

TAX COURT OF NEW JERSEY

Joshua D. Novin
Judge



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NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

June 21, 2016

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Heather Lynn Anderson, Deputy Attorney General
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Re: Mary Jeney, Executor v. Director, Division of Taxation
Docket No. 009107-2015

Dear Mr. Wolfe and Deputy Attorney General Anderson:

This letter constitutes the court's opinion with respect to the Director, Division of Taxation's motion to dismiss, with prejudice, the Complaint filed by plaintiff, Mary Jeney, Executor, for want of jurisdiction due to untimely filing. For the reasons explained below, the court grants the Director's motion, concluding that plaintiff untimely filed an appeal with the Tax Court.

I. Findings of Fact and Procedural History

In accordance with R. 1:7-4(a), the court makes the following findings of fact based on the certifications and exhibits submitted by the parties.

Barbara Joan Markowitz (“decedent”), died intestate on February 1, 2013 a resident of the County of Hudson and State of New Jersey. Letters of Administration were thereafter issued to Mary Jeney by the Hudson County Surrogate’s Court. On or about July 14, 2014, Mary Jeney, as “Executrix of the Estate of Barbara Joan Markowitz” (“plaintiff”), filed a New Jersey Resident Decedent Inheritance Tax Return (the “Return”). Contemporaneous with filing the Return, plaintiff remitted payment of New Jersey Inheritance Tax in the sum of \$9,481.01.

On February 12, 2015, the Director, Division of Taxation (“Director”) issued plaintiff a Notice of Underpayment (the “Notice of Underpayment”), assessing \$87,176.85 in New Jersey Inheritance Tax due, plus interest in the sum of \$12,613.35. After offsetting the \$9,481.01 in New Jersey Inheritance Tax previously paid, the balance due from plaintiff was \$90,309.19.

The Notice of Underpayment was addressed and mailed by the Director, by certified mail return receipt, to the address identified on the Return:

Mary Jeney
c/o Thomas Wolfe Esq
441 Main Street
Metuchen NJ 08840-0000

The Notice of Underpayment was received by Thomas Wolfe, Esq. (“plaintiff’s counsel”) on February 17, 2015. The Notice of Underpayment states that the “determination as reflected in this notice shall be final within 90 days of the date of this notice unless written letter of protest is submitted requesting a Conference or an Administrative Review with the Division of Taxation or a complaint is filed with the Tax Court of New Jersey.”

Approximately thirty days later, on March 16, 2015, plaintiff’s counsel’s health began to deteriorate and he was taken to an emergency health clinic for evaluation. Plaintiff’s counsel states that following his visit to the emergency health clinic he experienced difficulty moving and concentrating.

On March 17, 2015, plaintiff's counsel's symptoms worsened and he was admitted to the hospital. According to plaintiff's counsel, he was diagnosed with a sepsis infection, which led to renal failure and a heart attack. After ten days, plaintiff's counsel was discharged from the hospital on March 28, 2015.

Following his release from the hospital, plaintiff's counsel maintains that he was instructed by his physicians to rest and that during his recovery period he did not have the strength to "maintain focus or engage in any complex thoughts." Although plaintiff's counsel admits to having "travel[ed] to his office" and "engaging in very simple tasks", he asserts that he spent most of the time sleeping.

Plaintiff's counsel asserts that he did not substantially recover from this medical episode until the end of April 2015, and prior to that time he "lacked the physical stamina to sit at his desk or computer to do work".

On June 1, 2015, plaintiff's counsel filed a Complaint with the Tax Court challenging the Notice of Underpayment.

The Director now moves to dismiss plaintiff's Complaint for want of jurisdiction due to untimely filing. The Director argues that because plaintiff's Complaint was filed beyond the applicable 90-day limitations period the court is deprived of subject matter jurisdiction under N.J.S.A. 54:51A-14 and R. 8:4-1(b). Stated differently, the Director maintains that plaintiff's failure to timely file an appeal is a fatal jurisdictional defect which divests the court of jurisdiction in this matter.

Plaintiff opposes the Director's motion arguing that our "[c]ourts have found there are some cases in which leave can be given for a jurisdictional time limitation."¹ Plaintiff's counsel

¹ Plaintiff's counsel's brief and certification provided no case citations which supported this assertion.

asserts that his medical condition rendered him “totally unable to prepare and file the Complaint” within the limitations period. Thus, plaintiff’s counsel argues that his illness “should provide the basis for the relaxation” of the statutory 90-day limitations period.

II. Conclusions of Law

The court’s analysis begins with a principle that is axiomatic, the Tax Court is a court of limited jurisdiction. N.J.S.A. 2B:13-2. As our Supreme Court observed, the narrow jurisdiction of the Tax Court is statutorily defined, “[i]t is against this comprehensive mosaic of procedural safeguards -- one with which continuing strict and unerring compliance must be observed.” McMahon v. City of Newark, 195 N.J. 526, 529 (2008).

This court’s jurisdiction to review any decision, order, finding, assessment or action of the Director is clearly delineated in our statutes. N.J.S.A. 54:51A-14, provides, in part, that:

all complaints shall be filed within 90 days after the date of the action sought to be reviewed.

[N.J.S.A. 54:51A-14.]

The New Jersey State Uniform Tax Procedure Law, N.J.S.A. 54:49-18(a), likewise provides that:

If any taxpayer shall be aggrieved by any finding or assessment of the director, he may, within 90 days after the giving of the notice of assessment or finding, file a protest in writing signed by himself or his duly authorized agent, certified to be true, which shall set forth the reason therefor, and may request a hearing. Thereafter the director shall grant a hearing to the taxpayer, if the same shall be requested, and shall make a final determination confirming, modifying or vacating any such finding or assessment.

[N.J.S.A. 54:49-18(a).]

Our court rules mirror these statutory schemes, requiring that “[c]omplaints seeking to review actions of the Director of the Division of Taxation . . . with respect to a tax matter . . . shall be filed within 90 days after the date of the action to be reviewed.” R. 8:4-1(b). Thus, if a taxpayer

seeks to challenge a decision, deficiency, order, finding, assessment or action of the Director, the taxpayer must, within 90 days after notice of such action, either: (i) file a complaint, or (ii) file a written notice of protest.

The 90-day limitations period is “calculated from the date of service of the decision or notice of the action taken.” R. 8:4-2. In Liapakis v. State Department of Treasury, Division of Taxation, 363 N.J. Super. 96, 99 (App. Div. 2003), certif. denied 179 N.J. 369 (2004), our Appellate Division concluded that R. 8:4-2 applies to calculation of the 90-day period and therefore, the 90-day limitations period runs from the date taxpayer received the notice. See also Slater v. Director, Div. of Taxation, 26 N.J. Tax 322, 334 (Tax 2012); Sahaya v. Director, Div. of Taxation, 29 N.J. Tax 18, 23 (Tax 2015).

An exacting compliance with the statute and court rule is a fundamental prerequisite to conferring jurisdiction on the court. It is well-settled that “statutes of limitation applicable to suits against the government are conditions attached to the sovereign’s consent to be sued and must be strictly construed.” H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J. Tax 60, 65 (Tax 1991). In Rivera v. Prudential Property & Casualty Ins. Co., 104 N.J. 32, 39 (1986), our Supreme Court reiterated the logic underlying limitation periods:

The purposes of statutes of limitations, oft-repeated by this Court, are two-fold: (1) to stimulate litigants to pursue a right of action within a reasonable time so that the opposing party may have a fair opportunity to defend, thus preventing the litigation of stale claims, and (2) ‘to penalize dilatoriness and serve as a measure of repose.’

[Id. at 39 (citations omitted).]

In the area of taxation “statutes of limitation and limitation periods play a vital role. Legislative policy has consistently followed the salutary principle that proceedings concerning tax assessments and governmental fiscal matters be brought expeditiously within established time

periods.” L.S. Village, Inc. v. Lawrence Township, 8 N.J. Tax 287 (Law Div. 1985), aff’d, 8 N.J. Tax 327 (App. Div. 1986). A taxpayer’s failure to timely pursue a cause of action within a reasonable time period is “of particular concern in tax matters, given ‘the exigencies of taxation and the administration of...government.’” Millwork Installation, Inc. v. State Department of the Treasury, Div. of Taxation, 25 N.J. Tax 452, 459 (Tax 2010) (quoting F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 424 (1985)). After expiration of the applicable limitations period, the Director is entitled to assume that an assessment is final, and is not subject to further scrutiny by the court. Commercial Refrigeration & Fixture Co., Inc. v. Director, Div. of Taxation, 2 N.J. Tax 415, 419 (Tax 1981). Thus, the court’s strict adherence to “limitation period[s] is mandatory and is justified by the need for predictability of revenues by the State.” McCullough Transportation Co. v. Motor Vehicles Division, 113 N.J. Super. 353 (App. Div. 1971). The “court has no power...to relax or dispense with a statute of limitations passed by the Legislature and approved by the Governor.” Prospect Hill Apartments v. Borough of Flemington, 1 N.J. Tax 224, 227 (Tax 1979). A complaint that is filed even one day late must be dismissed for want of jurisdiction. Mayfair Holding Corp. v. Township of North Bergen, 4 N.J. Tax 38 (Tax 1982).

Plaintiff’s counsel asks this court to exercise its equitable powers and relax or toll the substantive statute of limitations under N.J.S.A. 54:51A-14 and R. 8:4-1(b), and adopt an approach which measures the intent, motivation or rationale for a party’s failure to adhere to a limitations period. In support of this proposition, plaintiff relies upon Rule 1:1-2 of the New Jersey Court Rules.

R. 1:1-2(a) provides, in part, that:

The rules...shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in

which the action is pending if adherence to it would result in an injustice.

[R. 1:1-2(a).]

However, plaintiff's counsel's request for equitable relief, apparently through relaxation or tolling of the statute of limitations, finds little support in the law. Generally, equitable relief is not available for claims which seek to extend the waiver of governmental immunity. Actions which involve challenges to the decisions, assessments and conclusions of the Director implicate well-established principles that condition a limited waiver of sovereign immunity upon keen adherence to statutory provisions, and must be strictly construed. See Estate of Ehringer v. Director, Div. of Taxation, 24 N.J. Tax 599, 617 (Tax 2009).

In John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 133-134, 128 S. Ct. 750, 753-754, 169 L. Ed. 2d 591, 595-596 (2008), Justice Breyer, writing for the majority, observed that:

Some statutes of limitations...seek not so much to protect a defendant's case-specific interest in timeliness as to achieve a broader system-related goal, such as...limiting the scope of a governmental waiver of sovereign immunity...The Court has often read the time limits of these statutes as more absolute, say as requiring a court to decide a timeliness question despite a waiver, or as forbidding a court to consider whether certain equitable considerations warrant extending a limitations period. As convenient shorthand, the Court has sometimes referred to the time limits in such statutes as 'jurisdictional.'

[Id. at 133-4 (citations omitted) (emphasis added).]

Thus, a limitations period which is jurisdictional and establishes boundaries for a government's waiver of sovereign immunity is "not susceptible to judicial 'engraft[ing]' of unlisted disabilities such as 'sickness, surprise, or inevitable accident.'" Ibid. (quoting Kendall v. United States, 107 U.S. 123, 2 S. Ct. 277, 27 L. Ed. 437 (1883)). It is therefore of primary importance for a court to

address these fundamental jurisdictional principles, regardless of whether same are raised by the parties or not.

N.J.S.A. 54:51A-14 is a statutory provision which limits the scope of the government's waiver of sovereign immunity, thereby affording taxpayers the right to assert affirmative claims against the Director. In enacting N.J.S.A. 54:51A-14, our Legislature sought to lay out certain "practice[s] and procedure[s] in the Tax Court." Morris-Sussex Area Co. v. Hopatcong Borough, 15 N.J. Tax 438, 447 (Tax 1996). Included among those practices and procedures was confirmation of a 90-day time limitations period to lodge challenges with the Tax Court of any decision, order, finding, assessment or action of the Director. Thus, the statutory scheme sought to expressly limit the scope of the government's waiver of sovereign immunity. As such, the statutory limitation periods are "not subject to extension based on equitable considerations." M.J. Ocean, Inc. v. Director, Div. of Taxation, 23 N.J. Tax 646, 652 (2008).

Here it is undisputed that plaintiff's counsel received the Notice of Underpayment on February 17, 2015. The Notice of Underpayment plainly and unambiguously states that the "determination as reflected in this notice shall be final within 90 days of the date of this notice unless written letter of protest is submitted requesting a Conference or an Administrative Review with the Division of Taxation or a complaint is filed with the Tax Court of New Jersey." Thus, the court will begin counting the 90-day limitations period from February 17, 2015, the date plaintiff's counsel received the Notice of Underpayment. See Liapakis, supra, 363 N.J. Super. at 99. According plaintiff the most favorable interpretation of the facts, the 90-day limitations period concluded on Monday, May 18, 2015. Plaintiff's counsel did not submit a letter of protest to the Director, under N.J.S.A. 54:49-18(a), seeking a conference or administrative review on or before

May 18, 2015. Instead, plaintiff's counsel filed a Complaint with the Tax Court on Monday, June 1, 2015, fourteen days after the applicable limitations period expired.

The court finds no support for plaintiff's counsel's argument that the limitations period under N.J.S.A. 54:51A-14 and R. 8:4-1(b) should be tolled due to plaintiff's counsel's illness or health-related issues. Although the court recognizes the serious nature of plaintiff's counsel's illness, plaintiff's counsel admits in his certification that he "did not recover from [t]his episode sufficiently until near the end of April 2015", at which time he "resumed activities." However, plaintiff's counsel fails to explain why, after resuming "activities" he did not file the complaint with the Tax Court until some thirty days later, on June 1, 2015. Plaintiff's counsel's failure to take the necessary precautionary steps, and implement safeguards to avoid untimely filing does not justify tolling the applicable limitations periods and the rules of court. A taxpayer's "[f]ailure to file a timely appeal is a fatal jurisdictional defect," which bars consideration of the merits of the action. F.M.C. Stores Co., *supra*, 100 N.J. at 425 (citing Clairol v. Kingsley, 109 N.J. Super. 22 (App. Div. 1970), *aff'd*, 57 N.J. 199 (1970)). Tax statutes limitation periods must be "strictly construed in order to provide finality and predictability of revenue to state and local government." Bonanno v. Director, Div. of Taxation, 12 N.J. Tax 552, 556 (Tax 1992) (citing Pantasote, Inc. v. Director, Div. of Taxation, 8 N.J. Tax 160, 164-166 (Tax 1985)). The strict construction of applicable limitation periods stems from the view that government cannot be efficiently and effectively managed in the absence of prudent fiscal policies. In order to adopt and implement responsible and accurate budgets, both state and local government must rely upon their estimated revenues. An exacting adherence to statutory deadlines ensures that state and local governments will receive timely notice of potential deviations in estimated revenues and can budget

accordingly. Thus, the Director would be prejudiced by being compelled to defend a Notice of Underpayment after the statutory limitations period lapsed.

Given that N.J.S.A. 54:51A-14 and R. 8:4-1(b) are plain and unambiguous, requiring that a complaint “shall be filed (emphasis added) within 90 days after the date of the action sought to be reviewed”, this court finds unavailing plaintiff’s counsel’s argument that the court should exercise its equitable powers to toll the statutory limitations period. Because plaintiff failed to timely appeal the Notice of Underpayment under N.J.S.A. 54:51A-14 and R. 8:4-1(b), the court is divested of subject matter jurisdiction in this matter.

III. Conclusion

For the above stated reasons, the Director’s motion to dismiss plaintiff’s Complaint, with prejudice, for want of jurisdiction under N.J.S.A. 54:51A-14 and R. 8:4-1(b) is granted. The court will enter an Order dismissing plaintiff’s Complaint.

Very truly yours,

/s/Hon. Joshua D. Novin, J.T.C.