

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOHL MOTORSPORTS, INC., A
NEVADA CORPORATION,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF TAXATION,
Respondent.

No. 87189

FILED

FEB 10 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER REVERSING AND REMANDING

This is an appeal from a district court order dismissing a petition for judicial review of a tax determination. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Hohl Motorsports, Inc. (Hohl) purchased the assets of Gato Malo, Inc. (Gato). In 2022, respondent the Nevada Department of Taxation (the Department) notified Hohl that Hohl was liable for a tax deficiency of \$2,066,395.29 as a successor in interest to Gato, which had outstanding tax liabilities at the time of purchase. Hohl challenged this deficiency determination by filing a petition for judicial review on January 19, 2023.

Before filing the petition, Hohl's counsel communicated with a lawyer representative of the Department regarding compliance with the statutory procedural requirements for filing a petition for judicial review. However, this communication resulted in confusion about whether Hohl had timely complied before filing its petition; specifically, whether it had entered a "written agreement" to pay the deficiency at a later date, as required by NRS 360.395(1)(b). Regardless, on February 14, 2023, just under a month after filing its petition, Hohl paid the full amount of the

deficiency to the Department. The Department subsequently moved to dismiss the petition for lack of subject matter jurisdiction, due to noncompliance with the statutory requirements, and the district court granted the motion and dismissed the case. Hohl argues that its email correspondence with the lawyer representative of the Department constituted a written agreement sufficient to satisfy the statutory requirements for filing a petition for judicial review. Reviewing de novo the dismissal of the petition and the interpretation of NRS 360.395, we agree. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (“This court reviews a district court’s decision regarding subject matter jurisdiction de novo.”); *Pub. Emps.’ Ret. Sys. of Nev. v. Reno Newspapers, Inc.*, 129 Nev. 833, 836, 313 P.3d 221, 223 (2013) (recognizing that this court reviews issues of statutory interpretation de novo).

Where a party seeks review of an administrative agency’s official act, “[c]ourts have no inherent appellate jurisdiction . . . except where the legislature has made some statutory provision for judicial review.” *Crane v. Cont’l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989). Because jurisdiction to review an agency decision is entirely created by statute, “strict compliance with the statutory requirements for such review is a precondition to jurisdiction.” *Kame v. Emp. Sec. Dep’t*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989), *overruled on other grounds by Jorrin v. Nevada, Emp. Sec. Div.*, 139 Nev., Adv. Op. 29, 534 P.3d 978 (2023).

NRS 360.395 provides prerequisites for judicial review of a decision by the Nevada Tax Commission. It requires the aggrieved party, before filing a petition for judicial review, to either “(a) [p]ay the amount of the determination; or (b) [e]nter into a written agreement with the Department establishing a later date by which he or she must pay the

amount of the determination.” NRS 360.395(1)(a)-(b). Thus, the statute functions to secure the disputed sum while the parties litigate the petition.

The Department has issued regulations clearly laying out the forms and other requirements for a written agreement to pay a deficiency *in installments*. See NAC 360.450; NAC 360.452; see also *Silver State Elec. Supply Co. v. State ex rel. Dep’t of Tax’n*, 123 Nev. 80, 85, 157 P.3d 710, 713 (2007) (recognizing that written installment agreements must comply with NAC 360.452). The Department’s arguments that NAC 360.450 and NAC 360.452 should also apply to an agreement to pay a lump sum at a later date are unpersuasive. Those regulations were promulgated pursuant to a statute allowing the Department to “adopt regulations providing: (a) for the payment of any tax *in installments*.” NRS 360.2915(2)(a) (emphasis added). Further, the regulations are contained in a subchapter clearly titled “Agreement of Payment of Taxes *in Installments*,” NAC 360.450 (emphasis added), and specify that the agreements they govern are “to pay taxes, interest and penalties *in installments* pursuant to NAC 360.450,” NAC 360.452(1) (emphasis added). Thus, these regulations clearly do not apply to the agreement at issue here, which was to pay a lump sum at a later date.

We therefore look to the statutory language of NRS 360.395 itself to determine what constitutes strict compliance. See *Crane*, 105 Nev. at 401, 775 P.2d at 706 (“When the legislature creates a specific procedure for review of administrative agency decisions, such procedure is controlling.”). Before filing a petition for judicial review, NRS 360.395(1)(b) requires the petitioner to “[e]nter into a written agreement with the Department establishing a later date by which he or she must pay the amount of the determination.” In the absence of more specific regulations,


strict compliance only requires a written agreement to pay the full amount at a later date be entered before the petition is filed.


The lawyer representative of the Department sent an email on January 17, 2023, stating that once the petition was filed, the Department would extend the briefing schedule (including the time to file a motion to dismiss) for an additional 90 days to allow Hohl to either (1) pay the amount of the determination or (2) enter into a payment agreement with the Department. That email constituted an agreement in writing and was entered into before the petition was filed. Crucially, the email began by advising Hohl to file its petition by the deadline, January 19, 2023, and the Department specifically agreed to an extension for the purposes of “allow[ing] [Hohl] to pay the amount of the determination.” The most natural reading of the email is that the Department had come to an agreement with Hohl for Hohl to file its petition and then have 90 days to pay the amount of the determination. We conclude that this meets the requirements of a written agreement under NRS 360.395. Thus, it was entirely reasonable for Hohl to interpret the email as an agreement that it could file the petition first and then pay the full amount of the determination at some point within 90 days. Furthermore, when Hohl informed the Department a few weeks later that it would be paying the full amount well within the 90 days, the Department’s reply indicated that this would be satisfactory. Lastly, when Hohl actually paid the full determination within the 90 days, the Department accepted the payment without expressing any concern about the petition being untimely.

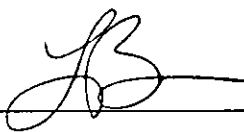
Taxpayers should be able to rely on the advice that they receive from the Department, especially where they have specifically discussed a particular issue. The Department moving to dismiss for noncompliance

with statutory requirements after advising Hohl that it had 90 days to meet those requirements violated basic notions of justice and fair play. We conclude that the January 17 email was a written agreement that strictly complied with the requirements of NRS 360.395(1)(b). Therefore, the district court erred by dismissing the petition for lack of subject matter jurisdiction. Having concluded that the district court improperly dismissed the action, we

ORDER the judgment of the district court REVERSED and REMAND for further proceedings consistent with this order


_____, C.J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. James E. Wilson, District Judge
David Wasick, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
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