

No. A05-387

STATE OF MINNESOTA
IN SUPREME COURT

Piney Ridge Lodge, Inc.,

Relator,

vs.

Commissioner of Revenue,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
LEGAL ISSUE.....	1
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT	3
I. THE TAX COURT PROPERLY GRANTED THE COMMISSIONER’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE RELATOR FAILED TO FILE A TIMELY NOTICE OF APPEAL FROM THE COMMISSIONER’S TAX ORDER.....	3
A. Standard of Review	3
B. Because The Right To File A Tax Court Appeal Is Purely Statutory, Failure To Timely File Such An Appeal Defeats The Right And Deprives The Tax Court Of Jurisdiction.....	3
C. The Tax Court Lacked Subject Matter Jurisdiction In This Case Because Relator Did Not File Its Notice Of Appeal From The Commissioner’s Tax Order Until After Expiration Of The Sixty-Day Period Of Limitation.	5
D. The Instructions For Filing Both Department Of Revenue And Tax Court Appeals, Which Were Included With The Commissioner’s Order, Are Clear.....	6
E. Through Its President And Sole Shareholder, Brian Chaffee, Relator Has Admitted That It Was Aware Of The Sixty-Day Limitation Period For Filing Tax Court Appeals From Commissioner’s Orders.	7
F. The Tax Court Decision Is Both Correct As A Matter Of Law And In Accord With Sound Public Policy.	8
CONCLUSION	10
APPENDIX	

TABLE OF AUTHORITIES

	Page
MINNESOTA CASES	
<i>Acton Construction Co. v. Comm'r of Revenue</i> 391 N.W.2d 828, 835 (Minn. 1986).....	4
<i>Benigni v. County of St. Louis</i> 585 N.W.2d 51, 54 (Minn. 1998).....	5
<i>Chapman v. Comm'r of Revenue</i> 651 N.W.2d 825, 830 (Minn. 2002).....	3
<i>Marzitelli v. City of Little Canada</i> 582 N.W.2d 904, 907 & n. 2 (Minn. 1998).....	3
<i>Ortiz v. Gavenda</i> 590 N.W.2d 119, 122 (Minn. 1999).....	5
<i>Reid v. Indep. Union of All Workers</i> 275 N.W. 300, 301 (Minn. 1937).....	3
<i>State v. Bies</i> 103 N.W.2d 228, 235 (Minn. 1960).....	4, 5
MINNESOTA STATUTES	
Minn. Stat. § 271.06, subd. 2 (2004).....	4, 5
Minn. Stat. § 271.06, subd. 7 (2004)	6

LEGAL ISSUE

Whether the statutory sixty-day period of limitation for filing a Tax Court appeal from a tax assessment order is tolled because a Revenue Department auditor reviews information submitted by the taxpayer after issuance of the order.

The Tax Court held in the negative.

STATEMENT OF THE CASE AND FACTS

The pertinent facts in this case are undisputed. A summary of those facts is as follows:¹

Relator Piney Ridge Lodge, Inc. ("Relator") did not file corporate franchise tax returns for the years 1998 through 2001. TCO at 2.² On September 2, 2003, the Commissioner of Revenue ("Commissioner"), following an audit with respect to those years, issued a Notice of Change in Tax ("Order") assessing corporate franchise tax, penalties, and interest in the amount of \$211,057.09 against Relator. *Id.*; Commissioner's Return filed with Tax Court, Item No. 3. Following issuance of the Order, Brian Chaffee, Relator's President and sole shareholder, submitted to the Department of Revenue ("Department") additional information pertinent to the issues determined by the Order. Resp. App. at A-20-A-21. In an attempt to resolve those issues, corporate tax audit supervisor Debora Berg reviewed the information submitted by Mr. Chaffee, *id.*, and concluded that it did not justify making changes to the Order. *Id.* at A-21. Relator did

¹ A transcript of the Tax Court hearing on the Commissioner's Motion to Dismiss, held on July 20, 2005, is included in Respondent's Appendix ("Resp. App.") at pages A-13 through A-36.

² "TCO" refers to the Tax Court Order appealed from.

not file a Tax Court appeal from the Order within the sixty-day limitation period, which expired on November 1, 2003.

Because the Order became final, the Department attempted to collect the assessed liability during 2004. In connection with this collection effort, the Department issued the following notices and demands: Final Notice and Demand for Payment dated January 10, 2004; Final Notice and Demand for Payment dated December 9, 2004; and Billing Statement dated January 5, 2005. Affidavit of Debora J. Berg, Resp. App. at A-4.

On February 11, 2005, Relator filed its Tax Court Notice of Appeal. Apparently referring to the Final Notice and Demand For Payment dated December 9, 2004, Relator incorrectly indicated the date of the Order appealed from as "12-9-2005." TCO at 3; Commissioner's Return filed with the Tax Court, Item No. 2.

On June 15, 2005, the Commissioner served and filed a Motion to Dismiss Relator's Appeal for Lack of Subject Matter Jurisdiction on the ground that Relator had not timely filed the Notice of Appeal. Resp. App. at A-3. The Motion was heard on July 20, 2005. On October 11, 2005, the Tax Court issued its Order granting the Motion. Rel. App. at AA0001.³

On December 6, 2005, Relator served and filed its Petition for Writ and Writ of Certiorari, which was issued by the Court that same day. Resp. App. at A-1 - A-2.

³ Rel. App. refers to Relator's Appendix.

ARGUMENT

I. THE TAX COURT PROPERLY GRANTED THE COMMISSIONER'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE RELATOR FAILED TO FILE A TIMELY NOTICE OF APPEAL FROM THE COMMISSIONER'S TAX ORDER.

A. Standard of Review

Since the facts in this case are undisputed, this Court considers whether the applicable law was properly applied. In so doing, the Court reviews de novo the Tax Court's conclusions of law, including the interpretation of statutes. *Chapman v. Comm'r of Revenue*, 651 N.W.2d 825, 830 (Minn. 2002).

B. Because The Right To File A Tax Court Appeal Is Purely Statutory, Failure To Timely File Such An Appeal Defeats The Right And Deprives The Tax Court Of Jurisdiction.

It is settled law that subject matter jurisdiction may not be conferred on a court either by agreement of the parties or by waiver of the right to object. *See Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 907 & n. 2 (Minn. 1998) (citing 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*, 275 N.W. 300, 301 (Minn. 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).

The jurisdictional issue in this case arises because Relator failed to file its Tax Court Notice of Appeal within sixty days from issuance of the Commissioner's Tax Order, dated September 2, 2003, as required by Minn. Stat. § 271.06, subd. 2 (2004). 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 citations 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, 103 N.W.2d 228, 235 (Minn. 1960) (quoting *Kannellos v. Great N. Ry.*, 186 N.W. 389, 390 (Minn. 1922)). *See also Acton Construction Co.*, 391 N.W.2d at 835 (the time limitation in a statute "creating [a] cause of action" is an integral part of the statute itself). Once a statutorily created right ceases to exist, it cannot be revived. *Bies*, 103 N.W.2d at 239.

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). 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”).

C. The Tax Court Lacked Subject Matter Jurisdiction In This Case Because Relator Did Not File Its Notice Of Appeal From The Commissioner’s Tax Order Until After Expiration Of The Sixty-Day Period Of Limitation.

The statute setting forth the period of limitation for filing Tax Court appeals from Commissioner’s tax orders provides as follows:

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 the Tax Court, 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 (2004).

The Order at issue in this case is the Commissioner’s Notice of Change in Tax issued on September 2, 2003. Exhibit A to Affidavit of Debora J. Berg, Resp. App. at A-5. That Order clearly explained Relator’s right to file an appeal with the Tax Court

within “60 days from the notice date.” Because that date, November 1, 2003, was a Saturday, Relator could have filed a timely appeal no later than Monday, November 3, 2003. *See* Minn. Stat. § 271.06, subd. 7 (2004) (rules of civil procedure govern procedures in tax court); Minn. R. Civ. P. 6.01 (computation of time). Instead, Relator did not file its Notice of Appeal until February 11, 2005, about fifteen months after the last date on which a timely Notice could have been filed. Further, Relator did not serve its Notice of Appeal (Commissioner’s Return filed with Tax Court, Item No. 2) on the Commissioner until February 9, 2005. *See* Affidavit of Service filed with the Tax Court.

Relator failed to perfect its appeal because it neither served nor filed a timely Notice of Appeal from the Commissioner’s Order. For that reason, the Tax Court properly dismissed the Appeal for lack of jurisdiction.

D. The Instructions For Filing Both Department Of Revenue And Tax Court Appeals, Which Were Included With The Commissioner’s Order, Are Clear.

Relator contends that the Commissioner’s Order is “ambiguous” and that a “plain reading” of the appeal instructions accompanying the Order “suspend” the running of the period of limitation on filing an appeal. *See* Rel. Br. at 5, 6.⁴ Neither contention is correct.

The first page of the “Notice of Change in Tax” advises that: “If you disagree with this order you have 60 days to appeal informally to the Department of Revenue. See the enclosed Payment and Appeal Instructions.” Resp. App. at A-5.

⁴ “Rel. Br.” designates Relator’s Brief.

In turn, the Payment and Appeal Instructions make it clear that the taxpayer has sixty days from the notice date to appeal “informally” to the Department of Revenue *or* “formally” to the Tax Court. *See* Resp. App. at A-11. Importantly, the instructions also make it clear that a Revenue Department “informal” appeal must include the following: a copy of the tax order; name, address, and taxpayer ID number; taxable periods and amount in question for each period; the items disagreed with; a summary of the facts and law relied upon; the date of the appeal; and the preparer’s signature. In addition, the instructions provide a specific address where the written appeal must be filed. *See* Resp. App. at A-11. Relator’s assertion that Brian Chaffee believed that Debora Berg’s review of additional documents he submitted after issuance of the Order served to toll the period of limitation on Tax Court appeals (as a sort of administrative appeal) is belied by the clarity and completeness of these instructions.

E. Through Its President And Sole Shareholder, Brian Chaffee, Relator Has Admitted That It Was Aware Of The Sixty-Day Limitation Period For Filing Tax Court Appeals From Commissioner’s Orders.

During the course of the Tax Court hearing on the Commissioner’s Motion to Dismiss, Brian Chaffee stated that he “had a chance to read [the appeal instructions] many times in the last 18 months.” Hearing Transcript, Resp. App. at A-31. He further admitted his understanding that “normally this [Tax Court appeal] should have been filed within 60 days, and it wasn’t.” *Id.* Brian Chaffee’s admission that he was aware of the sixty-day period of limitation on appeals, coupled with the clarity of the instructions

regarding appeals provided to him with the Order, is inconsistent with Relator's claim of confusion.

F. The Tax Court Decision Is Both Correct As A Matter Of Law And In Accord With Sound Public Policy.

Relator's position in this case is based entirely on the faulty premise that its submission of additional information to the Department after issuance of the Order served to toll the running of the period of limitation on filing a Tax Court appeal.⁵ Reliance on this faulty premise has led Relator to make equally faulty arguments in support of its position. Relator asserts, for example, that the Tax Court ruled that "both appeals [an administrative appeal to the Department and a formal appeal to the Tax Court] must be filed contemporaneously to preserve jurisdiction." Rel. Br. at 6. Relator likewise asserts that, under the Tax Court's view, "[T]axpayers must formally appeal *each* order with which they disagree." Rel. Br. at 8 (emphasis in original). Neither assertion is correct.⁶ The Tax Court simply held that an auditor's review of information submitted by a taxpayer after issuance of a tax order does not toll the running of the period of limitation for filing Tax Court appeals from that order. TCO at 3.

⁵ On page 4 of its brief Relator states that the Commissioner suspended collection efforts following issuance of his Order. That characterization of the facts is incorrect. *See* Affidavit of Debora J. Berg, Resp. App. at A-4.

⁶ Administrative and Tax Court appeals are alternative and cumulative remedies. A Commissioner's order can be appealed either administratively or to the Tax Court. If a taxpayer files an administrative appeal but does not prevail, it may *then* appeal to the Tax Court from the Commissioner's order determining the administrative appeal.

Finally, Relator argues that tax orders should not be considered “final” until the end of what Relator describes as “ongoing negotiations.” Rel. Br. at 7. This argument not only is without legal support but, if adopted, would lead to confusion in the administration and enforcement of Minnesota’s tax laws, to the detriment of both the taxing authorities and the general public. The widespread difficulty in administering a system that would depend upon some vague point in time when “negotiations end” to begin the running of the period of limitation for filing Tax Court appeals is obvious. Furthermore, adoption of such a system would have a negative impact on the efficient resolution of tax disputes because Revenue Department personnel would understandably feel less comfortable in continuing to review taxpayers’ submissions following the issuance of Commissioner’s tax assessments.

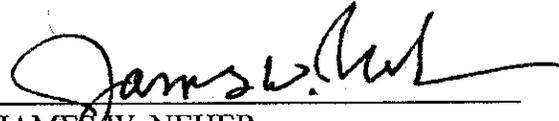
CONCLUSION

For the foregoing reasons, the Commissioner respectfully requests that the Court affirm the Tax Court's decision that the period of limitation for filing Relator's Tax Court appeal expired sixty days after issuance of the Commissioner's Order and that Relator's late appeal should therefore be dismissed for lack of subject matter jurisdiction.

Dated: February 2, 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).