

TAX COURT OF NEW JERSEY



Joshua D. Novin  
Judge

153 Halsey Street,  
Gibraltar Building, 12<sup>th</sup> Floor  
Newark, New Jersey 07101  
P.O. Box 47025  
Tel: (973) 645-4280 Fax: (973) 645-4283

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF  
THE TAX COURT COMMITTEE ON OPINIONS

January 28, 2016

Mr. Majeed Karimi  
249 West 26<sup>th</sup> Street  
Apartment 3C  
New York, New York 10001

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

Re: Majeed Karimi v. Director, Division of Taxation  
Docket No. 014476-2013

Dear Mr. Karimi and Deputy Attorney General Foster:

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 plaintiff, Majeed Karimi, for want of jurisdiction due to untimely filing. For the reasons explained below, the court grants the Director's motion, concluding that plaintiff 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 January 30, 2013, the Director, Division of Taxation (the “Director”) issued a Notice of Finding of Responsible Person Status and Demand for Payment (“Notice of Finding of Responsible Person Status”) to Majeed Karimi (“plaintiff”), as the person responsible for payment of Trust Fund taxes on behalf of P.C.S.P. Enterprises, L.L.C. The Notice of Finding of Responsible Person Status demanded payment from plaintiff in the sum of \$660,141.63.

On April 26, 2013, plaintiff requested a hearing before the Conference and Appeals Branch of the New Jersey Division of Taxation. Following the conference, on June 14, 2013, the Director issued a Final Determination letter (the “Final Determination”) adjusting the Notice of Finding of Responsible Person Status and assessing \$128,936.29 in Trust Fund taxes, penalties and interest against plaintiff.

The record contains undisputed evidence that the Final Determination was mailed by the Director to the plaintiff by certified mail return receipt. On Monday, June 17, 2013, the Final Determination was delivered to plaintiff’s residence and the certified mail return receipt was signed for by Emma Kazaryan.<sup>1</sup>

On Tuesday, September 17, 2013, the Clerk of the Tax Court received a Complaint from plaintiff challenging the Director’s Final Determination.

On October 18, 2013, the Director filed an Answer to the Complaint.

The Director now moves to dismiss plaintiff’s Complaint for want of jurisdiction due to untimely filing. The Director argues that because plaintiff’s Complaint was filed beyond the applicable 90-day limitations period the court is deprived of subject matter jurisdiction under N.J.S.A. 54:51A-14 and R. 8:4-1(b).

---

<sup>1</sup> The certified mail return receipt card does not reflect a delivery date. However, the United States Postal Service online tracking system reflects that the certified mail was delivered to plaintiff’s residence on Monday, June 17, 2013.

Plaintiff opposes the Director's motion arguing that he "signed and regular mailed my papers [the Complaint] on the 90<sup>th</sup> day", and therefore should not be penalized "because I don't know the law." Plaintiff acknowledges his Complaint was filed "1 day late" however, he asserts that there has been no "prejudice [to] the government" by his late filing and asks the court to deny the relief sought by the Director because the Director waited "11 years to file a claim" against him.

## **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.

An exacting compliance with the statutory provisions and court rules is 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 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 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 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). Even in the 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 that the Director issued a Final Determination to plaintiff on June 14, 2013. The Final Determination was received at plaintiff's residence on June 17, 2013. Thus, the court will begin counting the 90-day limitations period from June 17, 2013, the date the certified mail return receipt was signed. See Liapakis, supra, 363 N.J. Super. at 99. According plaintiff the most favorable interpretation of the facts, the 90-day period for establishing jurisdiction with this court concluded on Sunday, September 15, 2013. However, because the last day of the computation period was a Sunday, under R. 1:3-1, the filing deadline is extended to Monday, September 16, 2013. Plaintiff's Complaint was not filed with this court until Tuesday, September 17, 2013, one day after the 90-day limitations period expired.

The court finds a lack of support for plaintiff's argument that consideration should be given to his mailing of the Complaint prior to expiration of the 90-day limitations period. Our courts must strictly construe statutes which establish applicable 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. Given that, 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”, this court finds plaintiff’s argument unavailing. The mailing of a Complaint by ordinary mail or overnight mail within the 90-day limitations period does not amount to a filing under either N.J.S.A. 54:51A-14 or R. 8:4-1(b). Thus, upon expiration of the 90-day period, without the filing of a Complaint, the Final Determination became absolute and fixed, depriving this court of jurisdiction to review the actions of the Director.

Plaintiff maintains that the Director was not adversely prejudiced by his Complaint being filed “1 day late” because the Director “waited for 11 years” to institute this action. However, plaintiff misconstrues the prejudice which is suffered by the Director. The Legislature imposed strict deadlines under N.J.S.A. 54:51A-14 to “provide finality and predictability of revenue to state and local government.” Bonanno v. Director, Division of Taxation, 12 N.J. Tax 552, 556 (Tax 1992) (citing Pantasote, Inc. v. Director, Division of Taxation, 8 N.J. Tax 160, 164-166 (Tax 1985)). The imposition of strict deadlines stems from the view that government cannot be efficiently and effectively managed in the absence of prudent fiscal policies. In order to adopt responsible and accurate budgets, both state and local government must rely upon their estimated revenues. A strict adherence to statutory deadlines ensures that state and local governments will receive timely notice of potential deviations in estimated revenues and can budget accordingly. Thus, the Director would be prejudiced by being compelled to defend a Final Determination after the statutory limitations period had lapsed.

Finally, plaintiff contends that he should not be penalized “because I don’t know the law”. However, this argument also lacks merit. 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 plaintiff, following receipt of the Final Determination, bore an obligation to acquaint himself with the laws applicable to the asserted tax obligations or to seek advice from qualified legal counsel. Although plaintiff maintains that he “cannot afford” a lawyer, by choosing to represent himself in this matter, he is nonetheless charged with the responsibility to adhere to applicable statutory limitations periods and the rules of court. Thus, plaintiff’s failure to timely file a complaint challenging the Final Determination is result of his own inaction.

Therefore, because plaintiff failed to timely file his appeal within the statutorily prescribed limitations period, the Court is divested of jurisdiction in this matter.

### **III. Conclusion**

For the above stated reasons, the Director’s motion to dismiss plaintiff’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 plaintiff’s Complaint.

Very truly yours,



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