



On June 16, 2009, the Director, Division of Taxation issued a Final Determination assessing \$242,432.27 in New Jersey gross income tax, penalties and interest against plaintiff Mark Sahaya for tax years 2000 through 2002. The assessment arose from the Director's audit of limited liability companies in which plaintiff held an interest.

The record contains undisputed evidence that the Final Determination was mailed to plaintiff and to his accountant by certified mail. Plaintiff's accountant received the Final Determination on June 17, 2009. Plaintiff received the Final Determination on June 18, 2009.

Giving plaintiff the most favorable interpretation of the facts, the 90-day period for establishing jurisdiction in this court to review the Final Determination commenced on June 18, 2009. This interpretation of the facts results in a September 16, 2009 filing deadline.

On September 15, 2009, the Tax Court Clerk received a letter from plaintiff's accountant, who is not licensed to practice law in New Jersey. The letter states that "[w]ith reference to your notice dated June 16, 2009, we want to file a complaint against the assessment . . . ." The letter was not accompanied by a Complaint, Case Information Statement, see R. 8:3-2(a), the required filing fee, see R. 8:12, or proof of service on the Director or Attorney General, see R. 8:5-3(b)(1); R. 8:5-5. A copy of the June 16, 2009 Final Determination and schedule of liabilities was attached to the accountant's letter.

The Clerk accepted the letter and assigned the matter a docket number. More than a month later, the Clerk issued a 10-day Deficiency Notice (the "Notice"). The Notice is dated October 27, 2009 and states that the accountant's letter had been assigned a docket number and been given a filing date of September 15, 2009. The Notice explained in relevant part:

We are enclosing a package of complaint forms, which must be completed and retransmitted to the Tax Court Management Office. In order to retain the original "RECEIVED" date shown above, you must retransmit the forms, along with any filing fees due, within 10

days of the date of this letter. Otherwise, the filing date will be the date the Tax Court receives the retransmitted forms with the required fee.

On the portion of the Notice labeled “Attorney for Plaintiff:” the Clerk inserted “Mark Sahaya,” as no person licensed to practice law in New Jersey made an appearance on plaintiff’s behalf.

The October 27, 2009 Notice contains no address. Based on the practices of the Tax Court Clerk’s Office at the relevant time, the court concludes that it is more likely than not that the Notice was sent to plaintiff’s home address, as it appeared on the Final Determination, and not to plaintiff’s accountant because he is not admitted to practice law. Plaintiff concedes that he received the Notice at his home, but does not provide the date of receipt.

The record contains no evidence of the date on which the October 27, 2009 Notice was actually mailed to plaintiff. Nor do the records of the Clerk’s Office include evidence of the date of actual mailing. In light of administrative procedures in place at the Clerk’s Office in 2009, it is possible that the October 27, 2009 Notice was mailed after October 27, 2009. In fact, the record demonstrates that in a related case involving plaintiff, the Clerk mailed a deficiency notice dated November 20, 2009, but the postage meter cancelation on the envelope containing that notice is November 24, 2009.

If the court were to assume that the October 27, 2009 Notice was mailed on October 27, 2009, the deadline for retaining the original filing date through the submission of conforming papers and the filing fee would have been November 9, 2009, calculated as follows: (1) pursuant to R. 8:4-2(b), when notice of an action is sent by ordinary mail, the time to reply to that action is extended in accordance with R. 1:3-3, which adds three days to the time to reply. The time in which to file a Complaint, Case Information Statement, and filing fee was, therefore, extended to

13 days; (2) thirteen days from October 27, 2009 was November 9, 2009. If the Notice had actually been mailed later, the filing deadline, of course, would have been later as well.

It was not until November 19, 2009, that plaintiff filed a Complaint, Case Information Statement, and the correct filing fee. Because these items were filed beyond the time noted in the October 27, 2009 Notice, the Clerk assigned a November 19, 2009 filing date to the Complaint. November 19, 2009 is more than 90 days after issuance of the Final Determination.

The Director thereafter moved to dismiss the Complaint due to late filing.

Plaintiff opposed the Director's motion and cross-moved for an extension of time in which to cure the deficiencies in the original filing by plaintiff's accountant or for a relaxation of the rule establishing the 10-day cure period.

The Director opposed plaintiff's cross-motion.

## II. Conclusions of Law

As our Supreme Court recently reiterated, the "Tax Court is vested with limited jurisdiction" defined by statute. McMahon v. City of Newark, 195 N.J. 526, 546 (2008). The statutory scheme establishing this court's jurisdiction is "one with which continuing strict and unerring compliance must be observed . . . ." Id. at 543. Adherence to statutory filing deadlines is of particular concern in tax matters, given "the exigencies of taxation and the administration of . . . government." F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 424 (1985)(citing Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)); see also Bonnano v. Director, Div. of Taxation, 12 N.J. Tax 552, 556 (Tax 1992). A failure to file a timely Complaint divests this court of jurisdiction even in the absence of harm to the taxing authority. Lawrenceville Garden Apartments v. Township of Lawrence, 14 N.J. Tax 285 (App. Div. 1994). "Failure to file a timely appeal is a fatal jurisdictional defect." F.M.C. Stores, supra, 100 N.J. at 425. A Complaint

that is even one day late must be dismissed for lack of jurisdiction. Mayfair Holding Corp. v. Township of North Bergen, 4 N.J. Tax 38 (Tax 1982); Prospect Hill Apartments v. Borough of Flemington, 172 N.J. Super. 245 (Tax 1979). These rules allow for the effective administration of the State's finances by removing doubt as to the validity of fixed and final tax assessments. Once the filing deadline has passed, the Director is entitled to assume that his determination is final and no longer subject to review. Commercial Refrigeration & Fixture Co. v. Director, Div. of Taxation, 2 N.J. Tax 415, 419 (Tax 1981).

This court's jurisdiction to review assessments by the Director regarding a State tax is clearly defined: "[A]ll 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 90-day period is also stated in R. 8:4-1(b), which provides that "Complaints 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." Careful compliance with these rules is necessary to establish jurisdiction in this court. Rule 8:4-2, Calculation of Time for Filing, provides that the "time period shall be calculated from the date of service of the decision or notice of the action taken." In Liapakis v. State, 363 N.J. Super. 96 (App. Div. 2003), certif. denied, 179 N.J. 369 (2004), the Appellate Division held that Rule 8:4-2 applies to the calculation of the 90-day period for filing a challenge to a Director's Final Determination and that the period begins to run upon receipt of the notice.

The parties agree that if the court considers the filing date of the Complaint, Case Information Statement, and filing fee to be September 15, 2009, the date on which plaintiff's accountant filed his letter, then plaintiff will have filed a timely action and established jurisdiction in this court to review the Final Determination. Plaintiff does not, therefore, request an extension of the 90-day filing period established by statute. See N.J.S.A. 54:51A-14. Plaintiff, instead, asks

the court to extend or relax the time period established by court rule for curing deficient pleadings. This is a crucial distinction. While the statutory provision establishing this court's jurisdiction is strictly construed, a more flexible approach applies when the court interprets rules adopted for the just and efficient operation of the judicial system once jurisdiction has been established.

Rule 1:5-6(c)(1) is the operative provision here. The rule provides as follows:

Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that:

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement . . . ; or

\* \* \*

(D) the signature of an attorney permitted to practice law in this State pursuant to R. 1:21-1 or the signature of a party appearing pro se . . .

\* \* \*

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten 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).]

The Tax Court Clerk acted pursuant to this rule when she issued the October 27, 2009 Notice to plaintiff. As provided in the rule, the Clerk set a 10-day period to cure the deficiencies in plaintiff's initial filing in order to retain the original filing date.

Plaintiff relies on another court rule, R. 1:1-2(a), as the basis for his request that the 10-day period set in the October 27, 2009 Notice be extended to November 19, 2009. That rule provides, in relevant part, as follows:

The rules in Part I through Part VIII, inclusive, 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).]

Plaintiff argues that relaxation of the 10-day period established by R. 1:5-6(c)(1), and incorporated in the Clerk's October 27, 2009 Notice, is warranted for a number of reasons.

First, plaintiff relies on the fact that the Clerk did not send the October 27, 2009 Notice to plaintiff's accountant, the person who signed the original submission to the court. Plaintiff, unaware that the accountant could not represent a taxpayer in the Tax Court, relied on the accountant to protect plaintiff's interest in this forum. It is understandable that the Tax Court Clerk did not send the October 27, 2009 Notice to the accountant, given that he is not licensed to practice law in New Jersey and is not recognized by the court as plaintiff's representative. It is also understandable, however, that plaintiff, who has no training in the law, would expect that his accountant would receive notice of any deficiencies in the original filing.

Second, there is no evidence in the record with respect to the date on which the October 27, 2009 Notice was actually mailed to plaintiff by the Clerk. While plaintiff also did not produce proof of the date on which he received the Notice, it is the Clerk's Office which set the 10-day response period and which, in fairness to plaintiff, should bear the burden of establishing when the October 27, 2009 Notice was actually mailed.

Third, plaintiff argues that his delay in filing a Complaint, Case Information Statement, and correct filing fee was occasioned, in part, by several other deficiency notices mailed by the Clerk's Office to entities in which plaintiff held an interest. The Final Determination assessing tax against plaintiff was issued at the same time as seven other Final Determinations issued by the Director assessing taxes against various limited liability companies in which plaintiff held an interest, as well as principals of the entities. The same accountant who filed the initial deficient documents on behalf of plaintiff filed initial deficient documents on behalf of the limited liability companies and principals. The Clerk issued Deficiency Notices in each of those matters on October 26, 2009 or October 27, 2009. Those notices were mailed not to the accountant, but to the last known address of each of the limited liability companies and principals. Some of those addresses were out of date and some were the locations of retail operations of the limited liability companies at which business mail was not regularly received. Plaintiff awaited the collection of all of the deficiency notices before he filed Complaints, Case Information Statements and filing fees with the court. While this may not have been the best approach for plaintiff to have taken, if all of the notices had been sent to the accountant, this delay would likely have been avoided.

Finally, plaintiff argues that the short delay in filing a Complaint, Case Information Statement, and correct filing fee did not result in harm to the Director or unduly delay the adjudication of this matter. Plaintiff's Complaint, Case Information Statement, and filing fee were filed on November 19, 2009, ten days after the deadline established by the October 27, 2009 Notice (assuming it was mailed on October 27, 2009). The Director makes no argument that he was harmed by the 10-day delay. This is not an instance in which evidence was lost or the memory of witnesses diminished during the delay in filing. Nor is there evidence that the 10-day delay interfered with judicial administration. In fact, more than a month passed between the September

15, 2009 deficient filing and the October 27, 2009 Notice from the Tax Court Clerk. There was a longer period of delay occasioned by the lag in sending the October 27, 2009 Notice than would result from the 10-day extension of the cure period.

The court concludes that strict application of the 10-day period established by R. 1:5-6(c)(1) would result in an injustice here. This conclusion is based on unusual circumstances: (1) the sufficiency of the details of plaintiff's claim in the original filing, which included a copy of the relevant Final Determination and schedule of liabilities; (2) the fact that the original deficient pleading was filed by an accountant not admitted to practice law in New Jersey, to whom the Notice was not sent, but who plaintiff reasonably expected would receive the Notice; (3) the fact that the Notice was issued to plaintiff at the same time that seven other deficiency notices were issued by the Tax Court Clerk to limited liability companies in which plaintiff held an interest and to principals of those entities, yet the seven other notices were sent to separate addresses, some of which were out of date and some of which were addresses at which business mail was not regularly received; (4) the fact that the record does not contain evidence with respect to the date on which the Notice was actually mailed to plaintiff; and (5) the relatively short period of extension requested by plaintiff to cure the deficiencies in his original filing, and the demonstrated lack of harm to the Director as a result of the delay.

These are cogent reasons constituting good cause to extend the period to cure plaintiff's initial deficient filing to November 19, 2009.

Of course, the court's decision is predicated entirely on the fact that plaintiff's initial filing reached the court on September 15, 2009, prior to the expiration of the 90-day period in which to establish jurisdiction in this court to review the Director's Final Determination. That initial filing, although deficient, included a copy of the Final Determination and schedule of liabilities, stated

that plaintiff “want[s] to file a complaint against the assessment of \$242,432.77” and stated a basis for the challenge. Plaintiff’s initial pleading was sufficient to establish jurisdiction in this court to review the Final Determination, given the specificity of plaintiff’s initial submission. See Widder v. Director, Div. of Taxation, 14 N.J. Tax 349, 353 (Tax 1994). There is “clear precedent that defectively executed pleadings operate to toll applicable limitation” periods if filed in a timely manner and the claim can be gleaned from the facts alleged. Patel v. Director, Div. of Taxation, 13 N.J. Tax 509, 519 (Tax 1993)(citing White v. Katz, 261 N.J. Super. 672 (App. Div. 1993)).

Had plaintiff been even one day late with his initial filing, the court would be powerless to grant relief. Lawrenceville Garden Apartments, supra. The court’s jurisdiction having been established by the timely initial filing, however, the rules adopted by the Supreme Court for the efficient and just operation of the courts apply to plaintiff’s claim. Those rules include both R. 1:5-6(c), which sets the 10-day cure period, and R. 1:1-2(a), which allows for the relaxation of that rule to avoid injustice. Having concluded that R. 1:5-6(c) will be relaxed to allow plaintiff until November 19, 2009 to cure the defects in his initial filing, the court denies the Director’s motion to dismiss for want of jurisdiction due to the untimely filing of the Complaint.