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Circuit Court for Anne Arundel County
Case No. C-02-CV-23-001374

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1710

September Term, 2025

ERIC TUBLIN

v.

WALMART, INC.

Graeff,
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: November 20, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Eric Tublin, appellant, filed, in the Circuit Court for Anne Arundel County, a class action against Walmart, Inc. ("Walmart") alleging a violation of the Maryland Consumer Protection Act and negligent misrepresentation. The action was based on Walmart's alleged practice of charging sales tax on the sale of American flags in Maryland, which Tublin claimed violated Maryland law. Walmart moved to dismiss the action, arguing that Tublin had failed to exhaust his administrative remedies or state a claim for which relief could be granted. Following a hearing, the court granted Walmart's motion and dismissed Tublin's action with prejudice. After Tublin noted an appeal, this Court dismissed the appeal on the grounds that the court's order of dismissal was not a final judgment. Tublin thereafter filed a motion in the circuit court asking the court to reconsider its earlier decision to dismiss the complaint. The court denied the motion and entered a final judgment dismissing Tublin's complaint. Tublin thereafter noted the instant appeal.

In this appeal, Tublin raises three questions for our review. For clarity, we have rephrased those questions and consolidated them into a single question[1]:

[1] Tublin phrased the questions as:

1. Did the Circuit Court err by dismissing this action on the ground that Maryland administrative tax-refund procedure provides the exclusive remedy for the illegal overcharge imposed by Walmart on the sale of American flags?

2. Did the Circuit Court err by concluding that Walmart was performing a governmental duty when it represented that its unlawful overcharge was a "sales tax" that is expressly prohibited under Maryland law?

3. Did the Circuit Court err by dismissing a consumer protection claim that alleged false representations, consumer reliance, and objectively identifiable loss?

Did the circuit court err in dismissing the complaint?

For reasons to follow, we hold that the court did not err in dismissing Tublin's complaint. Accordingly, we affirm the court's judgment.

BACKGROUND

On March 11, 2023, Tublin purchased an American flag from a Walmart-owned store in Maryland for $33.98. The receipt of the sale indicated that Walmart had charged Tublin a sales tax on his purchase of the American flag. Tublin believed the charge to be erroneous because, under Maryland law, sales of certain flags, including American flags, are exempt from Maryland sales tax.

In July 2023, Tublin filed a class action lawsuit against Walmart on behalf of all persons who had purchased a tax-exempt flag from a Walmart store and had been charged sales tax. Tublin alleged that he had "paid sales tax on his purchase of an American flag from Walmart" even though "Walmart had no legal right to collect sales tax on [his] purchase of an exempt flag." Tublin alleged that Walmart "routinely mispresents that sales tax are due" on the sale of tax-exempt flags, that he and his fellow class members had "paid sales tax on their purchases of tax[-]exempt flags from Walmart[,]" and that he and his fellow class members "relied on Walmart's false and misleading representations that sales taxes were due and payable, when in fact they were not."

Tublin set forth two causes of action. The first cause of action alleged that Walmart's practice of charging sales tax on tax-exempt flags constituted a violation of the Maryland Consumer Protection Act ("MCPA"). Tublin alleged that Walmart had violated its duty "not to engage in any unfair, abusive, or deceptive trade practice in connection

with the collection of any consumer debts[.]" Tublin also alleged that Walmart had violated its duty to "not engage in any deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with the promotion or sale of any consumer goods, consumer realty, or consumer service[.]" Tublin maintained that Walmart had "engaged in an unfair or deceptive trade practice when it represented sales tax was due from [him] and the [s]ubclass on their purchase of an American flag." Tublin asserted that he and his fellow class members had suffered damages as a result of Walmart's unfair or deceptive trade practices.

In his second cause of action, Tublin alleged that Walmart's practice of charging sales tax on tax-exempt flags constituted negligent misrepresentation. Tublin alleged that Walmart owed a duty to use due care in representing that taxes were due on the sale of exempt flags; that the sales receipts provided by Walmart to its customers represented that sales tax were due on the purchase of exempt flags; that Walmart knew or should have known that no sales tax was due and that its representations were false; and that customers relied on Walmart's representations and suffered damages as a result of those representations.

Following the filing of Tublin's complaint, Walmart moved to dismiss, raising four grounds. First, Walmart argued that Maryland had an established administrative procedure for the refund of improperly collected taxes and that Tublin was required to exhaust those administrative remedies before filing his complaint. Second, Walmart argued that the collection of sales tax is not a "trade practice" and, therefore, is not covered by the MCPA.

Third, Walmart argued that Tublin had not established that Walmart's collection of sales tax constituted a "debt." Finally, Walmart argued that Tublin had failed to allege a misrepresentation or reliance.

Tublin opposed the motion, arguing that the administrative process for the refund of taxes was inapplicable because "there is no 'sales tax' involved in the claims against Walmart in this action." Tublin argued that, because Walmart was not authorized to collect sales tax on tax-exempt flags, the extra charge imposed on the sale of tax-exempt flags could not be considered a "tax." Tublin argued that "Walmart chose to charge and collect money that its customers did not owe" and that, consequently, Walmart's actions constituted a misrepresentation on which its customers had relied when purchasing certain flags. Tublin insisted that those allegations were sufficient to state a cause of action for a violation of the MCPA and for negligent misrepresentation.

Following a hearing, the circuit court granted Walmart's motion and dismissed Tublin's complaint with prejudice.[2] The court found that "the appropriate remedy was to approach the retailer" and that, absent that remedy, Tublin should have pursued an "administrative remedy" before filing a lawsuit. The court also found that Tublin had failed to allege that Walmart's actions constituted a "trade practice" or a "debt" within the meaning set forth by the MCPA. Finally, the court found that Tublin had failed to allege sufficient facts to show either a misrepresentation or reliance.

[2] The court actually granted Tublin leave to amend, but the court stated that Tublin had to file an amended complaint by a certain date or the matter would be dismissed with prejudice. Tublin did not file an amended complaint within the time set by the court.

After Tublin noted an appeal, this Court dismissed the appeal on the grounds that the order from which Tublin had appealed was not a final judgment. *Tublin v. Walmart, Inc.*, No. 10, Sept. Term, 2024, 2025 WL 1911470 (filed July 11, 2025). Shortly thereafter, Tublin filed, in the circuit court, a motion for reconsideration or, in the alternative, for entry of final judgment. The court ultimately denied the motion for reconsideration and entered a final judgment dismissing Tublin's complaint.

This timely appeal followed. Additional facts will be supplied as needed below.

STANDARD OF REVIEW

We review the grant of a motion to dismiss *de novo*. *Grier v. Heidenberg*, 255 Md. App. 506, 520 (2022). We also apply a *de novo* standard to the question of whether a plaintiff was required to exhaust his administrative remedies prior to bringing suit. *Comptroller of Maryland v. Comcast of California*, 484 Md. 222, 231 (2023).

DISCUSSION

Parties' Contentions

Tublin contends that the circuit court erred in dismissing his complaint. Tublin argues that, by suggesting he "approach the retailer" prior to filing suit, the court imposed an improper prerequisite to his causes of action. Tublin also argues that, because Walmart was not authorized to collect a sales tax on tax-exempt flags, the charge at issue was not a "tax," such that the relevant administrative remedy for tax disputes would not operate as a bar to his claim. Tublin argues, in other words, that his claim was not "a tax dispute" but rather was "an unlawful overcharge" that Walmart misrepresented as a sales tax. Tublin argues, therefore, that he adequately pleaded claims for negligent misrepresentation and a

violation of the MCPA. Tublin contends that, were we to accept the court's rationale for dismissing his complaint, unlawful conduct like that which Tublin alleges here would become "immune from consumer-protection law merely because it is mislabeled as tax collection."

Walmart contends that the circuit court properly dismissed Tublin's complaint. Walmart argues, as it did below, that Maryland has an established administrative procedure for resolving tax disputes and that Tublin was required to exhaust that procedure before filing his civil claim. Walmart also argues that Tublin's complaint failed to set forth facts sufficient to state an MCPA claim or a claim for negligent misrepresentation.

As discussed in greater detail below, we affirm the court's decision to dismiss Tublin's complaint. Tublin's exclusive avenue for relief was the special statutory administrative remedy for the resolution of tax disputes, and Tublin was required to exhaust that administrative remedy prior to seeking relief in the courts.

Maryland's Special Statutory Remedy for Sales and Use Tax Disputes

We begin by setting forth the relevant statutory remedy for the resolution of sales and use tax disputes. The Tax-General Article ("TG") of the Maryland Code empowers the Comptroller of Maryland (the "Comptroller") with the administration of certain taxes, including "the sales and use tax." TG § 2-102(a)(9). Under the "Sales and Use Tax" Title of the Tax-General Article, except as otherwise provided in that title, a sales and use tax "is imposed on: (1) a retail sale in the State; and (2) a use, in the State, of tangible personal property, a digital code, a digital product, or a taxable service." TG § 11-102(a). The Tax-General Article includes a slew of organizations, products, and transactions that are exempt

from the sales and use tax. TG § 11-201 *et seq.* One such exemption can be found in TG § 11-205, which states that the "sales and use tax does not apply to a sale of: (1) a Maryland State flag; (2) a United States flag; or (3) a prisoner of war flag or missing in action flag honoring and remembering military personnel who have served in the armed forces of the United States."

Despite those exemptions, "[a] rebuttable presumption exists that any sale in the State is subject to the sales and use tax[.]" TG § 11-103(a). Furthermore, "[t]he person required to pay the sales and use tax has the burden of proving that a sale in the State is not subject to the sales and use tax." TG § 11-103(b).

During a retail transaction, the buyer is generally responsible for paying retail sales tax, which the vendor ordinarily collects at the time of the sale. TG § 11-403(b)-(c). In that instance, the "vendor is a trustee for the State and is liable for the collection of the sales and use tax for and on account of the State." TG § 11-401(a). If the retail sale is ultimately rescinded or canceled and the purchase price is wholly or partially refunded to the buyer, then the vendor must refund the proportionate amount of sales tax the buyer has paid. TG § 11-403(d). Otherwise, the vendor must remit the collected tax to the State with a return that covers the period in which the sale was made. TG § 11-601(b). If a vendor fails to collect the appropriate sales tax from the buyer or fails to remit said sales tax to the State, then the vendor becomes personally liable for the tax and any interest and penalties. TG § 11-601(c). A vendor is also required to keep and make available for inspection by the Comptroller "complete and accurate records of: (i) all retail sales and sales for use; and (ii) the sales and use tax collected[.]" TG § 11-504(a)-(b).

In the event that an aggrieved taxpayer wishes to challenge a tax administered by the Comptroller, he has two available administrative paths: "(1) a post-deprivation remedy path, in which the taxpayer pays the tax and then seeks a refund, … or (2) a pre-deprivation remedy path, in which the taxpayer declines to pay the tax, awaits an assessment, and then appeals the assessment[.]" *Comcast*, 484 Md. at 235. Under the post-deprivation remedy, "[a] claim for refund may be filed with the tax collector who collects the tax, fee, or charge by a claimant who … pays to the State a tax, fee, charge, interest, or penalty that is erroneously, illegally, or wrongfully assessed or collected in any manner[.]" TG § 13-901(a)(2). The statute defines "tax collector" as "the person or governmental unit responsible for collecting a tax." TG § 13-101(e)(1). The statute defines "tax collector" to include the Comptroller. TG § 13-101(e)(2)(i). The statute defines "person" as "an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity." TG § 1-101(p)(1). The statute defines "governmental unit" as "(1) this State or a political subdivision, unit, or instrumentality of this State; (2) another state or a political subdivision, unit, or instrumentality of that state; and (3) a unit or instrumentality of a political subdivision of this State or of another state." TG § 13-101(d).

If a taxpayer pursues a claim for a refund, the claim must be: "(1) made, under oath, in the form that the tax collector requires; and (2) supported by the documents that the tax collector requires[.]" TG § 13-902. Upon receipt of the claim, "[t]he tax collector shall: (1) investigate each claim for refund; and (2) conduct a hearing at the request of the claimant prior to a final determination on the claim." TG § 13-904(a). "The tax collector shall give

the claimant notice of: (1) the determination of the claim for refund; and (2) any delay in paying an allowed claim." TG § 13-904(b). If the tax collector authorizes the refund, the tax collector must pay the refund unless: "(1) the claimant has not paid all other taxes, fees, or charges payable to the State; or (2) the amount of the refund due is less than $1." TG § 13-905(a). "For a claim of refund for sales and use tax, the Comptroller shall either: (1) pay the refund; or (2) allow a credit of the amount of the refund on subsequent sales and use tax payments due from the claimant." TG § 13-905(e).

"[W]ithin 30 days after the date on which a notice is mailed, a person or governmental unit that is aggrieved by the action in the notice may appeal to the Tax Court from … a disallowance of a claim for refund under § 13-904 of this title." TG § 13-510(a)(6). "If a tax collector does not make a determination on a claim for refund within 6 months after the claim is filed, the claimant may: (1) consider the claim as being disallowed; and (2) appeal the disallowance to the Tax Court." TG § 13-510(b).

"The Tax Court is an administrative agency of the State." *Broadway Servs., Inc. v. Comptroller of Maryland*, 478 Md. 200, 213 (2022). "Proceedings on appeal to the Tax Court are thus a continuation of a taxpayer's administrative remedies, not judicial review, and are governed by Part IV of Subtitle 5 of Title 13 of the Tax-General Article." *Comcast*, 484 Md. at 236. "The Tax Court has 'full power to hear, try, determine, or remand any matter before it,' including the ability to 'reassess or reclassify, abate, modify, change or alter any valuation, assessment, classification, tax or final order appealed to' it." *Id.* at 237 (quoting TG § 13-528(a)). "A final order of the Tax Court, which constitutes the final

administrative decision in a case, is then 'subject to judicial review as provided for contested cases in' the State Administrative Procedure Act." *Id.* (quoting TG § 13-532(a)).

Exhaustion

As the above statutory scheme makes plain, the Maryland General Assembly has enacted a comprehensive administrative remedy for the resolution of tax disputes involving sales and use tax. The next question, then, is whether Tublin was required to exhaust that remedy prior to seeking court intervention.

"When the General Assembly enacts legislation giving rise to statutory claims, it frequently also provides for special statutory administrative remedies to be pursued under an administrative scheme, subject to judicial review." *Comcast*, 484 Md. at 231. When such a remedy has been provided, the relationship between that remedy and any alternative judicial remedy falls into one of three categories: 1) the administrative remedy is exclusive; 2) the administrative remedy is primary but not exclusive; or 3) the administrative remedy and the alternate judicial remedies are concurrent. *Id.* at 232-33. "Which of the three categories is applicable to a particular administrative remedy is ordinarily a question of legislative intent." *Holzheid v. Comptroller of Treasury of Maryland*, 240 Md. App. 371, 389 (2019).

Importantly, if the administrative remedy is exclusive, "the only manner of obtaining judicial involvement is by pursuing judicial review of the final administrative decision." *Comcast*, 484 Md. at 232. Similarly, if the administrative remedy is primary but not exclusive, a litigant "'must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly

adjudicate the merits of the alternative judicial remedy.'" *Id.* (quoting *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 60 (1998)).

> Thus, in Maryland, it is well established that where there exists a special statutory remedy for a specific type of case, and the Legislature intends that remedy to be exclusive or primary, a party may not bypass the special statutory remedy by bringing an action for a declaratory judgment or for equitable relief.

Furnitureland S., Inc. v. Comptroller of Treasury of State, 364 Md. 126, 133 (2001). "When a plaintiff has failed to exhaust his or her administrative remedies, courts normally dismiss the action, 'because, although the court may well have subject matter jurisdiction over the action before it, the exhaustion doctrine bars the court from exercising that jurisdiction[.]'" *Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274, 296 (2015) (quoting *State Ret. & Pension Sys. v. Thompson*, 368 Md. 53, 66 (2002)).

There is little question that tax disputes, including disputes involving sales and use tax, are subject to the exhaustion requirement. In *Comptroller of the Treasury v. Zorzit*, we held that, ordinarily, the administrative remedies regarding tax disputes set forth in the Tax-General Article are primary, if not exclusive, and must be exhausted prior to judicial intervention. *Zorzit*, 221 Md. App. 294-96. The Supreme Court of Maryland has likewise "generally viewed special statutory remedies for the determination of tax questions to be exclusive[,]"*White v. Prince George's Cnty.*, 282 Md. 641, 649 (1978), and the Court has "consistently held" that the "comprehensive nature of the special statutory administrative remedies available for resolving tax disputes suggests that the General Assembly intended

them to be either exclusive or primary rather than concurrent[.]"[3] *Comcast*, 484 Md. at 238 (discussing the statutory scheme for sales and use tax disputes).

In *Holzheid v. Comptroller of the Treasury*, we held that, subject to a few narrow exceptions, tax disputes involving the payment of taxes and the issuing of refunds fall within the exclusive jurisdiction of the Tax Court. *Holzheid*, 240 Md. App. at 397. In reaching that conclusion, we noted that the statutory scheme governing tax collection and disputes was extensive and comprehensive, that prior case law had recognized the Tax Court as "at least having primary jurisdiction over refund claims," and that the General Assembly had enacted legislation removing the adjudication of refund appeals from the jurisdiction of the circuit court and granting it to the Tax Court. *Id.* at 390-97. In addition, we cited the following language from the Supreme Court of Maryland's decision in *Apostol v. Anne Arundel County*, in which the Court declared the remedies contained in the tax code to be exclusive:

> It is firmly established in this State that once a taxpayer voluntarily pays a tax or other governmental charge, under a mistake of law or under what he regards as an illegal imposition, no common law action lies for the recovery of the tax absent a special statutory provision sanctioning a refund. This is true even if payment is made under protest. Moreover, in these circumstances, no common law or declaratory judgment action lies to

[3] In *Comcast*, the Supreme Court went further, holding that the administrative remedies for resolving tax disputes was in fact exclusive. *Comcast*, 484 Md. at 247-48. But, in that case, the judicial remedy at issue was a request for declaratory relief, and the Court, in holding that the administrative remedy was exclusive, relied, in part, on the statutory scheme governing declaratory relief. *Id.* at 238-51. It is not clear whether that holding applies to all judicial remedies, or if the holding is specific to requests for declaratory relief. In any event, the Court made clear that the administrative remedies for resolving tax disputes was at least primary and, therefore, required exhaustion before an alternative judicial remedy is sought.

> challenge the validity of tax so paid. Where there is a statutory authorization for a refund and a special statutory remedy set forth, that remedy is exclusive.

Id. at 390 (cleaned up) (quoting *Apostol v. Anne Arundel Cnty.*, 288 Md. 667, 672 (1980)).

From that, it is clear that, where there is a dispute involving sales and use tax, the statutory remedies are at the very least primary and must be exhausted prior to judicial intervention. It is also clear that, where the tax dispute involves a refund, the Tax Court has exclusive jurisdiction.

The Instant Case

Turning back to the instant case, we hold that Tublin's complaint was properly dismissed. Tublin's purchase of the American flag was a retail sale, and Walmart charged and collected sales tax on that purchase pursuant to its general obligation to collect and remit sales tax on all sales in Maryland. *See* TG §§ 11-102(a), 11-103(a), and 11-601(b). If, upon paying that tax, Tublin believed that the tax had been "erroneously, illegally, or wrongfully assessed or collected in any manner[,]" then his post-deprivation remedy was to file a "claim for refund … with the tax collector who collect[ed] the tax, fee, or charge[.]" TG § 13-901(a)(2). The tax collector would then be required to investigate the claim and either issue a refund or deny the claim. TG § 13-904. If Tublin was aggrieved by that decision, or if the tax collector failed to make a decision within a certain time, Tublin could appeal the matter to the Tax Court, which "has exclusive jurisdiction over issues involving refunds[.]" *Holzheid*, 240 Md. App. at 397. Tublin's failure to exhaust that administrative remedy warranted dismissal of his claim with prejudice.

As discussed, Tublin insists that the charge at issue in the instant case did not constitute a "tax" subject to the administrative process for the resolution of tax disputes. Tublin notes that, under TG § 11-205, sales and use tax does not apply to the sale of American flags. Tublin contends, therefore, that the charge could not be considered a "tax" because Walmart was not authorized to collect the "tax" in the first place.

We are not persuaded by Tublin's argument. Again, Walmart was required by law to collect sales tax on all retail sales. Although Maryland has various enumerated exceptions to that general requirement, "[a] rebuttable presumption exists that any sale in the State is subject to the sales and use tax[.]" TG § 11-103(a). Thus, "[w]hen determining if tax exemptions apply, we do not presume that the State surrendered its taxing power." *Broadway Servs.*, 478 Md. at 215. To the contrary, "[t]he person required to pay the sales and use tax has the burden of proving that a sale in the State is not subject to the sales and use tax." TG § 11-103(b). Here, Walmart collected sales tax on the American flag pursuant to its general authority to collect and remit sales tax to the State. At the time, there existed a rebuttable presumption that the sale was subject to sales tax. If, upon paying the tax, Tublin believed that the sale fell within one of the enumerated exceptions, then he, as the person required to pay the tax, had the burden of proving that the sale was not subject to the sales and use tax. The appropriate avenue for making that showing would be the special statutory remedy for the resolution of sales and use tax controversies.

Furthermore, Tublin's argument – that the charge could not be a "tax" because it was not authorized by law – is belied by the record and the plain language of the statute. It is undisputed that the charge at issue was imposed by Walmart and paid by Tublin as a

sales tax. Whether such a "tax" was ultimately authorized by law is a matter directly addressed by TG § 13-901, which permits a tax payer to obtain a refund for any tax "that is erroneously, *illegally*, or wrongfully assessed or collected *in any manner*[.]" TG § 13-901(a)(2) (emphasis added). The statute clearly and unequivocally encompasses the sort of charge at issue here, *i.e.*, a sales tax that has been assessed illegally. To hold otherwise would allow litigants to circumvent the administrative process through clever pleading and would defeat the purpose of the legislation. *See Zorzit*, 221 Md. App. at 296 ("'[L]aws enacted for the collection of general taxes must be interpreted with very great liberality; consequently, construction should not be undertaken with an eye to defeating the legislation, but with both eyes focused on giving it force, if reasonably possible.'" (quoting *Surratts Assocs. v. Prince George's Cnty.*, 286 Md. 555, 556 (1979))).

In sum, we hold that the circuit court did not err in dismissing Tublin's complaint with prejudice on the grounds that Tublin failed to exhaust the special statutory administrative remedies for the resolution of tax disputes. Accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.