

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-06-69

DHM-KEN-379-2011

LIN-COR ENVIRONMENTAL, LLC,

Petitioner

v.

STATE TAX ASSESSOR,

Respondent

**ORDER ON MOTION  
TO DISMISS**

This matter is before the court on State Tax Assessor's motion to dismiss. The respondent asserts that the petitioner is a Maine limited liability company and, because the petition was submitted by a person who is not a licensed attorney, the submission constitutes the unauthorized practice of law. Accordingly, the court cannot accept initiations of a petition for review of a State Tax Assessor final agency action under the circumstances.

The matter was argued with the petitioner represented on a limited appearance by qualified counsel in opposition to the motion to dismiss. Petitioner argues that the case comes within an exception to the unauthorized practice of law in accordance with 4 M.R.S.A. § 807(3)(J) which reads:

For purposes of defending a civil action filed against a corporation, an officer of the corporation if the corporation is organized in this State and has 5 or fewer shareholders.

It is petitioner's position that an action by a taxpayer brought for review by the Superior Court of a decision by the State Tax Assessor pursuant to 36 M.R.S.A. § 151, places the petitioner in the position of a defendant to a civil suit. In support thereof, the petitioner notes 36 M.R.S.A. § 141, as cited in *Stromberg-Carlson Corp. v. State Tax*

*Assessor*, 2001 ME 11, 765 A.2d 566 as referring to a petitioner as a defendant, defending itself against the assessment of tax by the State Tax Assessor.

Under the provisions of 36 M.R.S.A. § 151, the decision of the State Tax Assessor upon requested reconsideration constitutes, for purposes of the Administrative Procedures Act, "final agency action." If no further action takes place, it is final. Under that statute, the taxpayer has a right to initiate a petition in the Superior Court for judicial review. It is particularly noteworthy under the circumstances that the judicial review in the Superior Court requires a *de novo* hearing and a *de novo* determination of the legal validity of the decision by the State Tax Assessor. Section 151 further provides that the burden of proof is on the taxpayer.

Under those circumstances, this court considers the petitioner as the moving party and not the respondent in the *de novo* review process and the exception does not apply.

The entry will be:

Lin-Cor Environmental, LLC's petition for review of final agency action is DISMISSED.

Dated: March 30, 2007

  
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Donald H. Marden  
Justice, Superior Court

Date Filed 9/14/06 Kennebec County Docket No. AP06-69

Action Petition for Review  
80C

Lin-Cor Environmental, LLC vs. Maine Revenue Services

<p>Plaintiff's Attorney</p> <p><del>Kinda M. Corbin, Pro Se</del>  <del>Lin-Cor Environmental, LLC</del>  <del>276 Saw Highway</del>  <del>Ellis, Maine 03903</del></p> <p>Jennifer M. Bryant, Esq.          150 Capitol Street          Augusta, Maine 04330</p>	<p>Defendant's Attorney</p> <p><del>Pamela W. Waite, AAG</del>          Office of the Attorney General          6 State House Station          Augusta, ME 04333-0006</p> <p>Kelly L. Turner, AAG</p>
Date of Entry	

9/14/06	Petition for Judicial Review, filed. s/Corbin, Pro Se
10/12/06	Letter entering appearance, filed. s/Waite, AAG Respondent will not file responsive pleading.
12/18/06	Letter entering appearance, filed. s/Turner, AAG  State Tax Assessor's Motion to Dismiss, with Incorporated Memorandum of Law, filed. s/Turner, AAG  State Tax Assessor's Request for Hearing on His Motion to Dismiss, filed. s/Turner, AAG Proposed Order, filed.
12/20/06	Notice of Withdrawal and Appearance of Counsel, filed. s/Waite, AAG
1/8/07	Opposition to Motion to Dismiss, filed. s/Corbin.
1/11/07	State Tax Assessor's Reply to Petitioner's Opposition to Motion to Dismiss, filed. s/Turner, AAG  Notice of setting for <u>3/19/07</u>  sent to attorneys of record.
3/6/07 ----	Motion To Enter Limited Appearance, filed 3/5/07. s/Mitchell, Esq. Lin-Cor Environmental LLC's Supplemental Memorandum in Opposition to Motion to Dismiss, filed 3/5/07. s/Mitchell, Esq.
3/28/07	Letter entering appearance, filed. s/Bryant, Esq.
3/30/07	ORDER ON MOTION TO DISMISS, Marden, J. Lin-Cor Environmental LLC's petition for review of final agency action is DISMISSED. Copies mailed to attys of record.  Copies mailed to Deborah Firesone, Garbrech Library and Goss

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-06-69  
D&M- KEM 5/5 2007

LIN-COR ENVIRONMENTAL, LLC,

Petitioner

v.

**ORDER ON MOTION**

STATE TAX ASSESSOR,

Respondent

Before the court is petitioner's motion for relief from order. On March 30, 2007, the court granted respondent's motion to dismiss the petition having determined that the petition was not filed with the court by a properly licensed and registered attorney. The court found that it, ". . . cannot accept initiations of a petition for review of a State Tax Assessor final agency action under the circumstances."

Petitioner's move for relief from that order by asserting that counsel entered her appearance in the matter prior to the order of dismissal and that mistake, inadvertence, and/or excusable neglect caused the court not to be aware that petitioner had obtained counsel. Petitioner's concern is the preservation of the 30-day time limitation with which it may petition for review of the State Tax Assessor's final agency action. 5 M.R.S.A. § 11002.

The court conducted a hearing on respondent's motion to dismiss. At that hearing, petitioner was represented by counsel entering a limited appearance for purposes of arguing the motion but not entering his appearance for any other purpose regarding a petition before the court. Upon the granting of the motion, petitioner seeks to preserve the initial filing date by a determination of this court that the deficiency

leading to the dismissal can be removed by the subsequent entry of counsel and the court allowing an appropriate amendment to the pleadings.

Regardless of the late entry of appearance and whatever equities may be presented to the court by the entry of appearance of counsel filed two days before granting the motion to dismiss, the issue facing the court is whether it has the authority to reconsider a dismissal of a petition improperly filed and improperly accepted by the clerk. Unfortunately, statutory limitations on filing petitions for judicial review are jurisdictional and the court has no more authority to grant reconsideration as it did to honor the petition in the first instance. Being jurisdictional, the court has no authority to enlarge the time for filing and the court cannot, *de facto*, do the same in this instance.

The entry will be:

Petitioner's motion for relief from order of this court is DENIED.

Dated: May 2, 2007



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Donald H. Marden  
Justice, Superior Court

Date Filed 9/14/06 Kennebec County Docket No. AP06-69

Action Petition for Review  
80C

J. MARDEN

Lin-Cor Environmental, LLC

vs.

Maine Revenue Services

Plaintiff's Attorney

~~Linda M. Corbin, Pro Se~~  
~~Lin-Cor Environmental, LLC~~  
~~276 New Highway~~  
~~Ellettsville, Maine 03903~~

Jennifer M. Bryant, Esq.  
150 Capitol Street  
Augusta, Maine 04330

Defendant's Attorney

~~Pamela W. Waite, AAG~~  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

Kelly L. Turner, AAG

Date of  
Entry

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10/12/06	Letter entering appearance, filed. s/Waite, AAG Respondent will not file responsive pleading.
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1/11/07	State Tax Assessor's Reply to Petitioner's Opposition to Motion to Dismiss, filed. s/Turner, AAG  Notice of setting for <u>3/9/07</u>  sent to attorneys of record.
3/6/07 ----	Motion To Enter Limited Appearance, filed 3/5/07. s/Mitchell, Esq. Lin-Cor Environmental LLC's Supplemental Memorandum in Opposition to Motion to Dismiss, filed 3/5/07. s/Mitchell, Esq.
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4/19/07	Petitioner's Motion for Relief from Order, filed. s/Bryant, Esq. Proposed Order filed