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Appeal No 18031

file a timely administrative appeal of a tax assessment denied the court subject matter jurisdiction. *Customers Parking, Inc. v. District of Columbia*, 562 A 2d 651, 654 (D.C 1989) The court also stated that a lack of subject matter jurisdiction cannot be waived by the conduct or the consent of the parties and cannot be cured by claiming estoppel *Id.*

In *King v. Kidd*, the appellant made no objection to appellee's allegation of jurisdiction in the proceedings before Superior Court. *King v. Kidd*, 640 A 2d 656, 662 (D C.1993) When the issue of jurisdiction was raised for the first time before the DCCA, the court stated, "The District of Columbia adheres to the traditional rule that a party's acquiescence in the trial court's exercise of subject matter jurisdiction (or a waiver of a defense of lack of subject matter jurisdiction), indicated by the failure to raise the defense before or during trial, does not preclude that party from raising the issue on appeal." *Id.* Moreover, "it is our [the court's] duty to notice a lack of jurisdiction even though the parties may desire a decision on the merits." *Id.* (quoting *Yeager v District of Columbia*, 33 A.2d 629, 630 (D C 1943)) Where the trial court lacks jurisdiction to hear the matter, then the DCCA is without jurisdiction on appeal *Id.* In such case, the DCCA's "only choice would be to 'remand the case to the trial court with instructions to vacate its judgment as void and to dismiss the complaint for want of jurisdiction '" *Id.* (quoting *Council of Sch. Officers v Vaughn*, 553 A.2d 1222, 1228 (D C 1989))

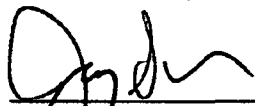
Based on the Board's prior decisions and DCCA precedent, it is clear that timeliness is mandatory and is the burden of the Appellant. Even if timeliness is not raised in the earlier proceedings, it is jurisdictional and thus can be raised at anytime. For these reasons, the Board may consider the issue of timeliness on remand from the DCCA.

Respectfully Submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

MELINDA M. BOLLING
General Counsel for the Department of Consumer
and Regulatory Affairs

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JAY A. SURABIAN (DC Bar # 977657)
Assistant Attorney General
Department of Consumer and Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
Washington, DC 20024
(202) 442-8403 (office)
(202) 442-9447 (fax)
jay.surabian@dc.gov

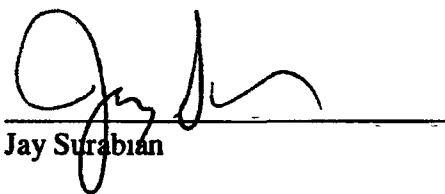
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by email this 13th day of August 2013, to the following:

Martin P. Sullivan, Esq.
Sullivan, Styles & Barros, LLP
1990 M Street, NW, Suite 200
Washington, DC 20036
msullivan@sullivanbarros.com

Rebecca Coder
Chair, ANC 2A
2501 M St., NW, #721
Washington, DC 20037
2A02@ancdc.gov, rebeccacoder@mac.com

Constance Miller, Esq.
2010 Corporate Ridge Dr., Suite 700
McLean, VA 22102
cjmiller1951@me.com



Jay Surabian