., 784 N.E.2d 477, 481 (Ind. 2003).

The Tax Court has exclusive jurisdiction over original tax appeals, i.e., any case

[1] The parties subsequently filed cross-motions for summary judgment. (See Pet'rs' Mot. Summ. J.; Resp't Corrected Cross-Mot. Summ. J.) On December 16, 2020, after a hearing, the Court denied the cross-motions.

that 1) arises under the tax laws of Indiana and 2) is an initial appeal of a final determination made by the Department. See IND. CODE § 33-26-3-1 (2021); Ind. Tax Ct. Rule 2(A). With respect to the first requirement, a case "arises under" the 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. Fresenius USA Mktg., Inc. v. Indiana Dep't of State Revenue, 970 N.E.2d 801, 803 (Ind. Tax Ct. 2012), review denied. 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 Ispat Inland, 784 N.E.2d at 482.

Here, the Department does not dispute that the Motor Carriers' case arises under Indiana's tax laws. (See, e.g., Resp't Br.) Rather, the Department claims that the Court's subject matter jurisdiction is defective because the Motor Carriers failed to obtain a final determination on the specific issue in this appeal. (See Hr'g Tr. at 12-28.) To begin with, the Department explains that because the Motor Carriers claimed that fuel consumed on the Toll Road was exempt from the MCFT during the administrative proceedings, they received a final determination that addressed that matter. (See Hr'g Tr. at 7, 12-15.) The Department further explains that after the Motor Carriers appealed to the Tax Court, they completely changed the basis of their refund claim by asserting that the apportionment

fraction under Indiana Code § 6-6-4.1-4(b)[2] should have been calculated differently. (See Hr'g Tr. at 12-28; Resp't Reply Supp. Mot. Dismiss, Resp. Opp'n Pet'rs' Mot. Summ. J., & Br. Supp. [Resp't] Cross-Mot. Summ. J. ("Resp't Reply Br.") at 2.) Consequently, the Department contends that the Motor Carriers' "bait and switch" litigation strategy created a jurisdictional defect because they have not appealed a final determination from the Department that addresses the merits of their new apportionment fraction claim. (See Hr'g Tr. at 13-17.)

During the administrative proceedings, the Motor Carriers provided letters to the Department that explained why they believed a refund of the MCFT was warranted. (See, e.g., Pet'rs' Pet., Ex. 1 at 2-3.) Each of the letters, in relevant part, stated: "Because the Toll Road is not publicly maintained [by virtue of its 2006 lease], the Toll Road is not a highway. Therefore, any MCFT assessments for fuel consumed on the [T]oll [R]oad are improper." (See, e.g., Pet'rs' Pet., Ex. 1 at 2-3 (citation omitted).)

In resolving their protests, the Department stated in its final order denying refund:

> The Indiana Tax Court has repeatedly held that carriers who travel on Indiana highways must pay the MCFT on all the fuel they consume, whether they are traveling on the Toll Road, traveling on other public highways, or even idling while entirely off of any highway. Whether the Toll Road is "publicly maintained" is irrelevant for the purpose of this protest. If they travel on highways in Indiana, carriers must pay the MCFT "on all fuel consumed by a commercial motor vehicle, regardless of whether and how it is consumed." . . .

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[2] During the years at issue, Indiana Code § 6-6-4.1-4(b) provided:

> The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.

IND. CODE § 6-6-4.1-4(b) (2016).

> Thus, the Toll Road is "publicly maintained," and the [l]ease is the vehicle by which Indiana has chosen to maintain the Toll Road.

(See, e.g., Pet'rs' Pet., Ex. 4 at 17.) Moreover, the Motor Carriers' Notice of Claim filed with this Court states that the MCFT is imposed under Indiana Code §§ 6-6-4.1-1 et seq. "on the consumption of motor fuel by commercial motor vehicle carriers operating on **publicly maintained** . . . highways in Indiana. . . . The Toll Road is **privately maintained** . . . [and t]herefore, . . . is not a highway for purposes of the MCFT." (Pet'rs' Pet. ¶¶ 29-31 (internal quotation marks omitted).) Accordingly, the Department issued a final determination denying a refund claim on the same basis as the Motor Carriers' Notice of Claim raises in this appeal. Even if the Motor Carriers' claims were different, however, it is well established that this Court hears appeals from a final order denying refund (i.e., a final determination) by the Department de novo, and is not bound by the evidence or legal arguments made to the Department at the administrative level. Horseshoe Hammond, LLC v. Indiana Dep't of State Revenue, 865 N.E.2d 725, 727 (Ind. Tax Ct. 2007), review denied. Consequently, the Court finds no defect in its subject matter jurisdiction and will not dismiss the Motor Carriers' small tax case for a lack of subject matter jurisdiction.

II. Failure to State a Claim

Next, the Department asserts that the Motor Carriers' appeal should be dismissed pursuant to Trial Rule 12(B)(6) for three distinct reasons. Specifically, the Department contends that the Motor Carriers failed to state claims upon which relief can be granted given: a) the holding in Roehl Transport, Inc. v. Indiana Department of State Revenue, 653 N.E.2d 539 (Ind. Tax. Ct. 1995); b) the holdings in Area Interstate Trucking, Inc. v. Indiana Department of State Revenue (Area Interstate Trucking I), 574 N.E.2d 311 (Ind. Ct. App. 1991), trans. denied and Area Interstate Trucking, Inc. v. Indiana Department of

State Revenue (Area Interstate Trucking II), 605 N.E.2d 272 (Ind. Tax Ct. 1992), cert. denied; and c) the doctrine of legislative acquiescence. The Court evaluates the Department's reasons cognizant that a Trial Rule 12(B)(6) dismissal cannot be affirmed "'unless it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances.'" See Thornton v. State, 43 N.E.3d 585, 587 (Ind. 2015) (citation omitted).

A. The Roehl Case

In its motion to dismiss, the Department maintains that the Motor Carriers' claim, that no MCFT is due for fuel consumed on the Toll Road because it is not a "highway," is analogous to the taxpayer's claim in Roehl, that no MCFT was due for fuel consumed while idling on privately owned areas instead of Indiana highways as required by Indiana Code § 6-6-4.1-4. (See Resp't Br. at 3-5 (citing Roehl Transp., Inc. v. Indiana Dep't of State Revenue, 653 N.E.2d 539, 542 (Ind. Tax. Ct. 1995).) Therefore, the Department contends that Roehl is fatal to the Motor Carriers' claim because that case "clearly establishes that all fuel consumed by a carrier while traveling anywhere in the state—whether on the Toll Road or elsewhere—is subject to [the] MCFT[,]" and thus, it is irrelevant whether the Toll Road is a "highway" for purposes of the MCFT. (Resp't Reply Br. at 4; see also Resp't Br. at 3-5.) The Court disagrees.

As explained above, the Department's entire argument in this case hinges on the purported similarity of the issue in this case and the issue in Roehl. The Department, however, has misconstrued Roehl. In that case, the calculation of the MCFT set forth under Indiana Code § 6-6-4.1-4(b) was at issue, not whether the taxpayer was subject to the MCFT in the first instance. See Roehl Transp., 653 N.E.2d at 542 (explaining that the

taxpayer claimed that the Department erred in calculating its MCFT liability). See also, e.g., I.C. § 6-6-4.1-4(a) (the MCFT's imposition statute). Indeed, the Court did not construe the meaning of the word "highways" as used in the imposition statute in Roehl, but instead looked to the meaning of the phrase "operations in Indiana" as used in Indiana Code § 6-6-4.1-4(a) and (b). See Roehl Transp., 653 N.E.2d at 542-44. Thus, the issue in Roehl involved the scope of operations included in the MCFT tax base.

Here, however, the issue is entirely different. Rather than determining what is included in the MCFT tax base that will be multiplied by an apportionment fraction, the Motor Carriers ask the Court to determine whether, under the changed circumstances reflected in the 2006 leasing of the Toll Road to a private company, the Toll Road is no longer "publicly maintained" as required by the definition of "highway" in Indiana Code § 6-6-4.1-1(h). (See Pet'rs' Pet. ¶¶ 28-35.) See also IND. CODE § 6-6-4.1-1(h) (2016) (defining a "highway" as "the entire width between the boundary lines of every publicly maintained way that is open in any part to the use of the public for purposes of vehicular travel") (emphasis added). Similarly, the Motor Carriers challenge the validity of the Department's related regulation that states: "For purposes of IC 6-6-4.1-1, a toll road is a highway." (See Resp't Br.; Pet'rs' Corrected Br. Opp'n [Resp't Br.] & Supp. Cross-Mot. Summ. J. ("Pet'rs' Resp. Br.") at 3-4.) See also 45 IND. ADMIN. CODE 13-1-11(b) (2016). Consequently, the issue in this case, whether the Motor Carriers were subject to the MCFT in the first instance, is different than the issue litigated in Roehl, and presents a case of first impression in Indiana. Thus, the Court will not dismiss the Motor Carriers' appeal for failure to state a claim on this basis.

B. The Area Interstate Trucking Cases

Next, the Department contends that the Motor Carriers failed to state a claim upon which relief can be granted because the Area Interstate Trucking cases held that the Toll Road was a highway for purposes of the MCFT. (See Resp't Br. at 5-7 (citing Area Interstate Trucking, Inc. v. Indiana Dep't of State Revenue (Area Interstate Trucking I), 574 N.E.2d 311, 312 (Ind. Ct. App. 1991), trans. denied; Area Interstate Trucking, Inc. v. Indiana Dep't of State Revenue (Area Interstate Trucking II), 605 N.E.2d 272, 275 (Ind. Tax Ct. 1992), cert. denied).) The Department's contention, however, is unavailing.

As just explained, the issue in this case is whether the Toll Road is a "publicly maintained" highway, consistent with the requirements of Indiana Code § 6-6-4.1-1(h), even though it was leased to a private company in 2006. The Area Interstate Trucking cases, which were decided in 1991 and 1992, predate the 2006 lease of the Toll Road and address wholly distinct issues: e.g., whether the toll road was a highway despite certain aspects of the statutory scheme for its funding, and whether the MCFT's imposition violated the federal and state constitutions. See, e.g., Area Interstate Trucking I, 574 N.E.2d at 312, 314; Area Interstate Trucking II, 605 N.E.2d at 273-75. Thus, none of those claims are relevant here. Moreover, to the extent those cases hold that the Toll Road is a highway, the holdings were not based on a finding that the Toll Road was publicly maintained even though it was leased to a private entity. See Area Interstate Trucking I, 574 N.E.2d at 312-15; Area Interstate Trucking II, 605 N.E.2d at 273-75. Therefore, the Court finds that neither of the Area Interstate Trucking cases compel this Court to dismiss the Motor Carriers' appeal for failure to state a claim upon which relief may be granted.

C. Legislative Acquiescence

Finally, the Department claims that the doctrine of legislative acquiescence necessitates the dismissal of the Motor Carriers' appeal for failure to state a claim upon which relief can be granted. (See Resp't Br. at 7-8.) The Department explains that the two Area Interstate Trucking cases and its own regulation, which has been in effect since 1984, provide that toll roads are highways for purposes of the MCFT. (See Hr'g Tr. at 43; Resp't Br. at 7-8.) See also 45 I.A.C. 13-1-11. Because the General Assembly has made no changes to the applicable law since the 2006 lease of the Toll Road, the Department contends that the issue raised in this appeal is settled because the legislature has acquiesced to those interpretations. (See Resp't Br. at 7-8; Hr'g Tr. at 43.)

The doctrine of legislative acquiescence is an estoppel doctrine designed to protect those who rely on long-standing administrative interpretation. Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co., 485 N.E.2d 610, 616 (Ind. 1985). This tool of statutory construction "provides that 'a long adhered to administrative interpretation dating from the legislative enactment, with no subsequent change having been made in the statute involved, raises a presumption of legislative acquiescence which is strongly persuasive upon the courts.'" Indiana Ass'n of Seventh-Day Adventists v. State Bd. of Tax Comm'rs, 519 N.E.2d 772, 773 (Ind. Tax Ct. 1988) (quoting Baker v. Compton, 211 N.E.2d 162, 164 (Ind. 1965)). Nonetheless, long standing administrative interpretations that are incorrect are entitled to no weight. Id.

As already explained, the Area Interstate Trucking cases do not support a dismissal of this appeal. Moreover, the Motor Carriers' appeal challenges the validity of the Department's regulation, claiming that the facts in this case will show that the

regulation is no longer valid because it ignores a limitation set forth in the statute, i.e., that the toll road be publicly maintained. (See Pet'rs' Resp. Br. at 3-4.) Therefore, the Court is not persuaded that the legislature's silence indicates that it acquiesced to giving no effect to the "publicly maintained" requirement of Indiana Code § 6-6-4.1-1(h) in response to the 2006 lease of the Toll Road. To put it differently, the Department's claim that the legislature has expressed its opinion through silence can just as easily be seen as the legislature's failure to express an opinion at all. Accordingly, the Court will not dismiss the Motor Carriers' small tax case for failure to state a claim upon which relief can be granted on this basis either.

CONCLUSION

For the foregoing reasons, the Department has not shown that the Motor Carrier's appeal must be dismissed pursuant to Indiana Trial Rule 12(B). Therefore, the Court DENIES the Department's motion to dismiss.

SO ORDERED this 27th day of January 2021.

Martha Blood Wentworth
Judge, Indiana Tax Court

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