

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF PHILIP)	APPEAL NO. 10-B-1289
HART from the decision of the Idaho State Tax)	
Commission assessing additional income tax,)	FINAL ORDER
penalty, and interest for taxable years 1996 through)	DISMISSING APPEAL
2004.)	

Notice of appeal was filed by Appellant on March 31, 2010. The appeal is taken from an adverse decision of the Idaho State Tax Commission (STC) dated September 30, 2010 (Docket No. 21551.)

Motion to dismiss the appeal was filed by the STC on April 15, 2010. Respondent argued the appeal was not timely filed in accordance with the requirements of Idaho Code § 63-3049. Nor was the 20% pre-pay requirement set forth in the same code section. The motion was supported by a staff affidavit.

Appellant argued the appeal was timely filed in compliance with applicable law because pursuant to Article 111, Section 7 of the Idaho Constitution, the statute of limitations concerning civil proceedings was tolled until the end of the legislative session, which began on January 11, 2010. Respondent contended legislative immunity was not applicable under the circumstances.

The courts have not had occasion to opine on the application of legislative immunity to the type of circumstances presented here. Likewise, this Board will not make a finding regarding the validity of the argument. Even if Appellant's position is accepted *arguendo*, we find the appeal untimely.

Appellant acknowledged receipt of the STC's decision on October 2, 2009. According to section 63-6049, I.C., Appellant had to file an appeal with the Board "within ninety-one (91) days after receipt of notice of the decision of the state tax commission" Therefore, January 1, 2010 was the last day in which Appellant could timely file an appeal. As noted earlier, the

legislature convened on January 11, 2010. Accepting *arguendo* Appellant's position that legislative immunity applies to this case, legislators are immune from civil proceedings both during the legislative session and ten (10) days prior to the commencement thereof. Thus, the tolling of the statute of limitations began on January 1, 2010, which was also the ninety-first day after Appellant's receipt of the STC decision. The legislative session ended on March 29, 2010, meaning Appellant had until no later than March 30th to file a timely appeal, given that ninety-one days had already passed by the time the statute of limitations would have begun to toll on January 1, 2010.. Appellant filed the appeal on March 31, 2010.

Even more compelling is Appellant's failure to fulfill the 20% pre-pay requirement until April 14, 2010, roughly two (2) weeks after the filing deadline had lapsed. On its face it appears Appellant's appeal was untimely filed on both counts. The Board is without jurisdiction to hear this appeal.

A question of jurisdiction is fundamental; it cannot be ignored when brought to the court's attention and should be addressed prior to considering the merits of an appeal. The statute contains no waiver or exception to the filing standards.

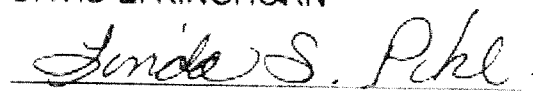
Good cause having been shown, IT IS ORDERED that this matter be, and the same hereby is, DISMISSED.

DATED this 24th day of August, 2010.

IDAHO BOARD OF TAX APPEALS


LYLE R. COBBS


DAVID E. KINGHORN


LINDA S. PIKE

NOTICE OF APPEAL PRIVILEGES

Enclosed is a final order of the Idaho State Board of Tax Appeals concerning an appeal.

Motion for reconsideration of the hearing record or motion for rehearing the appeal (with good cause detailed) may be made by filing such motion with the Clerk of the Board within ten (10) days of mailing of the Final Order, with a copy of the motion being sent to all other parties to the proceeding before the Board.

According to Idaho Code § 63-3812, either party can appeal to the district court from this final order. Pursuant to Idaho Code § 63-3812, the appeal shall be taken and perfected in accordance with Rule 84 of the Idaho Rules of Civil Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2010 I caused to be served a true copy of the foregoing FINAL ORDER DISMISSING APPEAL by the method indicated below and addressed to each of the following:

Starr Kelso Esq.
P.O. Box 1312
Coeur d'Alene ID 83816

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- STATEHOUSE MAIL

William A. von Tagen
Idaho State Tax Commission
P.O. Box 36
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- U.S. Mail, Postage Prepaid
- Hand Delivered
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- STATEHOUSE MAIL

C. Male