

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2010-001171

03/15/2012

HONORABLE DEAN M. FINK

CLERK OF THE COURT
S. Brown
Deputy

STAINLESS FIXTURES INC

MICHAEL D CURRAN

v.

ARIZONA STATE DEPARTMENT OF
REVENUE

AMY SPARROW

UNDER ADVISEMENT RULING

The Court took this matter under advisement following oral argument on March 12, 2012. Upon further consideration of Defendant's Motion for Summary Judgment, the Court finds as follows.

A.R.S. § 42-1251 states, "a person from whom an amount is determined to be due under article 3 of this chapter may apply to the department by a petition in writing within forty-five days after the notice of a proposed assessment made pursuant to § 42-1109, subsection B or the notice required by § 42-1108, subsection B is received, or within such additional time as the department may allow, for a hearing, correction or redetermination of the action taken by the department... If the taxpayer does not file a petition for hearing, correction or redetermination within the period provided by this section, the amount determined to be due becomes final at the expiration of the period. The taxpayer is deemed to have waived and abandoned the right to question the amount determined to be due, unless the taxpayer pays the total deficiency assessment, including interest and penalties. The taxpayer may then file a claim for refund pursuant to § 42-1118 within six months of payment of the deficiency assessment or within the time limits prescribed by § 42-1106, whichever period expires later." The plain language of the statute leaves no room for late filing, except as allowed by the department.

As for the hearsay objection, the Court can discern no material distinction between the apparently unobjectionable return receipt and the Track and Confirm document, which

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unambiguously states the date of receipt as August 5. At any rate, the Court has no doubt that the digit in question on the return receipt is a 5, not a 6: its upper portion distinctly contains two sharp angles rather than a smooth curved line, and there is a break in the lower left which is consistent with writing a 5 but quite impossible in writing the continuous curve of a 6. Based on this, the date on the FedEx envelope is immaterial, as Stainless Fixtures concedes, at Response 2:8, "If [the Assessment] was received on the 5th of August, the protest was untimely" (a concession repeated at 3:19-21).

IT IS ORDERED Defendant's Motion for Summary Judgment is granted. The motion to strike contained in the Response is denied.

IT IS FURTHER ORDERED Defendant shall lodge a form of judgment and file a Statement of Taxable Costs and Application/Affidavit for Attorney's Fees (if applicable) within 30 days of the filing date of this minute entry.

Arizona Tax Court - ATTENTION: eFiling Notice

Beginning September 29, 2011, the Clerk of the Superior Court will be accepting post-initiation electronic filings in the tax (TX) case type. eFiling will be available only to TX cases at this time and is optional. The current paper filing method remains available. All ST cases must continue to be filed on paper. Tax cases must be initiated using the traditional paper filing method. Once the case has been initiated and assigned a TX case number, subsequent filings can be submitted electronically through the Clerk's eFiling Online website at <http://www.clerkofcourt.maricopa.gov/>

NOTE: Counsel who choose eFiling are strongly encouraged to upload and e-file all proposed orders in Word format to allow for possible modifications by the Court. Orders submitted in .pdf format cannot be easily modified and may result in a delay in ruling.