

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

DAVID and LOU ANN MEYER,)
)
 Petitioners,)
)
 VS.)
)
 NEBRASKA DEPARTMENT OF)
 REVENUE,)
)
 Respondent.)

CI 14-6843

ORDER

COPY

This matter comes before the Court on its own motion to determine jurisdiction. On August 22, 2014, David and Lou Ann Meyer, Petitioners, filed a letter with the Douglas County District Court Clerk’s office. The letter indicated they wished to appeal a July 24, 2014 decision by the Respondent, Nebraska Department of Revenue, denying their claim for a tax refund.

Neb. Rev. Stat § 77-1781 (Reissue 2009) provides that a denial of a claim for a tax refund may be appealed in “accordance with the Administrative Procedure Act.” Neb. Rev. Stat. § 84-917 (Reissue 2008) of the Nebraska Administrative Procedure Act states:

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a)(i) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency . . . **Summons [notice] shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02.** If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(Emphasis added.)

Neb. Rev. Stat. § 25-510.02 (Reissue 2008) provides that the “State of Nebraska, [and] any state agency . . . may be served by leaving the summons [notice] at the office of the Attorney General . . . by certified mail or designated delivery service addressed to the office of the Attorney General.” There is no question that Respondent is a state agency. See Neb. Rev. Stat § 77-360 (Reissue 2009)(establishing the Department of Revenue) and Neb. Rev. Stat. § 81-

8,210(1)(Cum. Supp. 2012)(“State agency includes all departments . . . of the State of Nebraska”) In *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997), the Nebraska Supreme Court held that if summons (notice) is not served on the Attorney General within 30 days of the filing of the petition as required by § 25-210.02, the District Court does not acquire subject matter jurisdiction over the appeal and must dismiss.

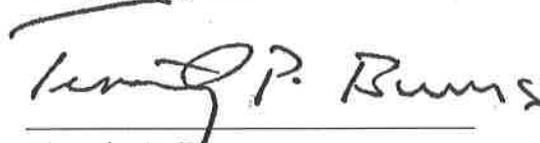
In this case, on August 22, 2014 Petitioners filed their letter, which I will treat as a petition, appealing the July 24, 2014 decision of the Respondent denying their request for a refund. This was within 30 days of the decision denying their refund request. However, the above referenced statutes, §§ 84-917 and 25-510.02, also require the Petitioners to serve summons (notice) on the Attorney General within 30 days of filing their appeal. To date, the Petitioners have not served summons (notice) upon the Attorney General and more than 30 days has elapsed. Therefore, pursuant to *Concordia Teachers College v. Neb. Dept. of Labor, supra*, I do not have jurisdiction to decide Petitioners’ appeal and must dismiss it.

IT IS THEREFORE ORDERED that Petitioner’s appeal is dismissed.

IT IS SO ORDERED.

Dated this 26th day of September

BY THE COURT



Timothy P. Burns
District Court Judge

cc:

David and Lou Ann Meyer
2823 S. 185th Ave.
Omaha, NE 68130

Pam Brewer
Nebraska Department of Revenue
PO BOX 94818
Lincoln, NE 68509-4600

Attorney General’s Office
2115 State Capitol
Lincoln, NE 68509-8920