



STATE OF MINNESOTA

TAX COURT

COUNTY OF SCOTT

REGULAR DIVISION

Sylvia A Roxberg,

**ORDER GRANTING MOTION
TO DISMISS**

Appellant,

vs.

Docket No.: COR-9687

Commissioner of Revenue,

Filed: January 30, 2025

Appellee.

This matter came before the Honorable Jane N. Bowman, Chief Judge of the Minnesota Tax Court, on the Commissioner of Revenue's motion to dismiss for untimely filing of tax appeal and for failure to properly serve or provide proof of service of the tax appeal on the Commissioner.

Sylvia A Roxberg is self-represented.

Jennifer A. Kitchak, Assistant Minnesota Attorney General, represents the Commissioner of Revenue.

This is an appeal from an order of the Commissioner of Revenue; Appellant Sylvia Roxberg alleges unfair treatment by the Commissioner. Prior to filing a Return & Answer, the Commissioner moves to dismiss this matter for failure to properly serve and file, thereby depriving this court of subject matter jurisdiction. The court now makes the following:

ORDER FOR JUDGMENT

Commissioner of Revenue's motion to dismiss is granted.

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



BY THE COURT:

Jane N.
Bowman

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N. Bowman
Date: 2025.01.30
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Jane N. Bowman, Chief Judge
MINNESOTA TAX COURT

Dated: January 30, 2025

MEMORANDUM

I. BACKGROUND

In an envelope postmarked October 30, 2024, Ms. Roxberg filed a Notice of Appeal of an Order of the Commissioner of Revenue with the Minnesota Tax Court.¹ She seeks to appeal from the Commissioner of Revenue's Tax Order ("Tax Order") dated August 29, 2024.² The filing included a Tax Court Form 1, completed on the front side, but incomplete on the back side (where the form allows the filer to complete an Affidavit of Service), accompanied by a handwritten letter dated August 5, 2024, from Ms. Roxberg setting forth the grounds for her appeal.³

Attached to the Tax Order is a list of questions and answers entitled "Your Right to Appeal" providing taxpayers with information on the appeals process.⁴ Among the questions, one reads "What if I need more time to appeal?" wherein answering, the document provides "You can request a one-time 30-day extension to appeal the decision. You must submit the request within 60 days of the letter's Notice Date."⁵

¹ Appeal (the tax court received the mailing on November 1, 2024).

² Appeal.

³ Appeal.

⁴ Declaration of Jennifer Kitchak ("Kitchak Decl.") (signed Dec. 2, 2024), Ex. 1.

⁵ Kitchak Decl., Ex. 1.

The Commissioner moves for dismissal alleging lack of subject matter jurisdiction, on the grounds that Ms. Roxberg was untimely in filing the appeal, there was no service on the Commissioner, and there was no proof of service provided with her appeal.⁶ Ms. Roxberg did not file a written response to the Commissioner’s motion. Immediately before the motion hearing scheduled for January 7, 2024, the court received a call stating that Ms. Roxberg was unavailable to attend the hearing. The court canceled the January 7th hearing, and extended a deadline of Friday, January 10, 2024, for Ms. Roxberg to file a written response; no response was filed.

II. GOVERNING LAW

Minnesota Statutes § 271.06, subdivision 1 authorizes filing an appeal from an order of the Commissioner 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 (2024). The same statute provides that “the Tax Court, for cause shown, may by written order extend the time for appealing for an additional period not exceeding 30 days.” *Id.* Minnesota Administrative Rule 8610.0030 (2024) likewise provides an exception to the 60-day filing deadline:

If the request for an extension of time is received within 60 days of the making and filing of the order, the Tax Court will extend the time to appeal for an additional 30 days. If the request for an extension is made more than 60 days after the making and filing of the order, the Tax Court may, for cause shown, extend the time for appeal to a date not more than 90 days from the date of the making and filing of the order of the commissioner. A request for an extension made more than 60 days after the making and filing of the order must explain why the extension was not requested within the original 60-day period.

⁶ Commr’s Not. Mot. & Mot. Dismiss (filed Dec. 2, 2024), *see* Declaration of Phillip Aitken (signed Nov. 26, 2024).

Minnesota Court Rules provide for computing time periods, such as a filing or service deadline, under a statute that does not specify a method of computing time.⁷ First, “exclude the day of the event that triggers the period.” Minn. R. Civ. P. 6.01(a)(1)(A). Next, “count every day, including intermediate Saturdays, Sundays, and legal holidays,” Minn. R. Civ. P. 6.01(a)(1)(B), unless the period of time to be counted is less than seven days. Minn. R. Civ. P. 6.01(a)(2). Finally, include the last day of the period. Minn. R. Civ. P. 6.01(a)(1)(C).

Statutory time limits for appeals must be “strictly construed and are jurisdictional in nature.” *Hohmann v. Comm’r of Revenue*, 781 N.W.2d 156, 157 (Minn. 2010). The Tax Court lacks the authority to hear appeals that are not properly filed on or before the statutory filing deadline expires. *Soyka v. Comm’r of Revenue*, 834 N.W.2d 711, 713 (Minn. 2013) (holding that failure to file or request an extension before the expiration of the statutory deadline “deprive[s] the tax court of subject matter jurisdiction over the appeal.”). The court is required to dismiss a claim when the court lacks subject matter jurisdiction over that claim. Minn. R. Civ. P. 12.08(c); *Langer v. Comm’r of Revenue*, 773 N.W.2d 77, 80 (Minn. 2009); *Ramos v. Comm’r of Revenue*, No. 69DU-CV-24-1064, 2024 WL 4997642 at *3 (Minn. T.C. Dec. 5, 2024) (dismissing a case for failure to serve the Commissioner or to file proof of service with the court), citing *Zwicky v. Cnty. of Hennepin*, No. 27-CV-20-15145, 2023 WL 2146468 at *3 (Minn. T.C. Feb. 21, 2023).

III. ANALYSIS

The question presented is whether the tax court has subject matter jurisdiction over the appeal at issue, and if not, whether the appeal must be dismissed. Ms. Roxberg filed her appeal

⁷ Minnesota Statutes section 271.06, subdivision 7, provides that, in general, the Minnesota Rules of Civil Procedure and the Minnesota Rules of Evidence govern the procedures in the tax court, where practicable. Minn. Stat. § 271.06, subd. 7 (2024).

with the Tax Court on the 64th day,⁸ with no proof of service.⁹ *See* Minn. Stat. § 271.06, subd. 2 (requiring timely filing of an appeal with proof of service); *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 271 (Minn. 2016) (“A plaintiff’s obligation to submit evidence of service ... is a low hurdle.”). Because the filing was untimely and service deficient with no extension, this court therefore grants the Commissioner’s motion to dismiss. *See Hohmann*, 781 N.W.2d at 157 (noting that statutory time limits for appeals must be “strictly construed and are jurisdictional in nature.”).

J.N.B.H.

⁸ August 29, 2024 plus 60 days is Monday, October 28, 2024.

⁹ Appeal.