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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY



Mala Sundar
JUDGE

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Guy C. Regalbuto
Self-represented

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Re: Guy C. Regalbuto v. Director, Division of Taxation
Docket No. 010151-2016

Dear Mr. Regalbuto and Counsel:

This letter constitutes the court's opinion after trial in the above captioned matter. Plaintiff appealed defendant's June 21, 2016 final determination which denied his claim for a homestead rebate for tax year 2012 as untimely. Defendant ("Taxation") asserted that the deadline for filing such claim was January 31, 2014, plaintiff filed the same April 28, 2015, and since plaintiff did not establish good cause for the untimely filing, its determination is proper. For the reasons stated below, the court agrees, and upholds the final determination.

The disputed issue is whether plaintiff received the 2012 benefit application. Plaintiff claims he never received any application by mail. Taxation responded that the application was sent to him by e-mail because plaintiff opted for this method of receipt when he filed his 2011 rebate application by filling out "Section E" of the rebate form ("Contact Information") which

asked for the applicant's e-mail address and telephone number. In furtherance of this chosen delivery option, Taxation claimed to have sent three e-mails in 2013 to plaintiff, the same emails sent to all homeowners who had indicated a preference for e-mail delivery of the 2012 homestead benefit application: the first was on September 6, 2013 which notified homeowners that the 2012 benefit applications would be sent early October 2013; the second was on October 21, 2013 which contained the homestead benefit application; and the third was on November 4, 2013 which was a follow-up e-mail reminding homeowners to file the application by November 22, 2013. None of these e-mails bounced back as undeliverable.

Taxation provided sample e-mails in this regard, which was in a letter format with its letter head and the State of New Jersey's seal, and also contained instructions on how to file the application. Taxation's employee, the Assistant Director in the Technical Services Activity, who was personally knowledgeable about Taxation's e-mail notifications, including e-mails sent to plaintiff, provided a supplemental certification post-trial. She certified that Taxation sent three e-mails to plaintiff, and those e-mails identified the "sender" as "NJ.homesteadBenefitApp@treas.state.nj.us," and the subject lines of the three emails were: "Attention New Jersey Homestead Benefit applicants;" "File Your 2012 Homestead Benefit Application;" and "Reminder to File Your 2012 Homestead Benefit Application." The certification included the e-mails allegedly sent to plaintiff, which appear in a letter format (thus, as an attachment to an e-mail rather than the e-mail itself). She also certified that none of the three e-mails sent to plaintiff was returned electronically as undeliverable.

Plaintiff contended that whether statutorily required or not, he relied on Taxation's mailings for notice of benefit application deadlines, thus, without receiving that mail he could not have timely applied for tax year 2012. He argued that unlike income tax returns which have a set

filing date (April 15), the homestead benefit application deadline varied each year, thus, “it is impossible to know when to file the application unless they send out the usual package.” He asserted that until the 2012 application he had always received paper application packets by regular mail, and consequently always applied for and received the rebate. Plaintiff testified that he generally applies by automatic prompts over the phone, although he could not recall the specific application method year to year.

Plaintiff conceded that the e-mail address cited by Taxation was indeed his address. Yet he denied that he opted for an e-mail delivery option of his 2012 benefit application. He stated that his 2011 application was by telephone, thus has no recollection of providing any e-mail address. He also denied receiving or seeing any of the three e-mails sent by Taxation. However, he stated that he may have provided an e-mail address simply to be “helpful” rather than deliberate, since he was computer illiterate. He further stated that that he receives 25 to 30 emails each day, which he “delete[s] first hand,” thus, it is likely that he could have deleted the e-mails sent by Taxation, especially because they did not identify him personally and lacked sufficient recognizable information for him to know they contained his homestead benefit application.

The court finds Taxation’s assertions are more credible. Plaintiff provided no evidence to indicate that he relied on misleading information from defendant. He conceded that the email address listed is accurate, that he receives and reads at least some email, and that he deletes unfamiliar emails.¹ Plaintiff’s concession that he deletes emails unless their subject line is readily apparent to him does not contradict that the e-mails were sent or that they provided proper notice.

¹ In the context of his procedure of reviewing his e-mails, plaintiff brought to the court’s attention that he is a former vice president of a large banking institution. While the court does not rely on this information in determining what was sent to plaintiff, it does question the credibility of plaintiff’s assertion that he is an unsophisticated user of computers and of e-mails.

Regardless of whether plaintiff agreed to receive instructions by email, the e-mails sent by Taxation would prompt a taxpayer to read them if they wanted to pursue a rebate application. Overall, plaintiff has not demonstrated to the court any cause to relax or adjust the ordinary filing deadline in his case.

Plaintiff's complaint is therefore dismissed and Taxation's final determination denying the 2012 homestead benefit application as untimely is hereby upheld.

Very Truly Yours,

/s/Mala Sundar, J.T.C.