

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 11892

N.C. DEPARTMENT OF REVENUE,

Petitioner,

v.

GRETA ANN CLIFTON,

Respondent.

**ORDER ON MOTION TO DISMISS
NOTICE OF DESIGNATION OF
ACTION AS A MANDATORY
COMPLEX BUSINESS CASE UNDER
N.C.G.S. § 7A-45.4**

1. **THIS MATTER** is before the Court on Respondent's Motion to Dismiss Notice of Designation of Action as a Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 (the "Opposition").¹ (Mot. Dismiss Notice Designation Action Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 [hereinafter "Opp'n"], ECF No. 5.)

2. Petitioner initiated this action on 7 September 2021, seeking review of a Final Decision issued on 5 August 2021 and Amended Final Decision issued 6 August 2021 by the Office of Administrative Hearings. (*See* Pet. Judicial Review ¶¶ 1, 11–13, ECF No. 3.)

3. That same day, Petitioner filed a Notice of Designation of Action as a Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 (the "NOD"), asserting that this action involves a material issue related to tax law under N.C.G.S. § 7A-

¹ The Court notes that, although styled as a "motion to dismiss," Respondent does not bring her motion under Rule 12 of the North Carolina Rules of Civil Procedure; rather, she challenges the designation of the matter under N.C.G.S. § 7A-45.4. As such, the Court shall treat Respondent's filing as an opposition to designation under section 7A-45.4(e).

45.4(b)(1). (See Notice Designation Action Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4 [hereinafter “NOD”], ECF No. 4.) Petitioner subsequently filed an amended NOD on 15 September 2021. (See Am. NOD, ECF No. 6.)

4. This case was designated as a mandatory complex business case by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, on 16 September 2021, (Designation Order, ECF No. 1), and assigned to the undersigned on 17 September 2021, (Assignment Order, ECF No. 2).

5. Respondent timely filed the Opposition on 7 September 2021, contending that designation of this action as a mandatory complex business case is not proper. (Opp’n.) Petitioner filed its Response to the Opposition on 27 September 2021. (Pet’r’s Resp. Mot. Dismiss Notice Designation Action Mandatory Complex Business Case Under N.C.G.S. § 7A-45.4, ECF No. 11.) The matter is now ripe for determination.

6. “For a case to be certified as a mandatory complex business case, the pleading upon which designation is based must raise a material issue that falls within one of the categories specified in section 7A-45.4.” *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at *25 (N.C. Super. Ct. Feb. 5, 2016).

7. According to section 7A-45.4(b)(1), “[a]n action involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16, or a civil action under G.S. 105-241.17

containing a constitutional challenge to a tax statute, shall be designated as a mandatory complex business case by the petitioner or plaintiff.”

8. Respondent argues that designation under this section is improper because, along with Respondent, Petitioner included “Daphne LaRose Montoya, deceased,” as an additional respondent in the caption of the NOD. (*See* Opp’n; *see also* NOD.) Respondent alleges that, because “[n]o [c]ase has been heard by the Office of Administrative Hearings with these Respondents[,]” the NOD should be dismissed because “no case exists.” (Opp’n.)

9. The Court disagrees. Section 7A-45.4(b)(1) requires that any case involving “a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16” must be designated as a mandatory complex business case. N.C.G.S. § 7A-45.4(b)(1). Designation is therefore not only proper but required in this situation. Here, Petitioner timely filed the NOD with respect to Respondent and, although the original NOD appears to include an improper respondent in the caption, that does not affect the designation of the case with respect to Respondent. Moreover, Petitioner filed an amended NOD on 15 September 2021 that removed “Daphne LaRose Montoya, deceased,” as a respondent in the caption. (*See* Am. NOD.) Because the NOD was timely filed against Respondent, designation under N.C.G.S. § 7A-45.4(b)(1) is proper.

10. The Court also notes that Respondent represents that she filed a petition for judicial review in this matter on 3 September 2021, (*see* Opp’n), but the Court has no

record of any such filing on its electronic docket. The Court will therefore order Respondent to file any such petition below.

11. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

- a. The Opposition is **OVERRULED**. This action involves “a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16, or a civil action under G.S. 105-241.17 containing a constitutional challenge to a tax statute,” and shall proceed as a mandatory complex business case before the undersigned.
- b. Respondent shall file a file-stamped copy of any petition for judicial review that she has filed in this matter on the Court’s electronic docket within fourteen days of the entry of this Order.

SO ORDERED, this the 28th day of September, 2021.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge