

STATE OF MINNESOTA  
COUNTY OF SAINT LOUIS

TAX COURT  
REGULAR DIVISION

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Charisma Taylor Ramos,  
  
Appellant,  
  
vs.  
  
Commissioner of Revenue,  
  
Appellee.

**ORDER GRANTING MOTION TO  
DISMISS**

File No. 69DU-CV-24-1064

Filed: December 5, 2024

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This matter came on before the Honorable Wendy S. Tien, Judge of the Minnesota Tax Court, on the motion of Appellee, the Commissioner of Revenue, to dismiss for lack of subject matter jurisdiction.

Charisma Taylor Ramos, appellant, is self-represented.

Jennifer A. Kitchak, Assistant Attorney General, appeared on behalf of appellee Minnesota Commissioner of Revenue.

The Commissioner moved to dismiss this notice of appeal on the grounds that Ms. Ramos failed to serve the Commissioner, or to file proof of service with this court. The parties appeared for oral argument on the motion on November 18, 2024.

The court, having considered all the files, records, arguments, and proceedings herein, now makes the following:

## ORDER

The Commissioner's motion to dismiss is granted.

IT IS SO ORDERED. THIS IS A FINAL ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY.



BY THE COURT:

Wendy  
S. Tien

Digitally signed  
by Wendy S. Tien

Date: 2024.12.05

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Wendy S. Tien, Judge  
MINNESOTA TAX COURT

Dated: December 5, 2024

## MEMORANDUM

### I. BACKGROUND

Ms. Ramos filed a Notice of Appeal on May 7, 2024 in the District Court for St. Louis County,<sup>1</sup> appealing from the Notice of Determination on Appeal (the "Tax Order") with notice date March 22, 2024. The Tax Order affirmed the Commissioner's determination that Ms. Ramos was ineligible for the Working Family Credit because another eligible individual also had claimed, and been paid, the credit. Along with her Notice of Appeal, Ms. Ramos filed an Affidavit of Service in this court.<sup>2</sup> Although a portion of the "Affidavit of Service by Mail" section of the document is completed, including Ms. Ramos's name, the date May 6, 2024, and the county, it is not notarized or signed. The Admission of Service and Affidavit of Personal Service are blank.<sup>3</sup>

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<sup>1</sup> Not. Appeal (filed May 7, 2024). The district court deemed the Notice of Appeal to have been filed in this court as it was filed on Form 1 and assigned the case the "Tax Court" file type.

<sup>2</sup> Aff. of Service. (un-notarized document bearing May 6, 2024 date). On September 5, 2024, this court issued a Notice of Case Filing to both parties.

<sup>3</sup> Aff. of Service.

On September 27, 2024, the Commissioner moved to dismiss for lack of subject matter jurisdiction,<sup>4</sup> alleging that Ms. Ramos failed to serve the Notice of Appeal on the Commissioner or to file proof of service with the court. The Commissioner supports his motion with the Declaration of Phillip Aitken, a paralegal in the Appeals, Legal Services, and Disclosure Division of the Minnesota Department of Revenue.<sup>5</sup> In his declaration, Aitken describes the procedure by which the Department of Revenue receives and stores court documents served upon it.<sup>6</sup> He also avers as to the procedure for handling documents that were served on the Department of Revenue, such as sending those documents to the Tax Division of the Minnesota Attorney General's Office.<sup>7</sup> Mr. Aitken avers that he thoroughly searched the Department's physical records<sup>8</sup> and based on his search, the Department did not receive a paper or electronic Notice of Appeal from Ms. Ramos in this case.<sup>9</sup> Ms. Ramos did not file a response to the motion to dismiss as provided in Rule 8610.0070, subpart 5(B).

This court held a hearing on the Commissioner's motion on November 18, 2024. At the hearing, Ms. Ramos stated that she believed the District Court would serve her Notice of Appeal on the Commissioner of Revenue. She further stated that she remembered mailing a letter to the Minnesota Tax Court when she filed her appeal in District Court, but acknowledged that she did not recall keeping physical evidence of mailing, nor did she mail the letter by a method that permitted tracking its delivery.

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<sup>4</sup> Commissioner's Not. Mot., Mot. Dismiss, & Mem. Supp. Mot. Dismiss (filed Sept. 27, 2024).

<sup>5</sup> Decl. Phillip Aitken (signed Sept. 24, 2024) ¶ 1.

<sup>6</sup> Aitken Decl. ¶¶ 2-4, 6.

<sup>7</sup> Aitken Decl. ¶ 5.

<sup>8</sup> Aitken Decl. ¶ 8.

<sup>9</sup> Aitken Decl. ¶ 7.

## II. GOVERNING LAW

Minnesota Statutes § 271.06, subdivision 1 (2022) authorizes the filing of an appeal from an order of the commissioner of revenue regarding “any tax, fee, or assessment ... including the imposition of interest....” “[W]ithin 60 days after the notice date of an order of the commissioner of revenue, the appellant ... 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.<sup>10</sup> Accordingly, to perfect an appeal, the taxpayer must complete two steps. “First, the appealing party must serve a notice of appeal on the [C]ommissioner and then, second, file the original notice, with proof the Commissioner received a copy, and the filing fee with the court.” *Cano v. Comm’r of Revenue*, No. 9404-R, 2020 WL 5509737, at \*1 (Minn. T.C. Sept. 9, 2020). In other words, it is not sufficient to file the notice of appeal with the court; the appealing party must serve it on the commissioner as well.

“The permissible methods of serving the pleadings that initiate a civil action in district court (and through section 271.06, subdivision 7, in tax court) are prescribed in Minn. R. Civ. P. 4.” *Kmart Corp. v. Cnty. of Clay*, 711 N.W.2d 485, 489 (Minn. 2006).<sup>11</sup> The statute does not describe how to “serve” the notice of appeal, nor does it refer specifically to Rule 4. However, “the notice of appeal shall be in the form prescribed by the tax court,” Minn. Stat. § 271.06, subd. 2, and Tax Court Form 1, on which Ms. Ramos filed her Notice of Appeal, provides detailed guidance concerning service for appellants initiating a case: “Fill out the appropriate Affidavit/Admission

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<sup>10</sup> “[T]he 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. (2022).

<sup>11</sup> Minnesota Statutes section 271.06, subdivision 7, provides that, in general, the Minnesota Rules of Civil Procedure and the Minnesota Rules of Evidence (collectively, the “Rules”) govern procedures in the tax court, where practicable. Minn. Stat. § 271.06, subd. 7 (2022).

of Service on the back of the original form; and SERVE ONE COPY UPON THE COMMISSIONER OF REVENUE.” The form provides the commissioner’s service address and directs the appellant to see the back of Form 1 for further details.

The back of the form, ”Explanations of Affidavits of Service,” provides a plain language explanation of service, as well as a summary of the accepted methods of service:

An Affidavit of Service tells the court you have notified the Commissioner of Revenue you are filing an appeal by serving him/her with a copy of the appeal. You need only complete this portion of the form on the original being sent to the Court. Below are the types of affidavits of service. Use only **one** of these methods of service.

1) **Affidavit of Service by Mail:** By mailing a copy of the appeal to the Commissioner of Revenue and signing a statement before a notary public that you did this.

2) **Admission of Service:** By delivering a copy to the Commissioner of Revenue in person and getting an employee of the Commissioner’s Office to sign that a copy of the appeal was received.

3) **Affidavit of Personal Service:** By having someone not a party to the appeal (such as a process server) deliver the required copy to the Commissioner of Revenue, and having that person sign a notarized statement that the delivery was made.-----

Proof of mailing is not the same as proof of service; demonstrating proof of mailing is not, on its own, sufficient to establish proof of service. For example, obtaining a signature on a certified mail return receipt does not constitute the written admission or acknowledgment of service of a summons and complaint. *Melillo v. Heitland*, 880 N.W.2d 862, 865 (Minn. 2016). Rather, it constitutes only acknowledgment that the party “had received an envelope.” *Id.* The service waiver provision of Rule 4.05 “requires strict compliance and is not effective if the acknowledgment is not signed and returned.” *Kokosh v. \$4657.00 U.S. Currency*, 898 N.W.2d 284, 288 (Minn. App. 2017) (citing *Coons v. St. Paul Cos.*, 486 N.W.2d 771, 776 (Minn. App. 1992)).

Timely service is a prerequisite to jurisdiction in tax court; “failure to satisfy service requirements deprives the tax court of subject-matter jurisdiction, and thus requires dismissal.” *Zwicky v. Cnty. of Hennepin*, No. 27-CV-20-15145, 2023 WL 2146468, at \*3 (Minn. T.C. Feb. 21, 2023), *citing Kokosh*, 898 N.W.2d at 289. “Minnesota law is clear: when service of process is challenged, the [petitioner] must submit evidence of effective service.” *Id.*, *citing DeCook v. Olmstead Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016) (noting that the bar for submitting evidence of service is low and, once met, shifts the burden to defendants to demonstrate that service was improper). Because section 271.06’s time limit for service and filing is jurisdictional, it cannot be waived or altered. *See Hohman v. Comm’r of Revenue*, 781 N.W.2d 156, 157 (Minn. 2010).

### III. ANALYSIS

The parties do not dispute that the Tax Order is dated March 22, 2024, or that Ms. Ramos filed her appeal in court on May 7, 2024. The Commissioner moves for dismissal for lack of subject matter jurisdiction, on the sole ground that Ms. Ramos failed to serve the Commissioner (and failed to file any proof of service), and that such failure deprives this court of jurisdiction to hear the appeal. Ms. Ramos has the low burden of demonstrating some evidence of effective service, which would shift the burden of challenging service to the Commissioner. *DeCook*, 875 N.W.2d at 271. The record demonstrates that Ms. Ramos did not serve the Commissioner and that no proof of service was filed with this court. Rather, Ms. Ramos filed a partially completed affidavit of service, which does not constitute evidence that service was made by any of the means set forth in the Explanation of Affidavits of Service, on Form 1.<sup>12</sup>

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<sup>12</sup> Service may be made in person, Minn. R. Civ. P. 4.03, by persons authorized to serve process. *Id.* at 4.02. Alternatively, a petitioner may request that the Commissioner waive personal service of a summons, and the Commissioner is obliged to minimize the unnecessary expenses of service. *Id.* at 4.05. Such a waiver of service may be obtained “by first-class mail or other reliable means,” *Id.* at 4.05(a)(6), such as an admission of service obtained in person. The act of delivering the complaint does not, on its own, constitute effective service. Rather, the defendant (or in this

At the hearing, Ms. Ramos made two contentions regarding service (although she did not provide the court with evidence for either). One is that the district court accepted responsibility for serving the Commissioner with the Notice of Appeal at the time she filed the appeal. The other is that Ms. Ramos mailed the Notice of Appeal to the Commissioner, although she did not retain proof of mailing and was unable to track the mailing.

Concerning the contention that the district court accepted responsibility for service, even if Ms. Ramos had provided evidence of her contention, it does not change any of the service requirements in section 271.06, subdivision 2 or extend the time to serve the Commissioner properly. In *Halonen v. Comm'r of Revenue*, No. 9274-R, 2019 WL 2932260, at \*2 (Minn. T.C. July 2, 2019), the court considered the request of a taxpayer to disregard statutory limitation periods (in that case, relating to filing claims for property tax refunds) based on allegedly erroneous advice from Department of Revenue personnel. The taxpayer did not provide the court with any evidence of the allegedly incorrect advice. In holding that “a court or an agency may not extend a statutory time limitation specified by the Legislature,” *Id.* (citing *Mays v. Comm'r of Revenue*, No. 7279, 2001 WL 561335, at \*2 (Minn. T.C. May 15, 2001)), this court held that, where “there is no evidence in the record that the official's allegedly incorrect advice ... arose from malfeasance, rather than mere inadvertence,” the government was not estopped from enforcing the statutory deadlines. *Id.* at \*3 (rejecting judicial estoppel argument).

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case, the commissioner) must acknowledge the service and return the waiver of service form for service to be effective and complete. *See id.* at 4.05 advisory comm. cmt.—2018 amendments (addressing revisions to Rule 4.05 to conform to its federal rule counterpart, and explaining that “[t]he former procedure created the illusion that valid service could be accomplished by U.S. Mail .... This rule does not authorize service by mere mailing—it is necessary for the defendant to waive formal service and return the waiver of service form. Service is accomplished and proven by the waiver, not the mailing.”).

Regarding Ms. Ramos's contention that she mailed the Notice of Appeal to the Commissioner, the court is unable to credit an assertion made without any evidence. In any case, section 271.06, subdivision 2 requires both service and proof of service; demonstrating proof of mailing would not, on its own, have been sufficient to establish proof of service. Rather, the proof of service requirement could have been met had the commissioner executed and returned a waiver of service. Minn. R. 4.05; *Kokosh*, 898 N.W.2d at 288. Accordingly, this court lacks jurisdiction to hear Ms. Ramos's appeal, which is dismissed. *Kmart*, 711 N.W. 2d at 490.

W.S.T.