Martin v. Vt. Dep't of Taxes, No. 818-11-08 Wrcv (Eaton, J., May 14, 2009)

STATE OF VERMONT
WINDSOR COUNTY

ALBERT C. MARTIN, Presiding Pastor for Open Heavens Christian Fellowship	)	**Windsor Superior Court**
	)	**Docket No. 818-11-08 Wrcv**
v.	)	
	)	
VERMONT DEP'T OF TAXES	)	

DECISION
Defendant's Motion to Dismiss, filed Dec. 24, 2008

This case is an appeal from a property transfer tax deficiency notice issued to plaintiff Albert Martin by the Vermont Department of Taxes in February 2008. The present matter before the court is the Department's motion to dismiss the complaint for lack of subject matter jurisdiction. The Department contends that Mr. Martin failed to follow the statutory procedures provided for appeals from the deficiency notice, and that the present complaint should be dismissed for failure to exhaust administrative remedies. Mr. Martin argues that he followed the statutory procedures by sending a letter to the tax examiner in March 2008, and that the Department failed to treat the letter as an appeal or grant him a hearing.

The administration of the property transfer tax is governed by statute. The tax is imposed upon every transfer of real property located in the state, and is normally paid by the transferee to the town clerk at the time of the recording of the deed. 32 V.S.A. §§ 9602, 9604, 9605. The transferee is also required to file a property transfer tax return at the time of payment. *Id.* § 9606(a). If the commissioner of taxes determines after reviewing the return that the taxpayer failed to pay all of the tax liability accrued as a result of the transfer, the commissioner notifies the taxpayer of the deficiency by mail. *Id*. § 9617(a).

The procedures for appealing a deficiency notice are as follows. After receiving the notice, the taxpayer may, "within 60 days after the date of the mailing of the notice of assessment, petition the commissioner in writing for a determination of that deficiency or assessment." 32 V.S.A. § 9617(b). If the taxpayer petitions the commissioner for a determination, the commissioner "shall thereafter grant a hearing upon the matter and notify the taxpayer in writing of his or her determination concerning the deficiency,

penalty or interest." *Id*. After receiving an adverse written determination from the commissioner, the taxpayer may seek further review by appealing the determination to the superior court within 30 days pursuant to 32 V.S.A. § 9617(e).

The foregoing procedures are the "exclusive remedy of a taxpayer" with respect to notices of property transfer tax deficiencies. 32 V.S.A. § 9617(f). This means that the taxpayer must follow the statutory procedures before any judicial review may be conducted in the superior court. See *Riley v. State*, 133 Vt. 116, 117 (1974) (explaining that where a tax statute provides an "exclusive remedy" to the taxpayer, the taxpayer "is bound to follow" the administrative appeal route as a prerequisite to judicial review). If the taxpayer does not follow the prescribed procedures for appeal, the taxpayer "shall be bound by the terms of the notification," and "shall not thereafter contest, either directly or indirectly, the tax liability as therein set forth." 32 V.S.A. § 9617(g).

The question presented by the motion to dismiss in this case is whether Mr. Martin followed the statutory procedures governing appeals from notices of property transfer tax deficiencies before filing the present complaint. If he did not, then the complaint must be dismissed for failure to exhaust administrative remedies. 32 V.S.A. § 9617(g); *Town of Bridgewater v. Dep't of Taxes*, 173 Vt. 509, 510 (2001) (mem.).

The following facts appear either in the complaint or in documents referenced by the complaint, and are set forth in the light most favorable to the non-moving party. Mr. Martin is the pastor of a Christian Fellowship ministry, and has been ordained since 1991. He became married in 2001. At that time, his spouse added his name to the deed for the marital residence, which she had owned since 1972.

In 2005, Mr. Martin organized the ministry as a "corporation sole" in the State of Nevada. The corporation sole is a Nevada form of business organization that allows religious organizations to hold property "for the benefit of religion, for works of charity, and for public worship." N.R.S. §§ 84.010, 84.020. Vermont does not have an equivalent to the corporation sole.

In April 2006, Mr. Martin and his spouse transferred the marital property to the corporation sole through a quitclaim deed. Mr. Martin then filed a property transfer tax return on behalf of the ministry in which he claimed that the transfer was exempt from taxation because it was made to a corporation and no gain or loss was recognized. See 32 V.S.A. § 9603(11) (providing an exemption from property transfer tax for transfers made to a corporation at the time of formation in which no gain or loss is recognized, except where the commissioner finds that a major purpose of the transfer was to avoid taxation).

The Department apparently did not respond to the property transfer tax return until November 2007. At that time, tax examiner Malcolm Matthew requested more information regarding the property transfer, and indicated that it did not appear to qualify for the claimed exemption. After further correspondence between the tax examiner and Mr. Martin's attorney (Richard Bowen), the tax examiner denied the request for an

exemption and sent a February 2008 letter stating that the property transfer tax return had been received without payment, and that a notice of deficiency would be mailed within fourteen days showing the amount due plus interest and penalties. The tax examiner also explained that the notice of deficiency could be appealed "by writing within sixty days from the date of the notice providing your reasons and the facts supporting them" and addressing the petition to the tax examiner.

The notice of deficiency followed on February 25, 2008. The notice advised Mr. Martin that he owed nearly $3,000 in property transfer tax plus interest and penalties.

On March 14, 2008, Attorney Bowen sent a letter to the tax examiner. He acknowledged receipt of the notice of deficiency, and argued that if the property transfer was not eligible for an exemption under § 9603(11) because Vermont law does not recognize the corporation sole, then the property transfer could be viewed as an exempt transfer between a husband and a wife. Cf. 32 V.S.A. § 9603(5) (exempting transfers between spouses from the property transfer tax). Attorney Bowen therefore requested that the notice of deficiency "be rescinded as this is not a taxable transaction."

The Department never granted Mr. Martin a hearing or otherwise responded to the March 14th letter. Instead, nothing happened until Attorney Bowen sent another letter to the Department on August 14, 2008. In this letter, Attorney Bowen expressly requested an "appeal" from the February 2008 notice of deficiency, and furthermore requested a determination that the property transfer be recognized as exempt under § 9603(5) as a transfer between a husband and wife.

The tax examiner subsequently denied the appeal in a written determination dated August 26, 2008. The tax examiner ruled that the August 14th appeal was untimely because more than sixty days had passed since the notice of deficiency was mailed in February 2008. The tax examiner also explained that the transfer was not eligible for an exemption under § 9603(5) because it was a transfer between two individuals and a corporation, rather than a transfer between husband and wife.

After receiving the adverse written determination, Mr. Martin did not pursue any further legal action for nearly three months. Then, on November 19, 2008, he filed a complaint under Rule 75 in the Windsor Superior Court. The complaint did not reference the appeals procedures set forth in 32 V.S.A. § 9617(e), but rather sought review of the Department's actions under Rule 75, a declaration that the property transfer was "a transfer exempt from property tax," and an order for the Department to remove any tax liens from the property.

The Department then filed the present motion to dismiss the complaint for lack of subject matter jurisdiction. The Department argues primarily that Mr. Martin failed to exhaust his administrative remedies because he did not seek a determination by the commissioner within 60 days from the February 2008 notice of deficiency. Most of the argument between the parties has involved the question of whether the March 2008 letter

was sufficient to constitute notice that Mr. Martin was appealing from the notice of deficiency.

The Department has also argued in the alternative that even if the March 2008 letter was effective as a notice of appeal, the complaint should nevertheless be dismissed because Mr. Martin did not comply with the statutory procedures for appealing to the superior court after receiving the adverse written determination in August 2008. 32 V.S.A. § 9617(e). In other words, the Department argues that Rule 75 relief is not available in this case because the taxpayer did not exhaust the "exclusive remedies" available to him under the procedures set forth in § 9617(b) *and* § 9617(e).

For the reasons described in more detail below, the court concludes that the complaint should be dismissed because Mr. Martin did not appeal to the superior court in a timely manner under § 9617(e) after receiving an adverse written determination from the Department in August 2008. This makes it unnecessary to rule upon the first question presented, which was whether the March 2008 letter should have been treated by the Department as a petition for a written determination by the commissioner within the meaning of § 9617(b). For the purposes of this decision, the court assumes without deciding that the Department should have granted Mr. Martin a hearing in response to his March 2008 letter. (The court additionally notes in passing that this is a reasonable assumption, since the March 2008 letter provided exactly the information that the Department told Mr. Martin to produce if he wanted to appeal: a statement of the reasons and facts supporting the appeal in a letter addressed to the tax examiner).

The court furthermore assumes without deciding that if the Department had never responded to the March 2008 letter, review in the superior court under Rule 75 might have been available in order to compel the Department to perform its required function of producing an appealable written determination of the petition. See *Sagar v. Warren Selectboard*, 170 Vt. 167, 171 (1999) (explaining that relief in the nature of mandamus may be available where an administrative officer refuses to perform some duty imposed by law, and where no other adequate legal remedy is available). The production of an appealable written determination would have permitted Mr. Martin to pursue his administrative remedies to their fullest extent by seeking judicial review under § 9617(e).

However, the record shows that the Department eventually produced an appealable written determination on August 26, 2008 that denied Mr. Martin's petition as untimely. It is implicit in this ruling that the Department had ruled that the March 2008 letter was not effective to trigger the hearing and determination procedures provided in § 9617(b). The Department would not have dismissed the appeal as untimely otherwise. Once that affirmative written determination was made, Mr. Martin's right to further judicial review became ripe under § 9617(e), and he had thirty days within which to seek such review in the superior court and raise any issues related to the dismissal for untimely filing, including the argument that dismissal was improper because the March 2008 petition had been timely filed.

Likewise, once the Department produced the appealable written determination, any review under Rule 75 became moot, since there was nothing further to compel from the Department. At that point, the "exclusive" statutory procedures for seeking further judicial review applied.

The record shows that Mr. Martin did not file a complaint in superior court within thirty days after receiving his appealable written determination from the Department. Instead, he filed a Rule 75 complaint on November 19th, which was almost two months past the permitted deadline.

Rule 75 does not provide a substitute for compliance with statutory procedures for appeals from administrative determinations. This is especially true where, as here, the Legislature has expressly defined the administrative appeal procedures as the "exclusive remedy" available to the taxpayer. Under these circumstances, the court must refrain from conducting any judicial review that is not in accordance with the statute, since those procedures are a "binding legislative limitation on the course of review of the action of the Commissioner of Taxes available to the taxpayer." *Stone v. Errecart*, 165 Vt. 1, 3 (1996) (quoting *Riley*, 133 Vt. at 117).

The court therefore concludes that Mr. Martin received an appealable written determination from the Department, but did not thereafter file a complaint in the superior court within the time permitted by 32 V.S.A. § 9617(e). The court accordingly concludes that Mr. Martin failed to exhaust the administrative remedies that were available to him, and that review is not separately available under Rule 75. See *Town of Bridgewater*, 173 Vt. at 510 (explaining that where a statute creates administrative remedies, exhaustion is required before the taxpayer turns to the courts for relief). The motion to dismiss the complaint is therefore granted.

ORDER

Defendant's Motion to Dismiss, filed December 24, 2008, is ***granted***.

Dated at Woodstock, Vermont this ____ day of May, 2009.

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Hon. Harold E. Eaton, Jr.
Superior Court Judge