

No. A09-414

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STATE OF MINNESOTA

IN SUPREME COURT

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Henry J. Langer and Patricia K. Langer,

Relators,

vs.

Commissioner of Revenue,

Respondent.

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**RESPONDENT'S BRIEF AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## LEGAL ISSUES

- I. Did the Tax Court have subject matter jurisdiction where Relators' Notice of Appeal was not received by, and therefore not timely filed with, the Tax Court before the expiration of the appeal period provided in Minn. Stat. § 271.06, subd. 2 (2006), which requires both timely service and filing of an appeal.

The Tax Court held: In the negative.

Minn. Stat. § 271.06, subd. 2 (2006);

*Piney Ridge Lodge, Inc. v. Comm'r of Revenue*, 718 N.W.2d 861 (Minn. 2006);

*Acton Construction Co. v. Comm'r of Revenue*, 391 N.W.2d 828 (Minn. 1986);

*State v. Bies*, 258 Minn. 139, 103 N.W.2d 228 (1960).

## STATEMENT OF THE CASE AND FACTS

This is an appeal of the Tax Court's Order dismissing Relators' Notice of Appeal, thereby affirming an Order of Respondent Commissioner of Revenue. The Commissioner's Order assessed additional income tax, penalties and interest for the taxable years 2003 through 2006. Relators attempted to appeal the Commissioner's Order but failed to timely file their Notice of Appeal with the Tax Court. The Commissioner moved to dismiss Relators' appeal, citing the Tax Court's lack of subject matter jurisdiction. The Commissioner's motion came on before the Tax Court on November 5, 2008, the Honorable Kathleen H. Sanberg, Judge of Tax Court, presiding. By an Order dated January 7, 2009, the Tax Court granted the Commissioner's motion and dismissed Relators' appeal. *See generally* Tax Court Order and Memorandum at Resp. App. 1-4.<sup>1</sup> From that Order, Relators take the instant appeal.

The facts of this appeal are largely undisputed. On April 8, 2008, the Commissioner issued an Individual Income Tax Audit Report and Tax Order ("Commissioner's Order") assessing Relators for unpaid income tax, penalties and interest, in the amount of \$77,587.62 for taxable years 2003 through 2006. Pursuant to Minn. Stat. § 271.06, subd. 2, the 60-day period for appealing the Commissioner's Order would have expired June 7, 2008. *See* Tax Court Order and Memorandum at Resp. App. 2. Relators, though, requested a 30-day extension from the Tax Court to appeal the Commissioner's Order, and on June 5, 2008, the Tax Court granted that request.

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<sup>1</sup> "Resp. App." references are to pages of Respondent's Appendix.

Accordingly, the extended last day when Relators could have filed an appeal with the Tax Court was July 7, 2008. *See* Tax Court Order and Memorandum at Resp. App. 2.

Relators served their Notice of Appeal on the Commissioner, which was received by the Commissioner on July 3, 2008. Relators, however, did not file their Notice of Appeal with the Tax Court by July 7, 2008. Tax Court Order and Memorandum at Resp. App. 2. Relators do not dispute that their Notice of Appeal was not received by the Tax Court by July 7, 2008. On July 22, 2008, the Attorney General's Office, counsel for the Commissioner, contacted the Tax Court regarding the docketing of this matter. The Commissioner learned that Relators failed to file their Notice of Appeal with the Tax Court and forwarded a copy of the Notice of Appeal to the Tax Court. After receiving Relators' Notice of Appeal from the Commissioner on August 6, 2006, the Tax Court sent a letter to Relators requesting that they pay their filing fee to the Tax Court. Relators paid their filing fee to the Tax Court on August 13, 2008. *See* Tax Court Order and Memorandum at Resp. App. 2.

On September 19, 2008, the Commissioner served his Notice of Motion and Motion to Dismiss for Lack of Subject Matter Jurisdiction, in which the Commissioner argued that Relators' failure to timely file their Notice of Appeal deprived the Tax Court of jurisdiction over this case. Relators responded that they mailed their Notice of Appeal to the Tax Court on July 2, 2008, and therefore their appeal should have been deemed to be timely.

By an Order and Memorandum dated January 7, 2009, the Tax Court granted the Commissioner's motion and dismissed Relators' appeal--thereby effectively affirming the

Commissioner's Order assessing Relators additional income tax, penalties and interest. The Tax Court reasoned that it lacked jurisdiction over the subject matter of Relators' appeal, because the Notice of Appeal was not timely filed. *See* Tax Court Order and Memorandum at Resp. App. 3-4. Although Relators had timely served the Commissioner and mailed their appeal to the Tax Court before July 7, 2008, the Notice of Appeal was not received by the Tax Court administrator by that date, and thus the appeal was untimely. In a letter dated January 15, 2009, Relators requested permission to file a Motion for Reconsideration, and the Tax Court denied this request on January 21, 2009. From the Tax Court's January 7, 2009 Order and Memorandum, Relators take the instant appeal.

## ARGUMENT

### I. STANDARD OF REVIEW

A taxpayer challenging an assessment by the Commissioner of Revenue bears the burden of showing that the Commissioner's order is incorrect, and the Commissioner's Order is considered to be prima facie valid. Minn. Stat. § 270C.61, subd. 4 (2006).

Minn. Stat. § 271.06, subd. 7 (2006), makes the Minnesota Rules of Civil Procedure, where practicable, applicable to Tax Court proceedings. Thus, on appeal from a Tax Court order, “[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01. In applying this standard, this Court has stated: “On an attack on findings of the trial court, the question on appeal is whether the evidence sustains the findings, using

all possible inferences supporting the findings.” *Georgopolis v. George*, 237 Minn. 176, 182, 54 N.W.2d 137, 141 (1952).

Issues of law are reviewed de novo. *Wybierala v. Comm’r of Revenue*, 587 N.W.2d 832, 835 (Minn. 1998). As a question of law, when reviewing a dismissal based on the Tax Court’s lack of jurisdiction, where the parties do not dispute the facts, this Court will review de novo whether the Tax Court properly applied the law. *See Piney Ridge Lodge, Inc. v. Comm’r of Revenue*, 718 N.W.2d 861, 862 (Minn. 2006).

Relators’ Brief does not provide this Court with the appropriate standard of review. The parties do not dispute the underlying facts on which the Tax Court Order dismissed Relators’ appeal. Accordingly, this Court should apply de novo review to whether the Tax Court properly concluded that it was deprived of jurisdiction when Relators failed to timely file their Notice of Appeal. Because the Tax Court’s jurisdiction is limited by the statutory requirement for timely filing of an appeal, and because Relators failed to invoke the Tax Court’s jurisdiction with their untimely appeal, the Tax Court properly dismissed Relators’ appeal. Accordingly, this Court should affirm the Tax Court’s decision.

**II. THE TAX COURT PROPERLY CONCLUDED THAT IT LACKED SUBJECT MATTER JURISDICTION BECAUSE RELATORS DID NOT FILE A TIMELY NOTICE OF APPEAL FROM THE COMMISSIONER’S ORDER.**

Relators contend that the Tax Court erred in dismissing their appeal, explaining that they mailed their Notice of Appeal prior to the expiration of the 90-day appeal period provided by Minn. Stat. § 271.06, subd. 2 (2006). While Relators may have mailed their Notice of Appeal prior to the July 7, 2008 deadline for appealing the Tax Court’s Order,

the date that Relators mailed their Notice of Appeal is only relevant to service on the Commissioner; it is not relevant, though, to determining when the appeal was filed with the Tax Court. Because Relators' Notice of Appeal was not received--and therefore not filed--by the Tax Court by July 7, 2008, the Tax Court was deprived of subject matter jurisdiction and properly dismissed Relators' appeal.

**A. It Is Appropriate For The Tax Court To Dismiss An Appeal Where It Lacks Subject Matter Jurisdiction.**

A court's subject matter jurisdiction may not be waived and may not be conferred by the parties. *See Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 907 & n.20 (Minn. 1998) (quoting 1 David F. Herr and Roger S. Haydock, *Minnesota Practice* § 12.16 (3d ed. 1998)). A court has the power to determine its own jurisdiction. *See, e.g., Reid v. Indep. Union of All Workers*, 200 Minn. 599, 601-02, 275 N.W. 300, 301 (1937). On proper motion, it also has the duty to do so: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.08(c) (emphasis added). Where the lack of jurisdiction appears on the face of the court's records, there can be no presumption of jurisdiction and the matter must be dismissed. *In re Mousseau*, 30 Minn. 202, 14 N.W.2d 887 (1883). Where the documents on file disclose a jurisdictional defect on their face, it cannot be presumed that other facts exist which would confer jurisdiction. *See, e.g., Holmes v. Loughren*, 97 Minn. 83, 105 N.W. 558 (1906).

Statutes of limitation are peculiarly within the legislative domain, and the courts and administrative agencies have no power to extend or modify the periods of limitation

prescribed by statute. *See, e.g., Johnson v. Winthrop Laboratories Div. of Sterling Drug, Inc.*, 291 Minn. 145, 190 N.W.2d 77 (1971); *Dumont v. Commissioner of Taxation*, 278 Minn. 312, 154 N.W.2d 196 (1967); *Sollar v. Oliver Iron Mining Co.*, 237 Minn. 170, 54 N.W.2d 114 (1952).

The Tax Court was created by the Legislature as an administrative agency of the executive branch, and it has been granted limited jurisdiction. *See Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 199 (Minn. 2000) (citing Minn. Stat. § 271.01, subd. 1 (2000)). It is well settled that “when the legislature creates a right not existing at common law, it has the power to impose any restrictions it sees fit . . . .” *Acton Construction Co. v. Comm'r of Revenue*, 391 N.W.2d 828, 835 (Minn. 1986) (internal quotation marks and citation omitted). A restriction limiting a statutory right constitutes a *substantive* part of that right: “[T]he conditions imposed [by the Legislature] qualify the right and are an integral part thereof; they are conditions precedent which must be fully complied with, *or the right does not exist.*” *Id.* (emphasis added). A statutory time limitation is just such a condition precedent to a substantive right:

[W]here a statute gives a new right of action ... and prescribes the time within which it may be enforced, the time so prescribed is a condition of its enforcement, an element in the right itself, and the right falls with the failure to apply for relief within the allotted [sic] time.

*State v. Bies*, 258 Minn. 139, 147, 103 N.W.2d 228, 235 (1960) (quoting *Kannellos v. Great N. Ry.*, 151 Minn. 157, 159-60, 186 N.W. 389, 390 (1922)).

**B. The Tax Court Lacked Jurisdiction Over This Appeal Due To Relators' Failure To Timely File Their Notice Of Appeal Within The Time Limit Provided In Minn. Stat. § 271.06, Subd. 2.**

The jurisdictional issue in this case arises from the statutorily-imposed limitations on the Tax Court, because Relators did not file a timely appeal. The right to appeal from an Order of the Commissioner is purely statutory and is set forth in section 271.06, which provides in pertinent part:

Except as otherwise provided by law, within 60 days after notice of the making and filing of an order of the commissioner of revenue, the appellant ... shall *serve* a notice of appeal upon the commissioner *and file* the original ... with the tax court administrator ... ; provided, that a tax court judge, for cause shown, may by written order extend the time for appealing for an additional period not exceeding 30 days.

Minn. Stat. § 271.06, subd. 2 (2006) (emphasis added).

This Court has emphasized that, “the limitation provisions in a statutorily created cause of action *are jurisdictional*, requiring dismissal for failure to comply—they do not have flexible parameters permitting them to be ignored if their application is ‘too technical ....’” *Ortiz v. Gavenda*, 590 N.W.2d 119, 122 (Minn. 1999) (emphasis added) (affirming dismissal for lack of jurisdiction of statutory wrongful death action not commenced within three-year statutory limitation period); *see also Kearns v. Julette Originals Dress Co.*, 267 Minn. 278, 282, 126 N.W.2d 266, 269 (1964) (noting that compliance with time limitation to appeal is “indispensable prerequisite” to court’s jurisdiction). Provisions limiting statutory rights in the tax area share this jurisdictional character. *See Benigni v. County of St. Louis*, 585 N.W.2d 51, 54 (Minn. 1998) (affirming Tax Court’s dismissal for lack of jurisdiction of taxpayer’s challenge to

property tax assessment because statutory time limit had run prior to taxpayer's filing of challenge); *Bies*, 103 N.W.2d at 235 (where State failed to initiate tax collection within statutory period, "the court has no jurisdiction to entertain proceedings for relief begun at a later time").

This Court recently affirmed the Tax Court's dismissal of an untimely appeal for lack of subject matter jurisdiction pursuant to this section. *See Piney Ridge Lodge, Inc. v. Comm'r of Revenue*, 718 N.W.2d 861 (Minn. 2006). In *Piney Ridge*, this Court acknowledged "that the 60 day time limit for tax court appeals provided in Minn. Stat. § 271.06, subd. 2 (2004), is jurisdictional," and that the taxpayer's failure to file within the 60 day time limit was an appropriate ground for dismissal. *See Piney Ridge Lodge, Inc.*, 718 N.W.2d at 862 n.1.

The dispositive issue herein is whether Relators timely filed their appeal with the Tax Court, because there is no dispute that Relators timely served the Commissioner with their Notice of Appeal. This Court has recognized the critical distinction between "filing" and "serving" as it relates to invoking a court's jurisdiction, and has held that "filed" means filed with a court. *See State v. Parker*, 278 Minn. 53, 55, 153 N.W.2d 264, 266 (1967) ("The meaning of the term 'filed' is plain and means that the notice must *actually be received* by the clerk within [the time provided by statute].") (emphasis added). The Commissioner submits that the plain language of Minn. Stat. 271.06, subd. 2, grants jurisdiction to the Tax Court only where an appealing taxpayer both serves and files this appeal in a timely fashion--specifically, the appeal must "actually be received" by the clerk of the Tax Court.

The order at issue in this case is the Commissioner's Order dated April 8, 2008. That order clearly explained Relators' right to file an appeal with the Tax Court within "60 days from the notice date." Therefore, Appellants were initially required to file an appeal with this Court within 60 days after April 8, 2008, or by June 7, 2008. Because Relators received the statutorily-allowed 30-day extension from this Court, Relators were required to file their appeal by July 7, 2008, 90-days after the Commissioner's Order. Relators did not file their Notice of Appeal with the Tax Court, but rather merely served it on the Commissioner. The Tax Court only received Relators' Notice of Appeal when it was forwarded by the Commissioner upon learning that Relators had failed to do so. Accordingly, Relators' appeal cannot be considered timely and the Tax Court therefore properly concluded that it lacked jurisdiction to consider the matter. By failing to timely file, Relators failed to invoke the Tax Court's jurisdiction. Lacking jurisdiction, the Tax Court properly granted the Commissioner's motion and dismissed Relators' appeal.

Relators argue that their appeal was timely, because they mailed it to the Commissioner and the Tax Court before the expiration of the extended 90-day appeal period. *See* Rel. Br. at 5-6. There is no dispute that the Relators satisfied the first jurisdictional threshold that they timely *serve* their Notice of Appeal on the Commissioner. Indeed, had they failed to do so, Relators' appeal could have similarly been subject to dismissal for failing to serve the Commissioner. *See* Minn. Stat. § 271.06, subd. 2 ("[W]ithin 60 days...the appellant...shall serve a notice of appeal upon the commissioner...."); *see also* *Blixt v. Civil Service Board*, 297 Minn. 504, 505, 210

N.W.2d 230, 231 (1973) (“Failure to both serve and file the petition for review within the time provided by statute deprives the district court of jurisdiction.”).

In their brief, Relators acknowledge that the “clerk of court never received the appeal...mailed on July 2, 2008.” Rel. Br. at 5. As the Tax Court correctly recognized, to have jurisdiction over Relators’ claims, Relators needed to not only serve the Commissioner but also file their Notice of Appeal with the Tax Court--meaning actual receipt by the court. See Minn. Stat. § 271.06, subd. 2; *Parker*, 278 Minn. at 55, 153 N.W.2d at 266. Therefore, Relators’ argument that they mailed their Notice of Appeal prior to July 7, 2008, is irrelevant and should be rejected as meritless.

Because Relators’ Notice of Appeal was not received by the Tax Court by July 7, 2008, the appeal was not timely filed. In light of the Tax Court’s jurisdiction being statutorily-limited to appeals filed and served within the period prescribed by Minn. Stat. § 271.06, subd. 2, the Tax Court lacked jurisdiction to consider Relators’ appeal. Therefore the Tax Court did not err when it granted the Commissioner’s motion and dismissed Relators’ Notice of Appeal.

### CONCLUSION

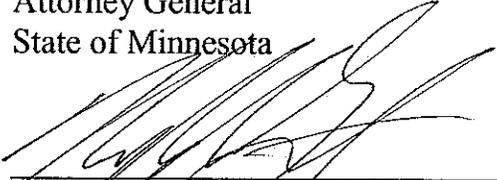
Relators claim that because they mailed their Notice of Appeal prior to the expiration of the statute of limitations for filing an appeal, the Tax Court erred by dismissing their appeal. The Tax Court, though, lacked jurisdiction over Relators’ appeal due to Relators’ failure to actually file their Notice of Appeal with the Tax Court Administrator by July 7, 2008, and it was therefore proper for the Tax Court to dismiss the appeal.

For the foregoing reasons, the Commissioner respectfully requests that this Court affirm the decision below.

Dated: May 29, 2009

Respectfully submitted,

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