UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0662

September Term, 2015

BALTIMORE COUNTY DEPARTMENT
OF PERMITS APPROVALS AND
INSPECTIONS

v.

ROSCOE HOLMES, ET AL.

Woodward,
Leahy,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: October 18, 2016

In November 2011, appellees, Roscoe Holmes, Terry Land, Dennis Mann, and Prabhjot Batra, began operating several internet cafes in Baltimore County. These internet cafes included a sweepstakes program in which customers could win money. In October 2012, appellees paid $177,000 in licensing fees to the Baltimore County Department of Permits Approvals and Inspections ("the Department") after being informed that they were required to have a "gaming device" license. Shortly after paying the fees, appellees' cafes were raided by the police and shut down for operating illegal slot machines. Thereafter, appellees sought a refund for what they believed to be wrongfully assessed license fees. When the Department did not respond to their refund claim, appellees appealed to the Maryland Tax Court. The Tax Court subsequently dismissed the case for lack of jurisdiction, because the license fees did not qualify as taxes. Appellees filed a Petition for Judicial Review in the Baltimore County Circuit Court, which reversed the Tax Court's dismissal. Appellant, Baltimore County ("the County"), responded by appealing to this Court.

On appeal, the County presents two questions for our review, which we have rephrased:[1]

[1] The County's questions, as presented in its brief, are as follows:

1. Did the Tax Court properly determine that it does not have jurisdiction to adjudicate an appeal for the refund of a licensing fee for an amusement device?

2. Did the Circuit Court abuse its discretion when it denied the County its right to defend its case on judicial review?

1. Did the Tax Court properly determine that it does not have jurisdiction to adjudicate an appeal for the refund of a licensing fee?

2. Did the circuit court commit reversible error by failing to require appellees' compliance with Maryland Rule 7-207?

For the reasons stated herein, we answer both questions in the negative. Accordingly, we affirm the judgment of the circuit court, which reversed the Tax Court's dismissal of appellees' appeal, and remand the case for further proceedings in the Tax Court.

BACKGROUND

On May 16, 2011, Fred Homan, the Administrative Officer for Baltimore County, wrote a letter to the Baltimore County Council proposing a licensing fee for "simulated gaming machines" as differentiated from "amusement devices." The letter informed the County Council that the County would begin charging a "simulated gaming machine" license fee of $1,000 per machine, unless the Council objected within 45 days. The County Council did not object, and the new fee went into effect on July 1, 2011.

In November 2011, appellees began operating internet cafes in Baltimore County. As part of the internet services offered, cafe customers had the opportunity to participate in a sweepstakes promotion, in which they could earn points for purchasing internet time. Those points could be used to play games on the computers, which then revealed the results of the sweepstakes to the customers. Customers who won sweepstakes games accumulated points that could be redeemed for cash, more internet time, or more sweepstakes play.

For the first several months that they operated their cafes, appellees did not pay the County's new "simulated gaming machine" licensing fee. In October 2012, the

Department informed appellees that they needed to pay the $1,000 per-computer licensing fee, because their computers fell under the category of "gaming devices." Appellees responded by paying $177,000 in fees to the Department, "under the reasonable belief that they would then be operating legal internet cafes." Within a week to a few weeks after appellees paid the fees, Baltimore County police raided appellees' cafes, shut the cafes down for operating illegal slot machines, and confiscated the computers.

On September 30, 2013, appellees wrote a letter to Arnold Jablon, the Deputy Administrative Officer and Director of the Department, asserting their claim to a refund of the $177,000 they had paid in licensing fees to the Department, claiming that the fees were erroneously assessed and collected. Appellees' claim was made pursuant to Md. Code (2013), § 20-113(2) of the Local Government Article ("LG").[2] Appellees argued that they were entitled to a refund for two reasons: (1) the Department lacked authority under the Maryland Code to assess and collect the licensing fees; and (2) the licensing fees violated state law, because the County cannot permit the licensing of devices that are illegal. Appellees also argued that they were at least entitled to a return of the unused portion of the licensing fees.[3] The Department did not respond to appellees' refund letter. Appellees treated the lack of response as a denial of their claim.

[2] In their letter, appellees asserted their claim to a refund under Md. Code Article 24 § 9-710. That statute has since been recodified as Md. Code (2013), § 20-113 of the Local Government Article ("LG"), without substantive change.

[3] Appellants paid licensing fees in October 2012 to operate the computers through the remainder of the year, but the computers were seized within a few weeks after payment.

On May 14, 2014, appellees appealed the denial of their refund claim to the Maryland Tax Court, pursuant to LG § 20-117. On June 13, 2014, the County filed a motion to dismiss the appeal on the grounds that the Tax Court did not have jurisdiction, because licensing fees were not "taxes" within the meaning of the Tax General Article. Appellees filed an opposition on July 1, 2014, arguing that the licensing fees were "fees" "erroneously, illegally, or wrongfully" collected by the Department under LG § 20-113, and thus were properly appealed to the Tax Court under LG § 20-117. The County filed a reply to appellees' opposition on July 18, 2014.

On August 20, 2014, the Tax Court held a hearing on the motion to dismiss. After hearing arguments from both sides, the court took the matter under advisement. On October 30, 2014, the Tax Court issued an order granting the County's motion to dismiss on the grounds that appeals regarding license fees did not fall under the Tax Court's jurisdiction.

On November 18, 2014, appellees responded to the Tax Court's decision by filing a Petition for Judicial Review in circuit court pursuant to Maryland Rule 7-202. The County filed a response to the petition on December 22, 2014, indicating its intention to participate in the action. No substantive pleadings were filed in advance of the administrative appeal hearing.

On April 22, 2015, the circuit court held a hearing on appellees' petition, and on April 29, 2015, the court issued an order reversing the Tax Court's decision and remanding the case for a hearing on the merits. On May 29, 2015, the County filed a timely notice of appeal to this Court.

DISCUSSION

I. Tax Court's Decision

A. Standard of Review

"The Tax Court is an adjudicatory administrative agency in the executive branch of state government. As such, the Tax Court is subject to the same standards of judicial review as other administrative agencies." *Frey v. Comptroller of Treasury*, 422 Md. 111, 136 (2011) (citations and internal quotation marks omitted). "Unless the Tax Court's decision was erroneous as a matter of law, or its conclusion was not supported by substantial evidence, we must affirm that decision." *Comptroller of the Treasury v. Citicorp Int'l Commc'ns, Inc.*, 389 Md. 156, 164 (2005). "'Determining whether an agency's 'conclusions of law' are correct is always, on judicial review, the court's prerogative, although we ordinarily respect the agency's expertise and give weight to its interpretation of a statute that it administers.'" *Comptroller of Treasury v. Gore Enter. Holdings, Inc.*, 209 Md. App. 524, 535 (2013) (quoting *Classics Chicago, Inc. v. Comptroller of the Treasury*, 189 Md. App. 695, 705-07 (2010)), *aff'd,* 437 Md. 492 (2014).

B. Analysis

In its order dismissing appellees' appeal, the Tax Court gave the following reasons:

> The issue raised by [appellees] do[es] not fall within the jurisdiction of the Maryland Tax Court. License fees for amusement devices charged by a county government department are not taxes imposed under the Maryland Tax General Article. The Court has constantly ruled that the imposition of license fees do not fall within its jurisdiction. *West Capital Associate Ltd. Partnership v. City of Annapolis*, 110 Md. App. 443 (199[6]); *MTA Baltimore County Revenue Authority*[,] 267 Md. 687 (1973).

The County contends that the Tax Court was correct in ruling that it did not have subject matter jurisdiction over license fees, because the Tax Court is limited to the adjudication of tax issues under Md. Code (1988, 2010 Repl. Vol.), § 3-103(a) of the Tax General Article ("TG").[4] Appellees counter that (1) LG § 20-113 gives appellees the right to request refunds for an erroneous, illegal, or wrongfully collected "tax, fee, charge, interest, or penalty[;]" (2) the licensing fee is a "fee" under LG § 20-113; and (3) LG § 20-117 gives appellees the right to appeal the disallowance of their refund claim to the Tax Court.

Section 3-103(a)(3) of the Tax General Article provides:

> **The Tax Court has jurisdiction to hear appeals** from the final decision, final determination, or final order of a property tax assessment appeal board or any other unit of the State government or of a political subdivision of the State that is authorized to make the final decision or determination or issue the final order **about any tax issue, including:**
>
> *** * ***
>
> **(3) the determination of a claim for refund**

(Emphasis added).

LG §20-113 reads:

[4] The County makes two other arguments on appeal: (1) the Tax Court does not have *in personam* jurisdiction, because the respondent named by appellees was the Department instead of the County; and (2) appellees' claim is procedurally deficient because it was not filed with the Director of Finance, the County's tax collector. Because the Tax Court decided the instant case only on subject matter jurisdiction grounds, these issues are beyond the scope of this Court's review. *See Frey*, 422 Md. at 137 ("[W]e may not uphold the final decision of an administrative agency on grounds other than the findings and reasons set forth by the agency.").

> **A claim for a refund may be filed with the tax collector who collects the** tax, **fee**, charge, interest, or penalty **by a claimant who:**
>
> (1) erroneously pays to a county or municipality a greater amount of tax, fee, charge, interest, or penalty than is properly and legally payable; or
>
> (2) **pays to a county or municipality a tax, fee, charge, interest, or penalty that is erroneously, illegally, or wrongfully assessed or collected in any manner**.

(Emphasis added).

The procedure for noting an appeal to the Tax Court by a claimant for a refund is set forth in LG § 20-117:

> (a) *Appeal.* - Except as provided in subsection (b) of this section, a claimant may appeal to the Maryland Tax Court, within 30 days after the date on which a notice under § 20-116(c) of this subtitle is given, in the manner allowed in Title 13, Subtitle 5, Parts IV and V of the Tax--General Article.
>
> (b) *Claimant.* - If a claimant is not given notice under § 20-116(c) of this subtitle within 6 months after the claim is filed, the claimant may:
>
> (1) treat the claim as being disallowed; and
>
> (2) appeal the disallowance to the Tax Court.

Each side relies primarily on one case to support its interpretation of the above statutory provisions. The County cites to *West Capital Assocs. Ltd. P'ship v. City of Annapolis*, 110 Md. App. 443 (1996), which the Tax Court agreed was controlling. Appellees point to *Vytar Assocs. v. City of Annapolis*, 301 Md. 558 (1984), and argue that the Tax Court erred in not following its holding. We agree with appellees and shall explain.

In *West Capital*, the appellant was a property owner with property just outside the City of Annapolis. 110 Md. App. at 446. The Annapolis City Code allowed the City to provide water and sewer services to users outside the city limits and charge them twice

what was paid by users in the City. *Id.* at 447. The Code, however, allowed the City to charge its normal rate, provided that the outside user agreed to pay an annual fee in an amount equal to the real property taxes that would have been imposed if the property was in the City. *Id.* The appellant entered into such agreement with the City and paid the annual fee for the first six years. *Id.* at 448. The appellant then stopped paying the fee and demanded a refund of all of the annual fees, claiming that they were unconstitutional. *Id.* The City rejected the claim and filed suit in circuit court for breach of contract. *Id.* "Upon the City's rejection of the claim for refund, [the] appellant filed a Petition of Appeal with the Maryland Tax Court, contending that, under the City Code, the City was without authority to impose sewer fees on [the] appellant in excess of those charged to City residents[.]" *Id.* The appellant filed a motion to dismiss the City's suit in circuit court, arguing that the Tax Court had primary jurisdiction over the dispute. *Id.* The court denied appellant's motion and thereafter granted the City's motion for summary judgment. *Id.*

On appeal, this Court addressed the jurisdictional issue by first looking at TG § 3-103(a) as conferring and limiting the jurisdiction of the Tax Court. *Id.* at 449. We acknowledged that the appellant's appeal to the Tax Court was based on Md. Code, Art. 24, § 9-712(d) (now LG § 20-117) and that Section 9-710 (now LG § 20-113) set forth the procedure for refunds of a wrongfully paid "tax, fee, charge, interest, or penalty." *Id.* at 449-50. We also noted that, by its language, the latter provision included more than just "taxes." *Id.*

This Court held that the water and sewer charges at issue did not constitute a "tax, fee, charge, interest, or penalty" under Section 9-710, and thus were not subject to the Tax

Court's jurisdiction. *Id.* at 450. We reasoned that the "[w]ater and sewer charges imposed by municipalities are generally not regarded as taxes or *fees in the nature of taxes* but rather as charges for the sale of a service or commodity." *Id.* (emphasis added). Such charges are not in the nature of taxes, because "the rates, though higher than those charged to City residents, were based either on consumption (of the water) or provision of the service (water and sewer) and did not represent a general exaction applicable to people who did not use the product or service[.]" *Id.* at 451. This Court concluded that the Tax Court had no jurisdiction, "[b]ecause these charges were not taxes, or even in the nature of taxes, but instead constituted *fees charged by the City in its proprietary capacity for the provision of a particular service or commodity*[.]" *Id.* (emphasis added).

On the other hand, in *Vytar*, the Annapolis City Code prohibited "the operation of certain rental dwellings . . . without a license and establishe[d] a license fee." 301 Md. at 560. The appellants were landlords who paid the license fee for several years until it was declared invalid under the Maryland Constitution. *Id.* at 560-61. Each of the appellants then filed a claim for a refund of the license fees that had been paid. *Id.* at 561. The City denied the claims, and the appellants appealed to the Tax Court, which held that the refund claims should have been paid by the City. *Id.* On the City's petition for judicial review, the circuit court reversed the Tax Court. *Id.* On appeal from the circuit court, the Court of Appeals issued a writ of certiorari prior to consideration by this Court. *Id.*

The Court of Appeals stated that the jurisdictional issue is "answered by a determination whether [the appellants] were entitled to file claims with Annapolis for a refund of the fees which they paid. If they were so entitled, the Maryland Tax Court had

jurisdiction to entertain an appeal in the event the claims were disallowed." *Id.* The Court explained that "the common law rule in Maryland is that in the absence of some statutory provision authorizing it, taxes, fees or other governmental charges voluntarily paid under a mistake of law cannot be recovered back." *Id.* at 561-62 (citations omitted). Therefore, the issue was whether Art. 81 § 215 of the Maryland Code authorized recovery. *Id.* at 562. A refund was authorized under Section 215 whenever a person

> shall have erroneously or mistakenly paid to any State, county or municipal agency authorized to collect the same more money for special taxes or other fees or charges, than was properly and legally payable[.]

Id. at 563.

Section 217 of Article 81 allowed claimants to appeal to the Tax Court if their claims were denied. *Id.* at 562. Of the license fees that had been paid by the appellants to the City, the Court held:

> The disputed payments met these criteria. They fell into the category of "other fees or charges" as fees to obtain licenses to operate rental dwellings. The fees were "erroneously or mistakenly paid" because the law establishing them was declared unconstitutional. . . . They were in an amount more than was "properly and legally payable" because in fact no fee at all was then "properly and legally payable." That is, the words "more money" must be read in conjunction with the phrase "than ... properly and legally payable."

Id. at 564 (footnote omitted).

The language of Article 81 § 215 analyzed in *Vytar* is substantially the same as the language in LG § 20-113. Art. 81 § 215 authorized a refund when a person "erroneously or mistakenly paid to any State, county or municipal agency authorized to collect the same more money for special taxes or *other fees or charges*, than was properly and legally

payable." *Id.* at 563 (emphasis added). LG § 20-113 states that "[a] *claim for a refund may be filed* with the tax collector who collects the tax, fee, charge, interest, or penalty *by a claimant who . . . pays* to a county or municipality *a* tax, *fee*, charge, interest, or penalty that is erroneously, illegally, or wrongfully assessed or collected in any manner." (Emphasis added).

The facts underlying the *Vytar* decision align much more closely with the instant case than the facts of *West Capital*. In *West Capital*, this Court held that the fees were not taxes or "in the nature of taxes" because the fees were "charged by the City in its proprietary capacity for the provision of a particular service or commodity[.]" 110 Md. App. at 451. In other words, the City was providing a commodity or service in exchange for a fee. *Id.* Conversely, in both *Vytar* and the case before us, the parties were not paying fees to a governmental entity in exchange for a commodity or service. In *Vytar*, the City required landlords to pay fees in order to obtain licenses to operate certain rental dwellings. 301 Md. at 564. Likewise, in the instant case, the County required appellees to pay fees for licenses in order to operate "simulated gaming machines." In *Vytar*, if the appellants did not pay the license fees, they could not rent out their dwellings. *See id.* In this case, if appellees did not pay the license fees, they could not operate their gaming machines. Both fees fall under the concept of "erroneously" collected "fees" as specified in the applicable statutes. Thus the licensing fee charged in this case falls within the purview of LG § 20-113, and appellees properly appealed the denial of their claims to the Tax Court pursuant to LG § 20-117. Accordingly, the Tax Court has jurisdiction in the instant case to decide appellees' appeal of the denial of their refund claim.

Subsequent to the briefing and oral argument in the instant appeal, the Court of Appeals issued its opinion in *Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355 (2016). As will be discussed, *Brutus 630* upholds the rationale of *Vytar* and distinguishes *West Capital* in a case factually similar to the case *sub judice*. Therefore, in our view, *Brutus 630* controls the outcome of this appeal.

In *Brutus 630*, the Court of Appeals addressed the same issue that we are faced with in the instant case: Did the Tax Court have jurisdiction to consider the appellant's claims for a refund under LG § 20-113? *Id.* at 358. The appellant, Brutus 630, was a real estate developer that sought a refund from the Town of Bel Air ("the Town") of "sewer connection fees" that it had paid in order to obtain building permits. *Id.* at 364-65. The fees were charged by the Town to "defray[] the cost of future replacement and expansion of the sewage treatment facilities." *Id.* at 364. Brutus 630 argued that it was entitled to a refund because the Town lacked the authority to charge such fees. *Id.* at 365. The Town's Director of Finance denied the claim, and Brutus 630 appealed to the Tax Court. *Id.* The Town moved to dismiss the appeal, asserting "that the Tax Court was without jurisdiction to hear the merits of the appeal because the sewer connection charges were not taxes, but rather regulatory fees charged for services." *Id.* at 366. The Tax Court granted the motion to dismiss, reasoning that "the sewer connection charges were not regarded as taxes or charges 'in the nature of taxes' and therefore did not come within the purview of the refund statute." *Id.* Just as it did in the case *sub judice*, the Tax Court relied on this Court's decision in *West Capital* in reaching that conclusion. *Id.* at 373-74. Brutus 630 filed a

petition for judicial review in circuit court; the court dismissed the petition, which decision was later affirmed by this Court in an unreported opinion. *Id.* at 366-67.

The Court of Appeals granted Brutus 630's petition for writ of certiorari "to decide whether the Maryland Tax Court has jurisdiction under the refund statute to consider the appeal of the Town's denial of the refund application." *Id.* at 367. To decide this issue, the Court of Appeals looked to the text of the statute, as well as its legislative and case law history. *Id.* at 367-373. With regards to the actual text of the statute, the Court observed:

> **The text of the refund statute does not limit its scope to taxes.** As noted above, it provides that a claimant may seek a refund of a "fee, charge, interest or penalty," as well as taxes, paid to a local government when there is an erroneous overpayment or when the "fee, charge, interest, or penalty" (or tax) is "erroneously, illegally, or wrongfully assessed or collected." LG § 20–113. . . . **The sewer connection fee at issue in this case would qualify as a "charge" or a "fee" under the ordinary definitions of those terms. Nowhere in this statute does the language limit its reach to governmental charges "in the nature of a tax."**

Id. at 368 (emphasis added).

The Court then considered the legislative history of the statute, confirming that "the General Assembly did not intend to limit the refund statute to taxes or to require fine distinctions about what other charges or fees imposed by a local government could be equated to taxes." *Id.* at 369. Moreover,

> [t]he legislative history of that statute demonstrates that, while the predecessor of that statute was once limited to "ordinary taxes" of counties, it was extended more than 40 years ago to other fees and charges imposed by counties, as well as municipalities. **Thereafter, it has been construed by this Court as a broad remedy "covering**

> **every type of tax, fee or charge improperly collected by a Maryland governmental entity."**

Id. at 373 (emphasis added).

The Court also looked at prior cases that had interpreted the statute, including *Vytar* and *Bowman v. Goad*, 348 Md. 199 (1997). *Id.* at 372. The Court stated that in *Vytar* it held that the license fees paid by the landlords to the City of Annapolis "fell within the category of 'other fees or charges' that were 'erroneously or mistakenly paid.'" *Id.* (quoting *Vytar*, 301 Md. at 563-64). "Accordingly, the Court held that the payments could be recovered pursuant to a claim under the refund statute and that the Tax Court could consider an appeal of the City's denial of the refund claims." *Id.* In *Bowman*, the Court of Appeals observed that with the refund statute, "'the General Assembly has now provided broad administrative refund remedies covering *every type of tax, fee, or charge improperly collected by a Maryland governmental entity*.'" *Id.* (quoting *Bowman*, 348 Md. at 204) (emphasis in original).

The Court examined *West Capital* and determined that *West Capital* did not govern the resolution of the dispute, because (1) the fees in *West Capital* were contractual payments to the City, not a fee or charge imposed by the City, and (2) "even if language in the *West Capital* decision could be construed to exclude the sewer connection charges in this case from the purview of the refund statute, such an interpretation would be at odds with the broad construction placed on the current version of the refund statute, clearly a remedial measure . . . ." *Id.* at 374.

Finally, the Court considered the Town's argument that refunds under LG § 20-113 were limited by the language of TG § 3-103(a), which states that the Tax Court has jurisdiction to hear "any tax issue." *Id.* at 379-80. The Court rejected the Town's argument, explaining:

> There is no question that the Tax Court has jurisdiction of refund claims relating to taxes. That responsibility is given to the Tax Court not only by TG § 3–103(a), but also by LG § 20–117 with respect to appeals of refund claims relating to local government taxes. But **LG § 20–113 does not limit claims under the local government refund statute to taxes. And, in stating that a refund claimant "may appeal" to the Tax Court, neither does LG § 20–117 limit that jurisdiction of the Maryland Tax Court to tax refund claims. LG § 20–117 unequivocally permits a claimant to appeal a denial of that claimant's application for a refund relating to *fees* and *charges,* as well as taxes, provided that the claimant meets certain procedural conditions.** Under the Town's reading of the statutes, the authority conferred on the Tax Court in LG § 20–117 would be superfluous of the authority provided by TG § 3–103.

Id. at 380 (italics in original and bold emphasis added).

The Court concluded:

> Because the plain language of the refund statute, the legislative purpose underlying the statute, and this Court's prior cases interpreting the statute all favor a broad interpretation of the statute, we conclude that the refund statute would encompass a claim for the sewer connection charges imposed by the Town in this case.

Id. at 382.

In the case *sub judice*, the license fees for "simulated gaming devices," like the sewer connection charge in *Brutus 630* and the license fees for the landlords in *Vytar*, are "fees" that are alleged to have been "improperly collected by a Maryland governmental entity[,]" and thus fall within the scope of the refund statute, LG § 20-113. *See Brutus 630*,

448 Md. at 373, 382. Because appellees appealed the County's denial of their claim for a refund of the licensing fees paid for the "simulated gaming devices" under LG § 20-117, the Tax Court does have jurisdiction to hear such appeal. Accordingly, the Tax Court's dismissal of appellees' appeal was in error.

II. Circuit Court's Decision

The County contends that the circuit court abused its discretion by denying the County its right to defend its case against appellees' petition for judicial review. According to the County, prior to the hearing on the petition, appellees did not file a memorandum as required by Rule 7-207. After hearing oral argument from appellees, the circuit court acknowledged the disadvantage faced by the County because of the lack of a memorandum filed by appellees. The court continued the case to allow appellees to file a memorandum, to which the County could then respond. However, one week after the hearing and without any memorandum or response filed, the circuit court issued an order reversing the Tax Court and remanding the case in that court for a hearing on the merits.

Although the County was not given the chance to fully brief the jurisdictional issue before the circuit court, that issue has been fully briefed in this Court. Thus any prejudice that may have existed at the circuit court level is absent here. Moreover, as explained *supra*, in appeals of this nature, this Court must look through the circuit court's decision and review the decision of the agency, *i.e.*, the Tax Court. *See People's Counsel for*

Baltimore Cty. v. Surina, 400 Md. 662, 681 (2007). Accordingly, under the circumstances of the case *sub judice*, no relief is warranted to the County for the trial court's error.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE TAX COURT FOR A HEARING ON THE MERITS; COSTS TO BE PAID BY BALTIMORE COUNTY.