

NO. CV 09 4020332S : SUPERIOR COURT
DOROTHY W. STAPLETON AND
CRAIG R. STAPLETON : TAX SESSION
v. : NEW BRITAIN
COMMISSIONER OF REVENUE
SERVICES : MAY 13, 2010

MEMORANDUM OF DECISION
ON DEFENDANT'S MOTION TO DISMISS

The defendant, commissioner of revenue services (commissioner), moves to dismiss this appeal filed by the plaintiffs, Dorothy W. and Craig R. Stapleton (the Stapletons) regarding the commissioner's denial of their claim for a tax credit carryover from their 2003 income tax return to their 2004 income tax return.

The facts in this case are not in dispute. The plaintiffs had previously paid \$60,000 of estimated taxes for their 2003 income tax return which resulted in an overpayment of \$12,225.

The plaintiffs allege in their complaint that they timely filed their Connecticut Resident Income Tax Return (Form CT-1040) for the year ending December 31, 2003 and claimed a refund of \$12,225 to be applied to their 2004 income tax return. The commissioner contests this allegation and contends that the plaintiffs' 2003 Connecticut Income Tax Return was not filed until June 25, 2008.

Beth G. Souza, a revenue services tax supervisor, recited as follows in her affidavit¹:

“7. Upon review of the Department’s records, the Department determined that the Taxpayers had not filed a 2003 Income Tax Return with the Department prior to receipt of the Taxpayers’ 2003 Income Tax Return received by the Department on or about June 25, 2008.

“10. The statute of limitations governing claims for refund of income tax is governed by Conn. Gen. Stat. § 12-732 (a). . . . Upon review of the Department’s records, the Department determined that the Taxpayers were granted an extension of time to file their income tax return for taxable year 2003. Therefore, in accordance with the requirements of Conn. Gen. Stat. § 12-732 (a) (1), in order to make a timely claim for refund for taxable year 2003, the Plaintiffs had to file their Refund Claim no later than October 15, 2007. The Plaintiffs, however, did not file their Refund Claim until June 25, 2008. As such, the Plaintiffs failed to comply with the statute of limitations prescribed by Conn. Gen. Stat. § 12-732.

“11. As the Taxpayers’ Refund Claim was filed more than eight months beyond its due date, said Refund Claim was not filed within the time prescribed by Conn. Gen. Stat. § 12-732 (a) (1).

“12. Based upon the Taxpayers’ Refund Claim being filed beyond the time prescribed by Conn. Gen. Stat. § 12-732 (a) (1), the Department’s ITAS program issued a notice of proposed disallowance of the Refund Claim (“Disallowance Notice”), wherein it denied the Taxpayers’ Refund Claim for the taxable year 2003.”

On July 18, 2008, the department of revenue services issued a notice of disallowance of the plaintiffs’ claims for a refund as follows:

¹ See attachments to defendant’s memorandum of law, dated August 17, 2009, Exhibit A.

“This letter is in response to your claim for a refund from the Individual Income tax return filed on 06/25/2008 for the period ending 12/31/2003. Because you did not file a timely, written claim for refund with the Commissioner, as specified in Connecticut General Statute[s] § 12-732 (a), the Department of Revenue Services (DRS) is denying your claim.

“This letter is a notice of proposed disallowance. The proposed disallowance will constitute a final disallowance 60 days from the date of this letter unless you file a written protest on or before the sixtieth day. Your protest must be received by DRS or be postmarked on or before the sixtieth day. It must contain a statement of the specific dollar amount that you are protesting and include the grounds on which the protest is based.”

(Exhibit B, defendant’s memorandum of law, dated August 17, 2009.)

Over four months later, on December 8, 2008, the plaintiffs mailed their reply to the department of revenue services’ July 18, 2008 notice of disallowance.

Contesting the commissioner’s claim that the appeal period from the disallowance of the plaintiffs’ protest began with the “Disallowance Notice” issued on July 18, 2008, the plaintiffs contend that the appeal period should commence with the date of March 3, 2009, which is on the letter from the commissioner’s representative, Scot R. Anderson, Director, Appellate Division, to the plaintiffs. Anderson’s March 3, 2009 letter to the plaintiffs recites, in relevant part, as follows:

“The commissioner’s notice of proposed disallowance was mailed to you on July 18, 2008. However, your written protest against the proposed disallowance was not

mailed to the commissioner until December 8, 2008. Accordingly, your written protest is denied.

“Because you did not file a written protest against the proposed disallowance with the commissioner within the sixty-day period specified in the statute, the Department of Revenue Services is without legal authority to consider (and, therefore, has not considered) the reasons, if any, that are given in your representative’s letter postmarked December 8, 2008, for granting your refund claim.

“By this letter, the Department of Revenue Services is confirming only that you did not make a timely written protest against the proposed disallowance. There can be no further administrative action on this matter. Any appeal to the Superior Court concerning this confirmation of your failure to make a timely written protest against the proposed disallowance must be taken within one month of the date of this letter. (Procedures to take an appeal to the Superior Court are set forth in Conn. Gen. Stat. § 12-730.) The Superior Court, however, may only consider the issue of whether you did, in fact, make a timely written protest against the proposed disallowance and may not consider the grounds upon which your claims were founded.”

In summary, the key dates in this case are as follows:

October 15, 2007: the final extended date for the plaintiffs to file a claim for a refund of overpayment of taxes on their 2003 income tax return;

June 25, 2008: the date the commissioner received a demand for a refund of the 2003 overpayment of taxes;

July 18, 2008: the date of the commissioner's notice of disallowance denying plaintiffs' claim for the tax refund;

December 8, 2008: the date on which the plaintiffs filed an appeal with the commissioner protesting the commissioner's disallowance of their claim for a refund.

March 3, 2009: the date that the commissioner denied the plaintiffs' protest on the grounds that the protest was not filed within the time requirements of § 12-732 (a).

The plaintiffs' December 8, 2008 protest was not a claim for a refund of taxes that was required to be filed by October 15, 2007, but a protest to the commissioner's letter to the plaintiffs that they were not in compliance with § 12-732 (a) (1). As the commissioner notes, in order to properly appeal the disallowance of the plaintiffs' claim for a refund, as set forth in the July 18, 2008 letter, the plaintiffs were required to file such an appeal within sixty days from the notification of the commissioner's denial of their claim. Based on the affidavits, this was not done.

The present action was commenced with service of process on the commissioner on April 1, 2009 and was filed with the court on April 7, 2009. This case is merely an appeal of the commissioner's letter notifying the plaintiffs that their protest was not timely filed pursuant to § 12-732 (a). By appealing the commissioner's decision rejecting the plaintiff's December 8, 2008 refund claim, the plaintiffs seek to resurrect the late filing of their claim. Having failed to file their protest to the commissioner's denial of

their refund claim within sixty days of the commissioner's July 18, 2008 notice of the disallowance, the commissioner's letter of March 3, 2009 was merely a notification of the July 18, 2008 rejection of the refund claim.

By failing to timely protest the commissioner's decision of July 18, 2008, the plaintiffs have failed to exhaust their administrative remedies. The commissioner relies on Stepney, LLC v. Fairfield, 263 Conn. 558, 563, 821 A.2d 725 (2003), which noted that "[i]t is a settled principle of administrative law that if an adequate administrative remedy exists, it must be exhausted before the Superior Court will obtain jurisdiction to act in the matter. . . . We have frequently held that where a statute has established a procedure to redress a particular wrong a person must follow the specified remedy and may not institute a proceeding that might have been permissible in the absence of such a statutory procedure." (Citations omitted; internal quotation marks omitted.)

The plaintiffs' appeal only challenges the commissioner's letter of notification of March 3, 2009 and not the commissioner's July 18, 2008 denial of the plaintiffs' claim for a tax refund. Therefore, the plaintiffs lack standing to challenge the commissioner's notice of disallowance having failed to comply with § 12-732 (a) (1) which, if complied with, might have afforded the plaintiffs with relief. The court notes that "[t]he commissioner is on stronger footing when [he or she] reminds us that failure to comply with the statutory requirements for a tax appeal deprives a trial court of subject matter jurisdiction. This principle has regularly been applied to administrative appeals. We recognize that tax appeals differ from other administrative appeals because only tax

appeals are trials de novo. For jurisdictional purposes, however, we can see no distinction between tax appeals and other statutory appeals.” (Citations omitted.) Millward Brown, Inc. v. Commissioner of Revenue Services, 73 Conn. App. 757, 763-64, 811 A.2d 717 (2002).

Accordingly, for the foregoing reasons, the defendant’s motion to dismiss is granted without costs to either party.

Arnold W. Aronson
Judge Trial Referee