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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Patrick DeAlmeida  
Presiding Judge

R.J. Hughes Justice Complex  
P.O. Box 975  
25 Market Street  
Trenton, New Jersey 08625-0975  
(609) 292-8108 Fax: (609) 984-0805

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Joseph M. Pinto, Esq.  
Polino and Pinto, P.C.  
Moorestown Times Square  
720 East Main Street, Suite 1C  
Moorestown, New Jersey

Michael J. Duffy  
Deputy Attorney General  
Division of Law  
R.J. Hughes Justice Complex  
P.O. Box 106  
Trenton, New Jersey 08625-0106

Re: Kamal R. Sinha v. Director, Division of Taxation  
Docket No. 015656-2009

Dear Counsel:

This is the court's opinion with respect to the cross-motion of the Director, Division of Taxation to dismiss the Complaint in the above-referenced matter for want of jurisdiction due to untimely filing. For the reasons explained more fully below, the Director's cross-motion is denied.

## I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law on defendant's cross-motion to dismiss. The following findings of fact are based on the certifications and exhibits submitted by the parties on the motion.

On June 16, 2009, the Director, Division of Taxation issued a Final Determination assessing \$25,500.25 in New Jersey gross income tax, penalties and interest against plaintiff Kamal R. Sinha 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). 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 "Kamal R. Sinha," 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.

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 matter, 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 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.

On November 9, 2009, an attorney filed a Complaint, Case Information Statement and the correct filing fee on behalf of Mr. Sinha challenging the June 16, 2009 Final Determination.

Plaintiff thereafter filed a motion to intervene as a plaintiff in a number of other matters pending in this court arising from assessments against limited liability companies in which he held an interest. He also moved to consolidate those matters for the purpose of discovery. The court will address that motion separately.

The Director cross-moved to dismiss plaintiff's Complaint due to late filing. The Director argues that the time in which to cure the deficiencies in plaintiff's initial submission expired on November 6, 2009 and that plaintiff's November 9, 2009 Complaint was, therefore, three days late. (The Director also cross-moved to dismiss the Complaints of the limited liability companies in the matters in which plaintiff sought intervention. That aspect of the Director's cross-motion will be addressed separately).

Plaintiff opposed the Director'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.

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. As noted above, because the October 27, 2009 Notice was sent to plaintiff by ordinary mail, the time in which to respond to the notice is extended by three days. R. 8:4-2(b); R. 1:3-3. Thirteen days from October 27, 2009 was November 9, 2009, the day on which plaintiff's Complaint, Case Information Statement, and filing fee were filed with the Tax Court Clerk.

Plaintiff's filings were, therefore, correctly assigned a September 15, 2009 filing date. His Complaint was not filed out of time. As a consequence of this conclusion, the Director's cross-motion to dismiss the Complaint as untimely is denied.

Very truly yours,

/s/Patrick DeAlmeida, P.J.T.C.