

TAX COURT OF NEW JERSEY



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THE TAX COURT COMMITTEE ON OPINIONS

August 22, 2016

Mr. Kenneth M. Ruskowski
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Paul V. Buonaguro, Deputy Attorney General
Division of Law
R.J. Hughes Justice Complex
P.O. Box 106
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Re: Kenneth M. Ruskowski v. Director, Division of Taxation
Docket No. 015538-2014

Dear Mr. Ruskowski and Deputy Attorney General Buonaguro:

This constitutes the court's decision on plaintiff's motion for reconsideration of the court's June 7, 2016 letter opinion and final judgment following trial in the above matter. In that opinion the court determined that plaintiff's in lieu tax payments, or PILOT payments, did not constitute "property taxes", as such term is defined under N.J.S.A. 54:4-8.67. Accordingly, the court concluded that the Director, Division of Taxation (the "Director") properly denied plaintiff's Property Tax Reimbursement Applications for the 2011 and 2012 tax years and dismissed plaintiff's Complaint. For the reasons explained more fully below, plaintiff's motion for reconsideration is denied.

I. Findings of Fact & Procedural History

For the purpose of providing context, the court will include a brief statement of facts. A

detailed statement of facts can be found in the court's June 7, 2016 letter opinion. Plaintiff, Kenneth M. Ruskowski ("plaintiff"), is the owner of a residential condominium unit located at 751 Summer Avenue, in the City of Newark, County of Essex and State of New Jersey (the "subject property"). According to the City of Newark, Department of Finance, Office of Assessment, the subject property "was granted a 30 years [sic] Fox Lance Tax Abatement as of the Certificate of Occupancy dated Jan. 21, 1989 and expires in Jan. 30, 2019. The property pays land taxes and [a] tax abatement, in lieu of improvement taxes."

For the tax years 2011 and 2012, the subject property was assessed by the City of Newark a land value only of \$20,000. No assessment for improvements erected on the subject property was levied by the City of Newark. Instead, the improvements on the subject property were classified on the City of Newark's tax roll as 15F, property tax exempt. However, in addition to taxes due on the land, plaintiff was required to remit to the City of Newark an annual in lieu tax payment, commonly referred to as a Payment In Lieu Of Taxes ("PILOT"), and administrative fee.

On or about April 18, 2012, plaintiff filed a 2011 Property Tax Reimbursement Application, and on or about May 21, 2013, plaintiff filed a 2012 Property Tax Reimbursement Application, with the Director. The Property Tax Reimbursement Program ("PTR"), commonly known as the "Senior Freeze", is codified in N.J.S.A. 54:4-8.67, et seq., and is available to individuals sixty-five or more years of age or who are disabled and who meet certain income and eligibility requirements. The PTR reimburses qualifying senior citizens and disabled persons for property tax increases.

In two separate letters dated February 20, 2014, the Director rejected plaintiff's 2011 and 2012 PTR applications. The Director concluded that plaintiff was ineligible for the PTR program because "property taxes are not paid on the improvement portion of your dwelling.

Therefore, your 2011 [and 2012] Property Tax Reimbursement [are] denied.”

On May 1, 2014, plaintiff filed a letter of protest with the Director contesting denial of his 2011 and 2012 PTR applications. Thereafter, a conference was conducted on July 9, 2014 with plaintiff and representatives from the Director’s Conference & Appeals Branch.

Following the conference, on August 27, 2014, the Director issued a Final Determination, rejecting plaintiff’s 2011 and 2012 tax year PTR applications (“Final Determination”). The Director determined plaintiff was not entitled to PTR as the “dwelling house and the land in which the dwelling house is situated, must be assessed as real property and have property taxes paid on both land and improvements.” The Director concluded plaintiff’s PILOT payments did not constitute “property taxes” under N.J.S.A. 54:4-8.67. Therefore, because plaintiff paid property taxes only on the land, he failed to satisfy all of the eligibility requirements for property tax reimbursement under the statute. Accordingly, the Director demanded repayment from plaintiff of the 2011 property tax reimbursement of \$364.62 and 2012 property tax reimbursement of \$579.87.

A trial in this matter was conducted on November 20, 2015.

On June 7, 2016, the court issued a letter opinion concluding that the term “property taxes” under N.J.S.A. 54:4-8.67 must be read in pari materia with the term “property tax” under N.J.S.A. 54:4-8.58. Because our Legislature specifically excluded PILOT payments from the definition of “property tax” under N.J.S.A. 54:4-8.58, the court concluded that the term “property taxes”, as defined under N.J.S.A. 54:4-8.67, excludes PILOT payments.

On June 19, 2016, the court received an electronic mail communication from plaintiff identifying several reasons he disagreed with the court’s June 7, 2016 opinion. By letter dated June 20, 2016, the court advised plaintiff that if he wished to file a motion for reconsideration, his submission must comply with R. 4:49-2 and R. 1:6-2 and provided plaintiff with a link to the

New Jersey Courts website to obtain the necessary motion forms. Alternatively, the letter advised plaintiff that if he sought to appeal the court's June 7, 2016 letter opinion, an appeal may be taken to the Appellate Division of the Superior Court and provided plaintiff with that court's address and telephone number.

On June 27, 2016, the Clerk of the Appellate Division of the Superior Court of New Jersey received a letter from plaintiff dated June 23, 2016 detailing his disagreement with the court's June 7, 2016 letter opinion. Said letter was, in turn, forwarded to the Clerk of the Tax Court and stamped "Received" on June 28, 2016. Sometime thereafter, the Tax Court Management Office returned the June 23, 2016 to plaintiff with a deficiency letter advising plaintiff that if "he wish[ed] to file a Motion for Reconsideration" to complete the "enclosed Notice of Motion Packet and file it with the Tax Court."

On July 14, 2016, the court received a copy of plaintiff's June 23, 2016 letter accompanied by a Notice of Motion seeking reconsideration of the court's June 7, 2016 letter opinion, Certification in Support of Motion, Certification of Service and a proposed form of Order.

The court assigned August 19, 2016 as the return date for the motion for reconsideration. The parties waived oral argument and consented to disposition on the papers.

II. Conclusions of Law

A. Timeliness of Motion for Reconsideration

A motion for rehearing or reconsideration is governed by R. 4:49-2. The rule provides, in part, that:

a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it.

[R. 4:49-2.]

A strict adherence to filing deadlines is paramount in the Tax Court, borne of the exigencies of taxation and the administration of local government. See Princeton Univ. Press v. Princeton Bor., 35 N.J. 209, 214 (1961); McCullough Transportation Co. v. Motor Vehicles Division, 113 N.J. Super. 353 (App. Div. 1971); Mayfair Holding Corp. v. Township of North Bergen, 4 N.J. Tax 38, 41 (Tax 1982); Millwork Installation, Inc. v. State Department of the Treasury, Division of Taxation, 25 N.J. Tax 452, 459 (Tax 2010). 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. Dir., Div. of Taxation, 2 N.J. Tax 415, 419 (Tax 1981).

Despite the court's exacting observance of these principles, if pleadings are sent to the wrong filing office R. 1:5-6(d) "requires transmittal by the office with whom papers are misfiled to the correct office and deems the receipt date of the misfiling as the filing date as within time . . ." Pressler & Verniero, Current N.J. Court Rules, comment 4 on R. 1:5-6(d) (2016). Moreover, when nonconforming papers are presented for filing the paper "shall be returned stamped 'Received but not filed (date)'" and "shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date." R. 1:5-6(c).

Here, it is undisputed that plaintiff's June 23, 2016 letter, expressing his discord with the court's June 7, 2016 opinion, was received by the Clerk of the Appellate Division of the Superior Court of New Jersey on June 27, 2016, and within the 20 day period prescribed under R. 4:49-2. Although plaintiff's June 23, 2016 letter was timely received, it was erroneously filed with the wrong office and the submission was nonconforming, as it was not accompanied by a Notice of Motion, Certification, Proof of Service and proposed form of Order, as required under R. 1:6-2.

Complicating matters further, the Tax Court Management Office's deficiency notice to plaintiff, under R. 1:5-6(c), was undated. However, based upon protocols in place in the Tax Court Management Office at the time, it is reasonable to assume that the deficiency notice was forwarded to plaintiff within 2 to 4 business days of June 28, 2016. Because the fourth business day was a legal holiday, Monday, July 4, 2016, and according plaintiff the most favorable interpretation of the facts, the 10-day period for plaintiff to retransmit conforming papers under R. 1:5-6(c), would have commenced on July 5, 2016 and expired on Friday, July 15, 2016. Plaintiff's June 23, 2016 letter, Notice of Motion, Certification, Proof of Service and proposed form of Order were received by the Tax Court on July 14, 2016. Therefore, the court concludes that plaintiff's motion for reconsideration was timely filed by plaintiff under R. 4:49-2.

B. Standard for Reconsideration

A motion for rehearing or reconsideration is granted sparingly. R. 4:49-2 requires the motion "state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2. Reconsideration "is a matter within the sound discretion of the court, to be exercised in the interest of justice." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Thus, a motion for reconsideration will be granted "only for those cases which fall into that narrow corridor in which either: (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence . . ." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Reconsideration is reserved for unique circumstances and is not justified by a litigant's mere dissatisfaction with the court's decision; such arguments are best raised on appeal. Ibid.

Plaintiff raises several arguments in favor of relief, including his opinion that the court “ignored” his statements and testimony, and that the court “ignore[d] to mention [his] plea” of financial distress. The court concludes that the bulk of plaintiff’s arguments involve issues with the Director’s Property Tax Reimbursement Application process, the timeliness and mindset of the Director in evaluating those applications, how plaintiff’s mortgage lender chose to classify plaintiff’s PILOT payments and the financial wherewithal of plaintiff to repay monies erroneously reimbursed to him. The court has already rejected those arguments, with the court referring plaintiff to the reasoning set forth in its June 7, 2016 letter opinion, which the court is satisfied adequately addressed them.

Additionally, plaintiff argues that the court failed to pinpoint why his testimony or actions, in submitting Property Tax Reimbursement Applications, “were wrong or inaccurate.” However the correctness or precision of plaintiff’s conduct in making application for Property Tax Reimbursement was not central to disposition of this matter. The core issue in this matter involved statutory interpretation, and more precisely whether the term “property taxes” under N.J.S.A. 54:4-8.67 included or excluded PILOT payments. To accomplish this task the court examined the genesis of the property tax, rebate and reimbursement programs, our Legislature’s intent in enacting the applicable statutory provisions, the definition of key terms in the overall statutory scheme, and applied the court’s interpretation of the statute to the facts presented. It is evident from the motion that plaintiff disagrees with the court’s analysis and interpretation of the statutory language, however plaintiff fails to offer any “controlling decisions which [he] believes the court has overlooked or as to which it has erred.” Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (citing R. 4:49-2). Reconsideration is not to be used as a means to “reargue a motion,” rather it should be employed when the record reveals the court’s decision was palpably incorrect or the court misinterpreted or overlooked

decisional authority. Ibid. The court concludes that plaintiff's arguments in this area are nothing more than a repetition of the arguments already proffered during trial and considered by the court in dismissing plaintiff's Complaint.

Finally, plaintiff argues that he "expected the judge to asked [sic] for my file and review the notes and documentation [from the Director] to confirm my testimony." However, it is well settled that a presumption of correctness exists in favor of the Director's assessment of state taxes, and the burden of proof rests with the taxpayer to show otherwise. Aetna Life Ins. Co. v. Newark, 10 N.J. 99, 105 (1952); Atlantic City Transp. Co. v. Director, Div. of Taxation, 12 N.J. 130, 146 (1953); Passaic v. Botany Mills, Inc., 72 N.J. Super. 449, 454 (App. Div.), certif. denied, 37 N.J. 231 (1962); Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327 (1984); Campo Jersey, Inc. v. Director, Div. of Taxation, 390 N.J. Super. 366, 383 (App. Div.), certif. denied, 190 N.J. 395 (2007). The "Director's expertise in the highly specialized and technical area of taxation...is entitled to great respect by the courts. Moreover, the agency's interpretation of the operative law is entitled to prevail, so long as it is not plainly unreasonable." Quest Diagnostics, Inc. v. Director, Div. of Taxation, 387 N.J. Super. 104 (App. Div. 2006), certif. denied, 188 N.J. 577 (2006) (citing Metromedia, Inc., supra, 97 N.J. at 327). Our courts afford the Director's determination a presumption of correctness because of "the Director's expertise in the highly specialized and technical area of taxation." Aetna Burglar & Fire Alarm Co., v. Director, Div. of Taxation, 16 N.J. Tax 584, 589 (Tax 1997) (citing Metromedia, Inc., supra, 97 N.J. at 327). Thus, during trial plaintiff bore the burden of presenting evidence, which was definite, positive and certain in quality and quantity, demonstrating that the Director's interpretation of N.J.S.A. 54:4-8.67 was arbitrary, unreasonable or capricious. See Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985); United Parcel Service General Services Co. v. Director, Div. of Taxation, 25 N.J. Tax 1, 13 (Tax 2009), aff'd, 220 N.J. 90 (2014). Although

the court found plaintiff to be a credible witness, plaintiff nonetheless failed to overcome the presumption of correctness which attached to the Director's Final Determination. The court is satisfied that the reasoning set forth in its June 7, 2016 letter opinion adequately addresses why the Director's interpretation of the term "property taxes" under N.J.S.A. 54:4-8.67 was entitled to prevail.

III. Conclusion

Plaintiff has failed to show that this court ignored or erred in interpreting controlling decisions, nor did plaintiff demonstrate that the court failed to consider or appreciate the evidence before it. The fact that plaintiff disagrees with the analysis and reasoning adopted by the court in reaching its decision does not establish that its decision was palpably incorrect or irrational, nor does it establish that the court acted in an arbitrary, capricious, or unreasonable manner. Plaintiff's motion for reconsideration is denied.

Very truly yours,

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