

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

MANN CONSTRUCTION CO. INC.,)	
)	
Plaintiff,)	No. 001005D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiff appeals defendant’s Notice of Deficiency, dated December 22, 1999, alleging that the proposed adjustments set forth in the Notice of Deficiency exceeded the terms of the parties’ Agreement Extending Period of Limitation For Issuing Notice of Deficiency or Refund, received by defendant on September 26, 1996. A trial was held in the Oregon Tax Court, Salem, Oregon, on Wednesday, February 21, 2001. Mr. Richard Mann, President, Mann Construction Co., Inc., appeared on behalf of plaintiff. Ms. Marilyn Harbur, Assistant Attorney General, appeared on behalf of defendant. Mr. Todd Canfield, Tax Auditor, testified for defendant.

At the conclusion of the trial, plaintiff requested additional time to obtain evidence from the Internal Revenue Service. The court agreed that plaintiff could have 90 days and if additional time was required, plaintiff could make a written request to the court. On May 21, 2001, plaintiff notified the court in writing that it no longer wanted “to delay this proceeding further.” (Ptf’s Post Hearing Brief - Amended at 1.) Defendant filed its Response to [Plaintiff’s] Post-Hearing Brief on May 29, 2001. On June 25, 2001, the court received Plaintiff’s Rebuttal to Defendant’s Response to Amended Post-Hearing Brief.

STATEMENT OF FACTS

In May 1996, defendant received a document (Transmittal of Cases to Appeals) from the Internal Revenue Service (IRS) stating that plaintiff filed an appeal for fiscal tax years ending July 1992 and July 1993. On June 18, 1996, defendant wrote to plaintiff and inquired as to the status of the IRS appeal. In response, plaintiff's president, Mr. Richard Mann, notified defendant that the appeal was still in progress. In September 1996, Mr. Mann signed an Agreement Extending Period of Limitation For Issuing Notice of Deficiency or Refund (Agreement) as did defendant's representative, Ms. Diana Delacerna, Auditor. (Def's Ex A.) The Agreement stated that plaintiff and defendant "agree to extend the period during which the department may issue a Notice of Deficiency until the extension date." *Id.* The extension date information stated on the Agreement read: "Date Extension Expires* 6 months after the date the taxpayer notifies the department of the final results of the Federal appeal." *Id.* Upon receipt of the signed Agreement, Mr. Canfield testified that defendant "pended the case", awaiting the outcome of the IRS audit.

On September 29, 1999, defendant's representative, Mr. Todd Canfield, sent a follow-up letter to plaintiff. On October 8, 1999, Mr. Mann responded to defendant's letter by sending a copy of the United States Tax Court's decision, Docket No. 27187-96, to Mr. Canfield. On October 27, 1999, Mr. Canfield requested a copy of the "IRS (or appeals) settlement computation relating to the amounts in the decision." (Def's Ex C.) On November 4, 1999, defendant received the requested information from plaintiff. On December 22, 1999, defendant issued its Notice of Deficiency (Notice).

Mr. Mann testified that defendant had notice of the IRS adjustments no later than June 3, 1999, which was the date the United States Tax Court issued its decision. Initially, Mr. Mann alleged that defendant's Notice was more than 6 months after June 3, 1999.

However, he subsequently withdrew this allegation. Instead, Mr. Mann alleges that defendant's Notice included an adjustment for a net operating loss (NOL) carryforward which was not part of the IRS appeal and therefore the NOL adjustment is improper. (Ptf's Rebuttal to Def's Response to Amended Post Hearing Brief (Rebuttal) at 2.)

Mr. Canfield testified that plaintiff extended the period of time defendant could issue its Notice and under the terms of the Agreement and statutory requirements (ORS 314.410(6) and 314.380(2)(a)) defendant's Notice was timely.

COURT'S ANALYSIS

The Oregon Department of Revenue (Department) is permitted to issue a notice of deficiency at any time within three years after a taxpayer files an income tax return. ORS 314.410.¹ However, there are exceptions. One of these exceptions permits the taxpayer and the Department to enter into a written agreement to extend the period of time when the Department can issue a notice of deficiency beyond three years. The agreement is permitted if it meets the statutory requirements of ORS 314.410(6) which reads:

“If, prior to the expiration of any period of time prescribed in this section for giving of notice of deficiency or of assessment, the department and the taxpayer consent in writing to the notice of deficiency being mailed or deficiency being assessed after the expiration of such prescribed period, notice of such deficiency may be mailed or the deficiency assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period agreed upon.”

In this case, the parties signed the Agreement Extending Period of Limitation For Issuing Notice of Deficiency or Refund (Agreement) on September 17, 1996, and September 20, 1996. The parties agree that this Agreement was signed within three years of the due date of the returns which is prior to the expiration of the statutory period of time for giving of

¹All references to Oregon Revised Statutes are to 1995.

a notice of deficiency or assessment.

The Agreement specifically stated that the extension of the time period for the Department to issue a notice of deficiency or assessment was “6 months after the date the taxpayer notifies the department of the final results of the federal appeals.” (Def’s Ex A.) The Agreement clearly stated that it was notification from the taxpayer that opened the 6 month window for the defendant to issue its Notice. In this case, defendant initiated the request, not the taxpayer. In response to defendant’s request, the Department received from Mr. Mann a copy of the United States Tax Court’s decision, Docket No. 27187-96. After reviewing the information, the Department issued two Notices of Deficiency (Notices) dated December 22, 1999. These notices were issued within 6 months of the Department obtaining the final results of the federal appeals and are in compliance with the terms of the Agreement.

Mr. Mann alleges that the Notices of Deficiency were incorrect. He states that because the proposed adjustments included not only the adjustments made by the Internal Revenue Service (IRS) to the corporation’s taxable income but an additional adjustment to the reported net operating loss carryforward the Department went beyond the terms of the Agreement. Mr. Mann alleges that under the Agreement the time period was extended for only those issues under appeal with the IRS. Mr. Mann alleges that the net operating loss carryforward was not under federal appeal.

The Agreement permits defendant to issue a Notice of Deficiency or Refund (Notice) beyond the statutory date if both parties mutually sign the Agreement. See ORS 314.410(6). In this case, both parties signed the Agreement. Typically, parties enter into this type of an agreement when changes to a taxpayer’s taxable income can not be predicted with certainty and the allowable statutory time period for making any

adjustment(s) to taxable income is limited. The adjustments when final can either increase or decrease taxpayer's taxable income. Because the adjustments can not be determined with certainty, the parties mutually agree to postpone any assessment or refund until a set date in the future. In this case, the parties mutually agreed to extend the deadline for issuing the Notice.

Contrary to plaintiff's allegations, the Agreement does not limit the content of defendant's Notice to specific adjustments such as federal audit adjustments. *Id.* The court is not persuaded that defendant's letter dated June 18, 1996, stating that adjustments on the federal audit report would change taxpayer's Oregon income tax, limited the content of defendant's Notice to only the adjustments proposed by the IRS. The court does not find that defendant "renege[d] on the original intent of the agreement." (Ptf's Rebuttal at 3.) Under the terms of the Agreement, defendant was given additional time beyond the statutory time period to make any adjustment(s) including but not limited to the IRS audit adjustments.

Mr. Mann is a successful professional businessman who is the President of the plaintiff corporation, Mann Construction Inc. In the course of his many years of owning and running a profitable business, he negotiated and signed numerous contracts. After years of experience, Mr. Mann is well aware that in most cases the written terms of the contract or agreement dictate the obligations and expectations of the parties. In this case, there was nothing in the signed Agreement limiting the scope of defendant's review and the content of its Notice. In addition, there is nothing in the evidence to persuade the court that the intent of the parties was to limit the scope of defendant's review of plaintiff's tax return and its adjustment(s) to only those previously identified by the IRS.

The court has not been requested nor does it make any ruling as to the validity of

the adjustments set forth in the Notice of Deficiency.

CONCLUSION

IT IS THE DECISION OF THIS COURT that plaintiff's Motion for Summary Judgment is denied.

FURTHER, IT IS THE DECISION OF THIS COURT that defendant's Motion for Summary Judgment is granted.

Dated this _____ day of July, 2001.

JILL A. TANNER
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 97301-2563. 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 JILL A. TANNER ON JULY 23, 2001. THE COURT FILED THIS DOCUMENT ON JULY 23, 2001.