

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Small Claims  
Income Tax

ALAN J. and ROSALIE B. TIEDEMAN,	)	
	)	
Plaintiffs,	)	No. 000748C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION AND JUDGMENT</b>

Plaintiffs request a refund of a tax paid in November 1999 for the 1995 tax year. Mr. Tiedeman appeared at trial and was represented by Janet Grush, CPA. Defendant appeared through Larry Boyd, an auditor with the Department of Revenue (the department).

**STATEMENT OF FACTS**

The underlying transaction that generated this appeal was the installment sale of real property owned by plaintiffs and located in Hawaii. The dispute is as to the 1995 interest income.

Plaintiffs' 1995 return was timely filed (under extension) on October 10, 1996. Plaintiffs filed an amended return increasing their tax liability on November 22, 1999. The amended return was prepared by plaintiffs' accountant and sent to the plaintiffs to hold onto. The parties agree that the amended return, which showed a tax due of \$838.00, correctly reflects plaintiffs' tax liability. Plaintiffs were amending a Hawaii return from which they expected a refund. Plaintiffs submitted the Oregon return and paid the tax shown as due. Defendant reviewed the amended return and billed plaintiffs for roughly \$300 in interest on December 13, 1999. Plaintiffs paid the interest assessed.

Plaintiffs now argue that the amended return should be disregarded because the defendant did not adjust the original return and assess the additional tax within the three year statute of limitations. In essence, plaintiffs wish to pull back the amended return because the deadline imposed on the department for adjusting the return had expired. Defendant responds that the payment was made voluntarily and that there is nothing in the law limiting the time period in which a taxpayer can file an amended return and pay the tax due. Plaintiffs' position is that the payment was not made voluntarily but rather was made "in error". As such, the return should be disregarded and the additional payment returned or applied to other years.

### **COURT'S ANALYSIS**

For a calendar year taxpayer, the tax returns (federal and state) are due April 15 of the year following the close of the calendar year in which the income was earned. ORS 314.385; IRC § 6072. By law the department has three years to examine or audit a return and issue a deficiency if it determines that additional taxes are due. ORS 314.410<sup>1</sup>.

The statute only prevents the department from assessing a deficiency more than three years after the return is filed. The prohibition applies unilaterally to the state. A deficiency is an amount of tax due, and includes " \* \* \* [a]dditional tax shown on an amended return filed after the due date of the return." 9 Mertens, Law of Federal Income Taxation, § 49.128, at 236 (Citing Treas Reg § 301.6211-1(a)). There is nothing in the law to prevent a taxpayer from voluntarily filing a return reporting a deficiency and paying a

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<sup>1</sup>ORS 314.410 provides in relevant part as follows:

“(1) At any time within three years after the return was filed, the Department of Revenue may give notice of deficiency as prescribed in ORS 305.265.”

tax after the department's three-year statute of limitations expires. Of course, if the amended return reports a refund, it must be filed within three years of the date of the original return or the return is accepted but the refund denied. ORS 314.415(1)(b)(A).<sup>2</sup>

Plaintiffs' argue the payment was not a voluntary payment but instead was a payment in error. The facts suggest otherwise, but regardless of the characterization, the distinction is of no legal significance. Whether the money was paid voluntarily or erroneously the tax was based on additional income correctly reported and the law imposes no deadline on a taxpayer for filing amended returns. That the department lost the legal authority to adjust the original return is irrelevant.

There are policy considerations behind this limitation and its unilateral application. The limit on the department to give notice of a deficiency within three years encourages timely action on its part and avoids unfair surprise years after a return is filed and taxpayer records may have been destroyed. However, there is no reason for the department, acting for the state, to prevent a taxpayer from rectifying a prior error or omission years later by reporting a deficiency and paying the tax. It must be kept in mind that plaintiffs did not overpay their taxes. Rather, they originally underpaid because of an error on their original return.

## **CONCLUSION**

Plaintiffs' request that the money paid in November 1999 be refunded or applied to other tax years is denied. The payment was submitted with an amended 1995 return, and

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<sup>2</sup>ORS 314.415(1) provides in relevant part:

“(b)(A) No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with ORS 305.270 \* \* \*.”

although the payment was made more than three years after the original 1995 return was filed, there is no statutory limit on the filing of an amended return reporting additional tax due. The limit found in ORS 314.410, precluding the department from adjusting the return more than three years after the return is filed, is inapplicable to a deficiency self-assessed by a taxpayer.

IT IS HEREBY ADJUDGED AND DECREED that plaintiffs' requested relief is denied. The additional tax paid voluntarily in November 1999 on a self-assessed deficiency for 1995, which the parties agree correctly reflects plaintiffs' tax liability, cannot be refunded or applied to other tax years.

Dated this \_\_\_\_ day of January, 2001.

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DAN ROBINSON  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON JANUARY 17, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 17, 2001.**