

TAX COURT OF NEW JERSEY



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THE TAX COURT COMMITTEE ON OPINIONS

May 25, 2016

Ms. Joy L. DeMaio
27 Narrowbrook Court
Manalapan, New Jersey 07726

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

Re: Joy L. DeMaio v. Director, Division of Taxation
Docket No. 011697-2015

Dear Ms. DeMaio and Deputy Attorney General Uger:

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 Joy L. DeMaio ("taxpayer"), for want of jurisdiction. At issue is the timeliness of taxpayer's Complaint challenging the January 20, 2012 protest denial notice ("Protest Denial Notice") issued by the Director, Division of Taxation ("Director"). For the reasons explained below, the court grants the Director's motion, concluding that taxpayer 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.

On May 7, 2009 the Director issued a Notice of Assessment (“Notice of Assessment”) to taxpayer for unpaid cigarette tax, under N.J.S.A. 54:40A-1 to -45, and sales and use tax, under N.J.S.A. 54:32B-1 to -29, for the period April 2005 through March 2007.

On November 1, 2011, the Director issued taxpayer a Notice and Demand for Payment of Tax (“Notice and Demand for Payment”). The Notice and Demand for Payment sought payment from taxpayer of the tax obligations identified in the Notice of Assessment.

On December 15, 2011, the taxpayer forwarded a letter of protest to the Director contesting the Notice and Demand for Payment and the tax liability asserted therein, alleging that “I did not purchase the stated cigarettes as the letter suggests.”

On January 20, 2012, the Director issued a Protest Denial Notice rejecting taxpayer’s December 15, 2011 letter of protest. The Protest Denial Notice provided, in part, that:

Under the provisions of N.J.S.A. 54:49-18 a request for a hearing must be postmarked within a 90 day period from the date of the Division’s notice. The Notice of Assessment was issued May 7, 2009.

Your 90-day appeal period expired August 5, 2009.

In the event you are not in accord with the above determination regarding the timeliness of your protest, you may file a complaint with the required fee relative to this determination which must be received within (90) ninety days from the date of this notice, directly with the Tax Court of New Jersey....The address of the Tax Court is...Should you require further assistance, the phone number of the Tax Court Clerk’s Office is (609) 292-5082.

The Protest Denial Notice was mailed by the Director to taxpayer’s residence by certified mail return receipt. The return receipt was signed “Joy DeMaio”, however the date the taxpayer signed the return receipt was not identified. However, the return receipt bears a February 3, 2012 postmark from the United States Postal Service. Moreover, the reverse side of the return receipt

bears the stamp “Received February 28, 2012 NJ Division of Taxation Conference and Appeals Branch”.

On January 26, 2012, the Director filed a Certificate of Debt memorializing taxpayer’s outstanding cigarette tax and sales and use tax obligations (“Certificate of Debt”).¹

On February 10, 2012, taxpayer forwarded a letter to the Director in response to the Protest Denial Notice. In her response, taxpayer alleges she did not receive the Notice of Assessment and did not know why the Certificate of Debt was entered against her. The taxpayer further expressed her belief that the Director possessed “incorrect information” with respect to this matter, because a Certificate of Debt was initially erroneously filed against her mother, Joy Ann DeMaio, however her mother “was absolved on August 29, 2011.”

On April 30, 2012, the taxpayer forwarded another letter to the Director providing a synopsis of the events which transpired and attempting to obtain resolution of the matter.

On July 23, 2015, the Clerk of the Tax Court received taxpayer’s Complaint challenging the Director’s Notice of Assessment and Protest Denial Notice. In the Complaint taxpayer alleges she did not receive the Notice of Assessment and that she is not liable for the cigarette tax and sales and use tax.

On October 9, 2015, the Director filed an Answer to the Complaint.

¹ The Director's authority to issue a Certificate of Debt and have information from that Certificate of Debt entered in the record of docketed judgments by the Superior Court Clerk is established under N.J.S.A. 54:49-12. That statute provides that: “As an additional remedy, the Director of the Division of Taxation may issue a certificate to the Clerk of the Superior Court that any person is indebted under such State tax law in such an amount as shall be stated in the certificate. The certificate shall contain a short name of the tax under which the said indebtedness arises. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon his record of docketed judgments the name of such person, and of the State, the address of the place of business where such tax liability was incurred, if shown in the certificate, the amount of the debt so certified, a short name of the tax, and the date of making such entries. The making of the entries shall have the same force and effect as the entry of a docketed judgment in the office of such clerk, and the director shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to the taxpayer’s right of appeal. N.J.S.A. 54:49-12.

The Director now moves to dismiss taxpayer's Complaint for want of jurisdiction due to untimely filing. The Director argues that because taxpayer's Complaint was filed more than three years after receipt of the Protest Denial Notice the court is deprived of subject matter jurisdiction under N.J.S.A. 54:51A-14 and R. 8:4-1(b).

Taxpayer opposes the Director's motion arguing that the "first 4 paragraphs" of the Director's Protest Denial Notice stated "a hearing cannot be granted due to the 90-day appeal period which expired on August 5, 2009". Therefore, the taxpayer misunderstood the Protest Denial Notice to denote that she possessed no further appeal or protest rights. Moreover, taxpayer asserts that despite her oral and written communications with the Director regarding the Protest Denial Notice, none of the Director's "professional employees gave me any direction to [do] anything." Although taxpayer acknowledges having received the Protest Denial Notice in February 2012, she asserts that because "I am not a lawyer and I don't know the terminology or sequence of law" she should nonetheless be afforded the right to "prove my innocence as a law-abiding citizen."

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 recently observed, the narrow jurisdiction of the Tax Court is "defined by statute...It 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. 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.

Our court rules mirror this statutory scheme, 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).

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 begins to run upon the taxpayer’s receipt of the notice.

Thorough observance of these statutory provisions and court rules are a fundamental prerequisite to conferring jurisdiction on this 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, Division of Taxation, 12 N.J. Tax 60, 65 (Tax 1991). 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, 172 N.J. Super. 224, 227 (Tax 1979).

A taxpayer’s failure to comply with the applicable limitations 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, Division 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)). 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 /8/ Division, 113 N.J. Super. 353 (App. Div. 1971). In the area of taxation “statutes of limitation and limitation periods play a vital role.

Legislative [38] 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). 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, Division of Taxation, 2 N.J. Tax 415, 419 (Tax 1981).

Thus, 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)). 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). Despite an absence of harm to a defendant, the failure to timely file a complaint within the prescribed 90-day limitations period deprives the court of jurisdiction. See Lawrenceville Garden Apartments v. Township of Lawrence, 14 N.J. Tax 285 (App. Div. 1994).

Here, it is undisputed the Director issued a Protest Denial Notice to the taxpayer on January 20, 2012. Moreover, the taxpayer acknowledged receipt of the Protest Denial Notice in her February 10, 2012 correspondence to the Director. According taxpayer the most favorable inference possible, the latest date for service of the Protest Denial Notice was February 28, 2012, the date the certified mail return receipt was stamped “Received” by the Director. Thus, the 90-day period afforded taxpayer under N.J.S.A. 54:51A-14 and R. 8:4-1(b) to file an appeal challenging the Director’s Protest Denial Notice expired on May 28, 2012. See Liapakis, supra, 363 N.J. Super. at 99. However, because the last day of the computation period was a legal holiday,

Memorial Day, the filing deadline was extended to May 29, 2012. R. 1:3-1. The taxpayer's Complaint in this matter was not filed with the court until July 23, 2015, more than three years after expiration of the 90-day limitations period.

Our courts must strictly construe statutes which establish limitations periods, as the failure to timely file a complaint is "fatal", depriving the court of jurisdiction over a matter. F.M.C. Stores Co., supra, 100 N.J. at 425. N.J.S.A. 54:51A-14 and R. 8:4-1(b) are clear and unambiguous, requiring that a complaint "shall be filed (emphasis added) within 90 days after the date of the action sought to be reviewed".

The Protest Denial Notice clearly and distinctly notified taxpayer that if she was not "in accord with the above determination regarding the timeliness of your protest, you may file a complaint" with the Tax Court within (90) ninety days from the date of the notice. Moreover, the Protest Denial Notice provided taxpayer with the Tax Court Management Office's address and telephone number, to facilitate filing and any questions she may have had regarding filing. Thus, the court finds no merit to taxpayer's argument that the Protest Denial Notice was ambiguous, vague or misleading.

Accordingly, without filing a Complaint prior to expiration of the 90-day period following receipt of the Protest Denial Notice, the taxpayer deprived herself of the opportunity to raise challenges to the alleged inadequacies of the Notice of Assessment and the asserted tax liabilities.

Finally, taxpayer's contention that she is "not a lawyer and I don't know the terminology or sequence of law" and that no representative of the Director advised her to file a Complaint is also unpersuasive. It is well-settled that "an individual is chargeable with knowledge of the law" and is expected to exercise a reasonable degree of prudence to ensure compliance with statutory deadlines and court rules. Mayfair Holding Corp., supra, 4 N.J. Tax at 41 (citing Gilbralter Factors

Corp. v. Slapo, 41 N.J. Super. 381 (App. Div. 1956), aff'd 23 N.J. 459 (1957)). Here taxpayer, following receipt of the Protest Denial Notice, bore an obligation to acquaint herself with the laws applicable to the asserted tax obligations or to seek advice from qualified legal or tax counsel acting on her behalf. By representing herself in this matter, without seeking advice from competent legal or tax counsel, the taxpayer is charged with the responsibility to adhere to applicable statutory limitations periods and the rules of court. Thus, taxpayer's failure to timely file a complaint challenging the Protest Denial Notice is the unfortunate result of her own inaction.

Therefore, because taxpayer failed to timely file an appeal of the Protest Denial Notice within the statutorily prescribed limitations period, the Court is divested of subject matter jurisdiction in this matter.

III. Conclusion

For the above stated reasons, the Director's motion to dismiss taxpayer'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 taxpayer's Complaint with prejudice.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'J. Novin', with a long horizontal line extending to the right.

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