

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Income Tax

GWYNN G. COFFMAN,)	
)	
Plaintiff,)	No. 000935E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on defendant's Motion for Dismissal filed August 3, 2000. Plaintiff filed a Response to the Motion for Dismissal on September 13, 2000. The court discussed the motion and response with the parties during the case management conference held September 13, 2000. Gwynn G. Coffman appeared on his own behalf. Rae Parsons, Auditor, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the department."

STATEMENT OF FACTS

In April 1999, the department sent taxpayer a letter requesting a copy of his federal return for the 1996 tax year. The department submitted its request several times without receiving a response.¹ As a result, on August 10, 1999, the department opened an audit of taxpayer's 1996 tax return. The department sent taxpayer an itemized list of information it needed to complete its audit. Taxpayer never received this itemized list. Ms. Parsons sent the request a second time and, this time, he received it. He did not, however, provide the information requested.

¹ Taxpayer indicated that in July 1999 he did send the department a copy of his 1996 federal return. The department has no record of receiving this submission.

The department scheduled several appointments with taxpayer to discuss the audit. Taxpayer, who was in the midst of preparing his employer's computers for the year 2000 transition, was unable to make the scheduled appointments. Taxpayer was required by his employer to fly to different locations on a moment's notice to handle various emergencies. Although the parties eventually met in December 1999, taxpayer failed to bring any of the documentation previously requested. After discussing the case with her manager, Ms. Parsons advised taxpayer in writing that he could submit the documentation in writing and that she would close the audit January 14, 2000. The department did not receive any documentation from taxpayer by January 14, 2000, so it issued a Notice of Deficiency on January 26, 2000.

Taxpayer claims that, in response to this deficiency notice, he sent a letter to the department. The department at this time has no record of receiving the letter.² As a result, the department assessed the deficiency on March 21, 2000. Taxpayer contends he then called the Tax Court requesting forms to appeal the assessment. He claims he called the court April 5, 2000, requesting forms. (Ptf's Response at 2.) Having not received the forms by April 17, 2000, taxpayer called the court again requesting the forms. He notes he did not receive the forms by May 16, 2000, so he again called requesting the forms. He claims the forms were "received June 19, 2000 * * * and delivered to the Court June 21." (*Id.*) However, the cancellation mark on the envelope shows the forms were *mailed* June 19, 2000. In addition, his appeal was not filed until *July 21, 2000*.

The department has filed a Motion for Dismissal asking the court to dismiss the appeal because it was filed more than 90 days after the date of assessment.

² Taxpayer claims that he had called the department at one point and was advised the department had received the letter. After receiving no response to his letter, he called again and was advised the department had no record of ever receiving his letter.

COURT'S ANALYSIS

ORS 305.280(2)³ provides that an appeal from a notice of assessment “**shall** be filed within 90 days after the date of the notice.” (Emphasis added.)

ORS 305.265(14) states that assessments “**shall** be final after the expiration of the appeal period specified in ORS 305.280.” (Emphasis added.) Here, the department issued the assessment notice on March 21, 2000. Taxpayer did not file his appeal until July 21, 2000, approximately one month beyond the 90-day appeal period. The last day to file his appeal fell on June 19, 2000.

Taxpayer acknowledges receiving the assessment notice. The law provides that, once the department mails an assessment notice to a taxpayer’s last-known address, the appeal period begins to run. Taxpayer failed to submit his appeal to this court within the 90-day appeal period. As a consequence, the court finds the appeal must be dismissed.

Throughout the audit process, there were several documents taxpayer claims were submitted but not received by both the department and himself. Regardless, the department ultimately assessed the deficiency on March 21, 2000, and taxpayer was put on notice that he needed to challenge the assessment to avoid it becoming final. Taxpayer claims he called the court three times before he received the Complaint form. His third call occurred on June 18 or 19, 2000, (based on the cancellation postmark). His last day to file his appeal was June 19, 2000. Taxpayer could have simply sent a letter to the court on that day indicating an intent to appeal. Further, after receiving the form, he waited another 30 days before he actually filed his appeal with the court. This shows a

³ All statutory references are to the 1999 Edition.

lack of urgency in the appeal process.

In any case, the assessment was issued on March 21, 2000, and taxpayer had 90 days to appeal. Nothing stated by taxpayer suggested the court misled him in any way with regard to his appeal rights. Taxpayer claims the court failed on two occasions to send him the forms. The court rarely hears of taxpayers not receiving forms when requested. To expect that it happened *twice* to the same taxpayer is inconceivable.

Taxpayer did note he was recently notified that a postal employee had been indicted with regard to mail theft and some of his personal mail was found in this person's possession.

In the end, notwithstanding lost mail, missed appointments, etc., the law is clear that, unless an appeal is filed within 90 days after the assessment notice, the assessment becomes final. Taxpayer's only remedy at this point is to pay the assessment and sue for a refund. See ORS 305.280(3).⁴

CONCLUSION

The court concludes that taxpayer failed to file his appeal with the court within the statutory 90-day appeal period. As a consequence, the court finds the case should be dismissed. Now, therefore;

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this _____ day of October, 2000.

⁴ ORS 305.280(3) states:

“Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes * * * may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.”

COYREEN R. WEIDNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON OCTOBER 20, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 20, 2000.