

STATE OF MINNESOTA

IN SUPREME COURT

A12-1966

Express Scripts, Inc.,

Respondent,

vs.

Commissioner of Revenue,

Relator.

ORDER

The Commissioner of Revenue filed and served a Petition for Writ of Certiorari in this case on November 2, 2012 pursuant to Minn. Stat. § 271.10, subd. 2 (2012), which authorizes this court's review by certiorari within 60 days after "notice of the making and filing of the order" of the Tax Court. Respondent Express Scripts, Inc. has moved to dismiss the petition as untimely because the "notice of the making and filing" of the Order appealed from was August 20, 2012; the deadline for seeking review was therefore, according to Express Scripts, October 19, 2012.

The Tax Court issued Findings of Fact, Conclusions of Law, and Order for Judgment on August 20, 2012, reversing an order of the Commissioner of Revenue in this corporate franchise tax case. The Conclusions of Law stated:

The Order of the Commissioner of Revenue, dated June 8, 2012, is hereby reversed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED. THIS IS A FINAL ORDER.

The copy of the August 20 Order attached to Express Scripts' motion was signed and included a stamped notation, also dated August 20, as follows:

The office of the Minnesota Tax Court does hereby certify that the attached instrument is a true and correct copy of the original on file and of record in this office.

Id.

On September 4, 2012, the Tax Court issued a Notice of Entry of Order that included the following statement:

YOU WILL PLEASE TAKE NOTICE that the Tax Court filed and entered the attached Order on September 4, 2012.

Attached to the September 4 Notice is a complete copy of the signed August 20 Order.

Minnesota Statutes § 271.10, subd. 2, allows a party to seek review of a final order of the Tax Court by obtaining a writ of certiorari from this court within “60 days after notice of the making and filing of the order of the Tax Court.” We have held that the parties must strictly comply with the statutory deadlines imposed on tax court proceedings. *See, e.g., State ex rel. Ryan v. Civil Serv. Comm’n of Minn.*, 278 Minn. 296, 301, 154 N.W.2d 192, 196 (1967) (noting that the writ of certiorari “as used in Minnesota is not the common-law writ” but a “writ of error or an appeal” that is “statutory and the statutory provisions must be strictly construed.”); *State v. Bies*, 258 Minn. 139, 146, 103 N.W.2d 228, 234-35 (1960) (“the obligation of the citizens to pay taxes is purely a statutory creation, . . . In creating the right involved, the legislature has the power to impose any restrictions it sees fit. The conditions so imposed 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.”).

Here, the date on which the parties had “notice” of both statutory requirements—the “making and filing” of the Tax Court’s Order—was August 20. Even though the Tax Court’s September 4 notice indicates that the August 20 Order was filed again, that second filing did not change the fact that the Tax Court’s order was made and was filed as of August 20, 2012. *See* Black’s Law Dictionary 967 (7th Ed. 1999) (“make: 1. To cause (something) to exist . . . to make law”). The clerk’s notation on the August 20 Order confirms that the order was “on file” as of that date. While the Tax Court’s decision to stay the August 20 Order for 15 days allowed the parties to consider whether to move for rehearing, amended findings, or a new trial, *see* Minn. Stat. § 271.08, subd. 1 (2012), the stay cannot extend the statutory appeal period beyond 60 days. *See Brown’s Bay Marine Corp. v. Skrypec*, 271 Minn. 523, 527-28, 136 N.W.2d 590, 593 (1965) (explaining “the district court has no power to extend the time for appeal from a judgment by vacating the same after the time for appeal has expired . . .”) (citing *Tombs v. Ashworth*, 225 Minn. 55, 95 N.W.2d 423 (1959)).

We recognize that the Tax Court’s September 4 Notice stated that the August 20 Order was “filed” a second time, on September 4. The better practice may be for the Tax Court to notify the parties of the date that judgment was entered on a previously filed order, rather than to notify the parties that the order was filed a second time when judgment was entered. But the possibility of alternative language does not change our conclusion here. The plain language of section 271.10 requires notice of two events, the

“making and filing” of the Tax Court’s Order. Because only the August 20 Order meets both statutory requirements, the August 20 order is the order that started the running of the statutory period for seeking review before this court.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the motion of respondent Express Scripts, Inc. to dismiss the petition for writ of certiorari be, and the same is, granted.

Dated: January 18, 2013

BY THE COURT:

/s/

Lorie S. Gildea
Chief Justice

STRAS, J., took no part in the consideration or decision of this case.