

Before the
Administrative Hearing Commission
State of Missouri



SAM and VICKIE ABARR,)	
)	
Petitioners,)	
)	
vs.)	No. 14-1492 RI
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We dismiss the complaint filed by Sam and Vickie Abarr because we lack jurisdiction to hear it at this time.

Procedure

On September 3, 2014, the Abarrs filed a complaint to “stop collection activities” by the Director of Revenue (“the Director”). Attached to their complaint were several pages of medical records. On September 17, 2014, they filed a similar complaint with additional information and medical records, which we deem to be an amended complaint. On September 17, 2014, the Director filed a motion to dismiss supported by an affidavit and copies of the Director’s records. 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).¹ We will grant

¹ 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.

the motion if the Director establishes facts that entitle him to a favorable decision and the Abarrs do not dispute those facts. Regulation 1 CSR 15-446(6)(A).

We allowed the Abarrs until October 3, 2014 to respond to the motion, but they filed no response. Therefore, the following facts are undisputed.

Findings of Fact

1. On November 27, 2013, the Director mailed the Abarrs a Notice of Deficiency – Individual Income (Form 2944) (“the notice”) concerning the 2012 tax year. The notice states:²

YOU HAVE THE RIGHT TO PROTEST THIS ASSESSMENT. If you disagree with the assessment of the amounts shown above, you may file a protest. **If you wish to file a protest, you must do so within 60 days of the date of this notice.** An explanation of your options for resolving this notice is enclosed.

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

2. On September 3, 2014, the Abarrs filed their complaint with this Commission, and we provided the Director with a copy of the complaint that same day. They filed an amended complaint, similar in nature to the original complaint, on September 17, 2014.

3. The Abarrs have not filed a protest with the Director, and the Director has not yet issued a final decision concerning the notice of deficiency on their 2012 income tax liability.

Conclusions of Law

Section 621.050.1³ 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

²Motion Ex. A-1.

³Statutory references, unless otherwise noted, are to RSMo 2000.

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 Abarrs did not first file a protest with the Director, and the Director has not yet issued a final decision on such a protest. Therefore, we have no jurisdiction over the Abarrs’ complaint at this time because the protest procedure was not concluded. If we have no 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).

We note that the Abarrs attached 12 pages of medical records to their complaint and subsequently submitted an additional 12 pages of such records. On our own motion, we seal those records pursuant to § 610.021(14) and 42 CFR 164.502(a).

Summary

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

SO ORDERED on October 28, 2014.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner