

A05-2387

Supreme Court No.

State of Minnesota
IN SUPREME COURT

Piney Ridge Lodge, Inc.,

Petitioner,

vs.

Commissioner of Revenue

Respondent,

Appellant's Brief

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ISSUES ON APPEAL

Whether the Tax court erred in dismissing Relator's appeal for lack of subject matter jurisdiction?

Whether the Tax Court erred in concluding that pursuing informal appeal does not suspend the time limits for filing a formal appeal?

STATEMENT OF THE CASE

This appeal follows an order by the Minnesota Tax Court ("Tax Court") denying Relator Piney Ridge Lodge, Inc. ("Piney Ridge") review of a decision by the Commissioner of Revenue ("Commissioner"). The October 7, 2005 Order ("Court Order") concluded that the Tax Court lacked jurisdiction as a result of Piney Ridge's failure to timely file its petition. The Tax Court's conclusion that Piney Ridge's appeal came after the time limit expired is erroneous as a matter of law. The instructions delivered to Piney Ridge regarding appeal of the Commissioner's order suggest that informal and formal appeal are coextensive. This language tracks closely with general jurisprudence on finality which demands that all substantive issues be resolved prior to appeal. Further, the Court Order cuts against two well settled principles of public policy, the right of persons to appeal executive body decisions and government efficiency.

FACTS

On September 2, 2003, the Commissioner issued a Notice of Change in Tax ("Tax Order") to Piney Ridge in the amount of \$211,057.09. The Tax Order included appeal instructions, quoted in relevant part by the Court Order:

"If you disagree with this notice, you have 60 days from the notice date to appeal informally to the Department of Revenue or formally to the Minnesota Tax Court." Court Order at 3; AA00003.

Upon receiving the Commissioner's Final Notice and Demand of Payment (dated December 9, 2004), Piney Ridge informally appealed the Tax Order. In response, the Commissioner of Revenue suspended collection actions and began negotiations through its agent. The negotiations lasted nearly 16 months. At the conclusion of negotiations, the Commissioner reinstated its collection efforts. Soon afterward, on February 11, 2005, Piney Ridge served and filed its official appeal upon the Commissioner and with the Tax Court.

ARGUMENT

The Court Order dismissed Piney's appeal on the grounds that failure to timely file the appeal voids the Tax Court's subject matter jurisdiction. Court Order at 2; AA00002 The statute that grants subject matter jurisdiction to the Tax Court does not expressly limit jurisdiction to appeals timely filed. Minn. Stat. § 271.01 subd. 5. Some previous case law, however, has suggested the time limit on filing an appeal (found in Minn. Stat. § 271.06 subd. 2) as jurisdictional. *Point Rejuvenate of Minn. v. County of St. Louis*, No. C2-01-100656, 2002 WL 31651161, *3 (Minn.Tax. 2002),¹ citing *Brouse v. Commissioner of Revenue*, Dckt. No. 7282 (Minn.Tax. 2001)("[t]he right to and methods of challenging those taxes are statutorily granted by the legislature").

Under *Point Rejuvenate* and *Brouse*, Piney Ridge contends that its appeal was timely. From the perspective of either a layman or an experienced attorney, Piney Ridge may not submit its appeal until it receives a final order from the Commissioner of

¹ All unpublished opinions are provided in Appellant's Appendix in compliance with Minn. Stat. § 480A.08.

Revenue. A plain reading of the instructions provided to Piney Ridge reveals that ongoing negotiations with the Commissioner (which may reasonably be expected to alter the Tax Order) suspend the timing of the taxpayer to appeal. A formal examination of the statutes and rules, as well as a general understanding of the finality doctrine, supports this plain reading. Further, accepting the Tax Court's reading of the Tax Order as a proper interpretation of the law either encourages multiple appeals on single cases as the orders of the Commissioner change or divests unsuspecting taxpayers of their statutory right to appeal the findings of the executive body.

I. STANDARD OF REVIEW

“Questions of statutory construction, including the construction of tax statutes, are subject to *de novo* review.” *Arcadia Development Corp. v. County of Hennepin*, 528 N.W.2d 857, 859 (Minn. 1995); *see also, In re Denial of Eller Media Co.'s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn.2003)(stating that courts retain authority to review *de novo* errors of law arising when agency decision is based on statutory construction). While the Court will defer to an agency's finding of fact, questions of law are still reviewed *de novo*. *Rasidescu v. Commissioner of Economic Sec.*, 644 N.W.2d 504 (Minn.App. 2002).

Piney Ridge does not contest any fact at issue here. Rather, it contends that the law was both incorrectly read and applied. The questions put to this Court are purely legal, relate to statutory construction, and deserve *de novo* review.

II. THE RULES OF CONSTRUCTION SUPPORT THE ARGUMENT OF PINEY RIDGE.

Read plainly, the language of the Tax Order supports the understanding that informal appeal preserves a later right to a timely formal appeal. “When ambiguous, tax statutes must be strictly construed against the taxing authority and in favor of the taxpayer.” *Benda v. Girard*, 592 N.W.2d 452, 455 (Minn. 1999), citing *Dahlberg Hearing Systems, Inc., v. Commissioner of Revenue*, 546 N.W.2d 739, 743 (Minn. 1996); see also *Dumont v Commissioner of Taxation*, 154 N.W.2d 196 (Minn. 1967)(“since [the dispute] involves a statute of limitations which may not be enlarged by the courts, it should be construed in favor of the taxpayer”); *Charles W. Sexton Co. v. Hatfield*, 116 N.W.2d 574 (Minn. 1962).

Because the Tax Order may be the sole and exclusive instruction on appeal received by the taxpayer, it must be subject to similar strict construction. As quoted by the Tax Court, the relevant Tax Order itself is ambiguous at best; it reads:

“If you disagree with this notice, you have 60 days from the notice date to appeal informally to the Department of Revenue *or* formally to the Minnesota Tax Court.” (emphasis supplied).

The disjunctive ‘or’ compels the conclusion that *either* type of appeal may be filed within 60 days. Nowhere does the Tax Order state that filing one appeal forfeits the legal right to the other. The interpretation of the Tax Court, that both appeals must be filed contemporaneously to preserve jurisdiction, similarly finds no textual support in the Tax Order. None of the surrounding text directly or impliedly states that either form of review is exclusive of the other or that both must be filed within the same sixty days. In short, the taxpayer in this case reasonably interpreted the language of the Tax Order and

the subsequent suspension of collection proceedings as a suspension of the finality of the Tax Order, thus tolling the time in which to formally appeal.

III. THE TAX COURT'S RULING VIOLATES EXISTING JURISPRUDENCE ON FINALITY.

A broader legal analysis supports the view that the Commissioner's orders may not be considered final for the purposes of appeal until the end of ongoing negotiations. In general, the Tax Court is governed by the same rules of procedure as the district courts. Minn. Stat. § 271.06 subd. 7 ("the rules of evidence and civil procedure for the district court of Minnesota shall govern the procedures in the tax court, where practicable"). While administrative regulations regarding Tax Court procedure proscribe differences from general civil procedure in a few narrow instances, these regulations are silent on the issue of finality. *See* Minn. R. 8610.0010, *et. seq.* The most appropriate civil procedure corollary states that "an appeal may be taken...from a *final* order..." Minn. R. App. P. 103.03(a)(emphasis supplied). Final judgment, both logically and as defined by this Court, leaves no room for alteration by the body setting forth the judgment. *Weinzierl v. Lien*, 296 Minn. 539, 540, 209 N.W.2d 424 (Minn. 1973)("this court has consistently held that an order is not appealable unless in effect it finally determines the action").

The order of the Commissioner from which Piney Ridge appealed is not a "final order." The auditor dispatched by the Commissioner of Revenue had the power to negotiate and change the Commissioner's order. This simple, uncontroverted fact conclusively shows that receipt of the order, which the Commissioner claims causes the time limit to begin to run does not "in effect...finally determine the action." To the

contrary, re-opening negotiations through an auditor explicitly authorizes the taxpayer to continue advocating at the Commissioner's level. To not toll the time for appeal while the amount of tax and penalty is uncertain is an error of law.

IV. THE TAX COURT'S RULING VIOLATES PUBLIC POLICY.

A. JUDICIAL ECONOMY.

Part of the public policy that undergirds the requirement of finality of judgment before appeal is the concern for judicial economy. This Court has recently reiterated the importance of judicial economy, and cited greater judicial economy to justify preference for certain procedures. *Span v. State*, 704 N.W.2d 486, 492 (Minn. 2005). While the Tax Court is technically an administrative body, it too has enunciated the need for judicial efficiency. *See, e.g. Rockwood Place Apartments LP v County of Ramsey*, Nos. C7-03-4285, C0-04-4879, 2004 WL 1853716 (Minn. Tax 2004); *citing Enbridge Energy Ltd. P'ship v. County of Red Lake*, File No. C8-03-58 (Minn. Tax Ct. Order dated Feb. 27, 2004); *ZIRP-IC, L.L.C. v. County of Hennepin*, File No. 29185 (Minn. Tax Ct. Order dated July 3, 2003).

The interpretation of the Tax Court cuts directly against the interests of judicial economy. Under its view, taxpayers must formally appeal each order with which they disagree; the economy of the Tax Court cannot take advantage of the Commissioner's internal review process to reduce the total number of appeals. To the contrary, every appeal is in some sense duplicative. Further, an appeal to the Tax Court heard prior to the end of negotiation between the taxpayer and the Commissioner is rendered moot if the Commissioner amends its order. If the new order is still not amenable to the

taxpayer, the appeal must be renewed. It must be highlighted that these economy issues burden not only the Tax Court, but the taxpayer as well. The interpretation urged by Piney Ridge ensures that fewer appeals reach the Tax Court and that taxpayers are not burdened by concurrent or multiple appeals.

B. RIGHT OF APPEAL.

The ruling of the Tax Court abrogates the taxpayer's right to appeal adverse judgment. The right to an appeal from an order of the Commissioner was created by the legislature. Minn. Stat. § 271.06 subd. 1; *Point Rejuvenate*, No. C2-01-100656, 2002 WL 31651161, *3, citing *Brouse v Commissioner of Revenue*, Dckt. No. 7282 (Minn.Tax. 2001) ("The right to and methods of challenging those taxes are statutorily granted by the legislature").

The legislature intended that taxpayers would have recourse against Tax Orders filed against them. Public policy demands that such a statutory right must be respected by the courts and should not be abrogated unless the taxpayer has acted in such a fashion as to clearly warrant divestiture. Piney Ridge's explanations of its reasoning and actions regarding this appeal are sensible and likely representative of the reaction of other taxpayers. Their reading and interpretation of the Tax Order is reasonable. The intent of the legislature to allow aggrieved taxpayers to appeal judgments is violated under the ruling of the Tax Court.

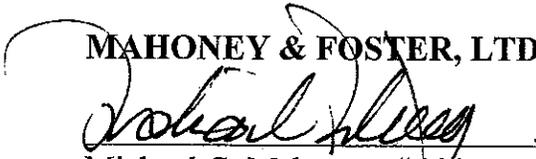
CONCLUSION

The Court's Order runs contrary to respected principles of statutory construction, long-standing jurisprudence on finality and public policy. As such, it should be reversed.

Respectfully submitted,

Dated: January 4, 2006

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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) (with amendments effective July 1, 2007).