

STATE OF MINNESOTA
COUNTY OF RAMSEY

TAX COURT
REGULAR DIVISION

LaReesa Hooper,
Appellant,

vs.

Commissioner of Revenue,
Appellee.

**ORDER ON MOTION TO
DISMISS**

Docket No.: 9666-R

Filed: November 8, 2024

This matter came on before the Honorable Jane N. Bowman, Chief Judge of the Minnesota Tax Court, on the Commissioner's motion to dismiss for the lack of subject matter jurisdiction.

LaReesa Hooper, Appellant, is self-represented.

Joseph Weiner, Assistant Minnesota Attorney General, represents the Commissioner of Revenue.

Ms. LaReesa Hooper challenges a November 8, 2023 Order of the Commissioner of Revenue which adjusted her claimed property tax refund. Prior to this court's review of the merits of this dispute, the Commissioner asks us to dismiss for lack of subject matter jurisdiction. The court heard the Commissioner's motion to dismiss on August 29, 2024. Ms. Hooper neither filed a response nor appeared at the hearing. The court, having heard and considered the arguments of counsel, and upon all the files, records, and proceedings herein, now makes the following:

ORDER

1. Within 30 days of the date of this order, Ms. Hooper may submit to the court, and simultaneously serve on the Commissioner, evidence demonstrating that she timely served on the Commissioner the Notice of Appeal that commenced this case.

2. Should Ms. Hooper decline to submit the evidence of timely service required by paragraph 1, this matter shall be automatically dismissed.

IT IS SO ORDERED. THIS IS A FINAL ORDER. ENTRY OF JUDGMENT IS STAYED FOR 30 DAYS. LET JUDGMENT BE ENTERED ACCORDINGLY.



BY THE COURT:

**Jane N.
Bowman**

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Jane N. Bowman, Chief Judge
MINNESOTA TAX COURT

Dated: November 8, 2024

MEMORANDUM

I. PROCEDURAL BACKGROUND

In the fall of 2023, Appellant LaReesa Hooper filed for a property tax refund claim for tax year 2022. The Commissioner of Revenue reviewed the refund request, made some adjustments to Ms. Hooper's adjusted gross income, and sent a November 8, 2023 Order of the Commissioner of Revenue disallowing the refund.¹ Ms. Hooper then supplied the Commissioner with further information to support her property tax refund claim, including a detailed letter and a copy of a lease. After reviewing the new information, the Commissioner allowed a partial property tax refund, in the amount of \$409, via a Notice of Determination on [Administrative] Appeal dated April 23, 2024; the Commissioner denied the remainder of the property tax refund claim.²

¹ Pet. (filed June 10, 2024).

² Pet.

Ms. Hooper challenges the Commissioner's partial disallowance of her property tax refund claim. Her appeal, filed with this court on June 10, 2024, consisted of a Tax Court Form 1 Notice of Appeal, appended with the November 8, 2023 Order, the April 23, 2024 Notice of Determination, and other documents supporting her claim. The appeal also contained a notarized Affidavit of Service by Mail, whereby Ms. Hooper attested that she put a copy of the appeal filing, addressed to the Commissioner, in the mail on May 8, 2024.³

By way of a signed Declaration, the Commissioner attests that he did not receive the Appeal in the mail.⁴ Rather, the Commissioner states that he received Notice of the Appeal on June 10, 2024, by way of this court.⁵ Further, counsel for the Commissioner attests that counsel verified the veracity of the affidavit of service by speaking with the notary.⁶ Counsel also attests to speaking with Ms. Hooper, during which time she: (1) stated she did not believe the affidavit of service needed to be dated on/with the same date as mailing of the petition, (2) asserted she mailed her appeal to the Tax Court on May 21, 2024, (3) expressed frustration that the appeal was not delivered until June 10, 2024, and (4) asked if her check was cashed.⁷ The Commissioner now asks us to dismiss this case for lack of subject matter jurisdiction for want of service by Ms. Hooper on the Commissioner.⁸

³ Pet.

⁴ Declaration of Phillip Aitken ¶ 3 (signed July 26, 2024).

⁵ Aitken Decl. ¶ 4. The notice of appeal contained a copy of the appeal.

⁶ Declaration of Christopher Stafford ¶ 3 (signed July 30, 2024).

⁷ Stafford Decl. ¶¶ 5-8. Counsel opines that Ms. Hooper confused the Minnesota Attorney General's Office with the Minnesota Tax Court. *Id* at 8.

⁸ Mem. Supp. Mot. SJ (filed July 30, 2024).

II. GOVERNING LAW

The Tax Court, created by the Legislature, is an administrative agency of the executive branch with 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)). The “Tax Court shall be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state...” Minn. Stat. § 271.01, subd. 5 (2023).

An appeal is timely if, “within 60 days^[9] after the notice date of an order of the commissioner of revenue, the appellant, or the appellant’s attorney, shall serve a notice of appeal upon the commissioner and file the original, with proof of such service, with the Tax Court administrator” Minn. Stat. § 271.06, subd. 2.¹⁰ The Supreme Court has held “that statutory time limits for [tax] appeals are strictly construed and are jurisdictional in nature” *Hohmann v. Comm'r of Revenue*, 781 N.W.2d 156, 157 (Minn. 2010). Accordingly, an appellant’s failure to timely serve a notice of appeal on the Commissioner deprives the tax court of subject matter jurisdiction. *Id.*

Under Minn. Stat. § 271.06, a taxpayer’s notice of appeal to the Minnesota Tax Court is functionally equivalent to a complaint in a civil action. Minn. Stat. § 271.06 subds. 5 & 6. Therefore, when a Rule 12.02(a) of the Minnesota Rules of Civil Procedure motion to dismiss based on lack of subject matter jurisdiction is brought before the court, we must determine whether

⁹ An appellant can seek a 30-day extension. Minn. Stat. § 271.06, subd. 2.

¹⁰ Although not relevant to this case, the Commissioner’s brief asserted “that filing is not accomplished as of the mailing date. Instead, filing with the Tax Court is only effective upon receipt by the Tax Court of all jurisdictionally necessary materials.” Mem. Supp. Mot. SJ 4, n.1 (citing *Langer v. Comm'r of Revenue*, 773 N.W.2d 77, 80 (Minn. 2009)). *Langer*, however, was overruled by statute. 2013 Minn. Laws, 148, ch. 36, sec. 1. The “mailbox rule” now applies to appeals from orders of the Commissioner of Revenue. *See* Minn. Stat. § 271.06, subd. 2a (if other filing requirements are met, “then the date of filing is the date of the United States postmark stamped on the envelope”).

the motion challenges service on the face of petition (“facial attack”) or challenges the truthfulness of the averments contained within the affidavit of service (“factual attack”). *Carlsen v. GameStop, Inc.*, 833 F.3d 903, 908 (8th Cir. 2016), quoting *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990); *see also Swendsen v. Comm'r of Revenue*, 2013 WL 1136433, *5-6 (Minn. T.C. 2013) (outlining facial and factual attacks on this court’s subject matter jurisdiction to hear a matter).

In a facial attack on subject matter jurisdiction, the court restricts itself to the face of the pleadings and the plaintiff is protected as they would be in a federal 12(b)(6)¹¹ motion. In other words, the complaint should not be dismissed “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of (their) claim which would entitle (them) to relief.” *Osborn*, 918 F.2d at 729 n. 6. In a factual attack on subject matter jurisdiction, the plaintiff does not enjoy the protection of a 12(b)(6) motion, and the court may look outside of the pleadings to affidavits or other evidence. *Moss v. United States*, 895 F.3d 1091, 1097 (8th Cir. 2018). The court can evaluate the merits of the jurisdictional claim and the plaintiff will maintain the burden of proof that jurisdiction does in fact exist. *Osborn*, 918 F.2d at 730. However, “[w]henever 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).

¹¹ Federal Rule 12(b)(6) is the functional equivalent to Rule 12.02(a) of the Minnesota Rules of Civil Procedure. *See City of Elk River v. Bolton & Menk, Inc.*, 2 N.W.3d 173, 178 n. 2 (Minn. 2024) (“We have routinely held—including in our own interpretation of Rule 54.02—that “[w]here the language of the Federal Rules of Civil Procedure is similar to language in the Minnesota civil procedure rules, federal cases on the issue are instructive.””) (citing *T.A. Schifsky & Sons, Inc. v Bahr Const., LLC*, 773 N.W.2d 783, 787 n.3 (Minn. 2009)).

III. ANALYSIS

We first determine whether the Commissioner's challenge is a facial or factual attack on this court's subject matter jurisdiction. As the Commissioner provided the court with two affidavits, which provide a counter-narrative to Ms. Hooper's assertion that she served the Commissioner by mail, we consider his motion a factual attack on Ms. Hooper's affidavit of service, and therefore apply the relevant standard.¹² As such, Ms. Hooper's allegations of service do not enjoy the presumption of correctness, and this court may look to evidence outside the Notice of Appeal. *See Moss v. United States*, 895 F.3d at 1097.

Although Ms. Hooper alleges she mailed her appeal to the Commissioner on May 8, 2024, the Commissioner presented evidence to contradict her affidavit of service. In addition to not receiving the appeal, the Commissioner introduced affidavit evidence that Ms. Hooper actually mailed one copy of her appeal to the tax court on May 21, 2024 (not May 8).¹³ Based on this contrary evidence, we find that it is more likely than not that Ms. Hooper mailed her appeal to the tax court, and not the Commissioner. *See Swendsen*, 2013 WL 1136433 at *5 (“Jurisdictional facts must be proven by a preponderance of the evidence.”), citing *Zunamon v. Brown*, 418 F.2d 883, 886 (8th Cir.1969). By failing to mail a copy to the Commissioner, and thus timely serve the Commissioner, this court is deprived of subject matter jurisdiction to hear the matter, and we must dismiss it. *See Piney Ridge Lodge, Inc. v. Comm'r of Revenue*, 718 N.W.2d 861, 862 n.1 (Minn. 2006) (“Under Minn. R. Civ. P. 12.08(c), courts have a duty to dismiss when they lack subject

¹² A facial attack on the court's subject matter jurisdiction to hear this matter would be unsuccessful. Here, Ms. Hooper's affidavit of service is signed and dated within the requisite time period. *See Osborn*, 918 F.2d at 729 n. 6 (in a facial attack, a court is restricted to the face of the pleadings).

¹³ Stafford Decl. ¶¶ 5-8.

matter jurisdiction.”); *see also Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (noting that “[self-represented] litigants ... must comply with court rules”).

Ms. Hooper did not file any responsive documents to the Commissioner’s motion to dismiss, nor did she appear at the motion hearing. Thus, we did not have the benefit of Ms. Hooper’s response to the Commissioner’s factual allegations. In recognition that both representing oneself is sometimes intimidating and dismissal is a severe remedy, we offer Ms. Hooper an additional thirty days to submit evidence—by way of an affidavit and possible exhibits—that she did mail a copy of her appeal to the Commissioner. Should this court receive further evidence, we will consider it in due course. Should Ms. Hooper decline to offer further evidence, this matter will automatically dismiss after thirty days of the date of this order.

J.N.B.H.