

Before the
Administrative Hearing Commission
State of Missouri



SYLVIA M. WIESE ESTATE,)	
ROBERT STURM, TRUSTEE,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1968 RI
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We dismiss the complaint filed by the Sylvia M. Wiese Estate, Robert Sturm, Trustee (the “Estate”) because we lack jurisdiction to hear it at this time.

Procedure

On November 12, 2013, the Estate filed a complaint appealing a fiduciary income tax notice of deficiency issued by the Director of Revenue (“the Director”). On December 10, 2013, the Director filed an answer and motion to dismiss supported by an affidavit. On December 19, Ronald W. Shouse, purportedly the financial analyst and certified public accountant for the Estate, responded to the Director’s motion.¹

¹ Our regulation 1 C.S.R. § 15-3.250 prohibits any person other than a licensed attorney from “represent[ing] any other person, including a corporation or other legal entity.” As Mr. Shouse has not entered his appearance on behalf of the Estate as its legal representative, his response to the motion is stricken.

We treat the motion as a motion for summary decision because it relies on matters other than allegations in the complaint and stipulations. Regulation 1 CSR 15-3.436(4)(A).² We will grant the motion if the Director establishes facts that entitle him to a favorable decision and the Estate does not dispute those facts. Regulation 1 CSR 15-446(6)(A).

The following facts are not in dispute.

Findings of Fact

1. On August 29, 2013, the Director issued to the Estate a Fiduciary Tax Notice of Adjustment for the 2012 fiduciary income tax year (Form 2895) (“the notice”). The notice states:³

The department has reviewed and adjusted your 12/2012 Missouri Fiduciary Income Tax Return. Please review the adjustments on page 2, and the detailed Explanation of Adjustments on page 3.

If you believe additional adjustments should be made, please provide any documents you would like considered.

The balance of your 12/2012 Missouri Fiduciary Income Tax Return is \$178.58. Make your check or money order payable to the Missouri Director of Revenue.

If you have questions, a customer service representative will assist you by telephone or you may write to the department at the above address. When calling, please have a copy of the return available to discuss any adjustments. The Missouri Department of Revenue may collect checks returned for insufficient funds or uncollected funds electronically.

The Director’s mailing address is provided on this page of the notice.

2. On October 30, 2013, in response to correspondence forwarding additional information on behalf of the Estate, the Department wrote to the Estate’s Trustee:⁴

² All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

³Complaint, p. 4.

⁴Complaint, p. 2.

The Missouri Department of Revenue (Department) received a letter from Ronald W. Shouse regarding the above fiduciary income tax return.

Based on a review of our records and the information provided, the Department has denied your request for a waiver of the additions to tax assessed on the 2012 return. The current balance due is \$179.71.

Please send your payment for \$179.71, along with a copy of this letter, to the above address before November 30, 2013, to avoid additional interest.

If you have any questions, you may contact Desiree Carpenter, Taxation Division, Post Office Box 3815, Jefferson City, Missouri 65105-3815.

3. On November 12, 2013, the Estate filed its complaint with this Commission, and we provided the Director with a copy of the complaint on November 15, 2013.

4. The Estate has not filed a protest with the Director, and the Director has not yet issued a final decision on the issue of the Estate's 2012 fiduciary income tax liability.

Conclusions of Law

Section 621.050.1⁵ gives us jurisdiction over an appeal of "any finding, order, decision, assessment or additional assessment made by the director of revenue." Before our jurisdiction arises, however, a protest must be filed with the Director and the Director must issue a final decision on that protest. Sections 143.631.1 and 143.651; *State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004) (describing the filing of a protest as the "exclusive remedy for challenging the assessment."); *State ex. rel. Fischer v. Sanders*, 80 S.W.3d 1 (Mo. App., W.D. 2002) (setting forth the protest as a necessary step in appealing a case to this Commission and then to a court).

The Estate did not first file its protest with the Director, and the Director has not yet issued a final decision on the protest. Therefore, because the protest procedure has not yet concluded, we have no jurisdiction over the Estate's complaint at this time. If we have no

⁵Statutory references, unless otherwise noted, are to RSMo 2000.

jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

Although he has not yet done so in this case, in past cases the Director has stated he will consider the date the complaint was filed with this Commission as the date the protest was filed with him.⁶ If he does so here, the Estate's appeal would fall within the period for timely filing a protest under § 143.631. In the event the Director subsequently issues a final decision unfavorable to the Estate as a result of the protest, it may appeal the final decision to this Commission at that time.

Summary

We grant the Director's motion to dismiss the complaint because we lack jurisdiction to hear it at this time.

SO ORDERED on January 13, 2014.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner

⁶See, e.g., *Headrick v. Director of Revenue*, Case No. 11-1339 RI (Jan. 10, 2012); *Youtzy and Koepke v. Director of Revenue*, Case No. 11-1692 RI (Sept. 27, 2011); *Keele v. Director of Revenue*, Case No. 11-1665 RI (Sept. 27, 2011); *Tompson v. Director of Revenue*, Case No. 11-1603 RI (Sept. 27, 2011); *Gray v. Director of Revenue*, Case No. 11-1578 RI (Sept. 27, 2011); *O'Day v. Director of Revenue*, Case No. 11-1600 RI (Sept. 27, 2011); *Higgerson v. Director of Revenue*, Case No. 11-158 RI (Sept. 20, 2011); *Otto de la Noval v. Director of Revenue*, Case No. 11-1101 (September 12, 2011); *Tooley v. Director of Revenue*, 11-1414 RI (Sept. 1, 2011); *Pate v. Director of Revenue*, Case No. 11-1322 RI (Sept. 1, 2011); *Briggs v. Director of Revenue*, Case No. 11-1163 RI (July 27, 2011).