

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Income Tax

CHARLES AND SUSAN DASTRUP,)	
)	
Plaintiffs,)	No. 001010E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiffs appeal defendant's 1999 Notice of Tax Assessment dated June 27, 2000. Trial in the matter was held October 12, 2000.¹ Susan Dastrup appeared on behalf of plaintiffs. Laurie Fery, Auditor, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayers" and "the department."

STATEMENT OF FACTS

Taxpayers timely filed an Oregon return for the 1999 tax year. In the past, taxpayers would hire a tax professional to complete their returns for them. Tax year 1999 was the first year they chose to complete their returns on their own. During 1999, taxpayers made two tax payments to the state of Oregon. The payments were for a tax liability they owed for 1998 and both payments included a 1998 payment coupon.

When preparing their 1999 return, taxpayers included the 1998 payments they made in 1999 on line 64 as an estimated tax payment for 1999. Because taxpayers did not really make any estimated tax payments for 1999, the department removed the

¹ The proceeding began as a case management conference but was converted to a trial at the request of the parties.

subtraction and adjusted their liability accordingly. Taxpayers appeal claiming the assessed tax and accompanying interest and penalty charges should be canceled because the instruction booklet is misleading as to what amount should be entered on line 64.

COURT'S ANALYSIS

For line 64 of the return, the instruction booklet directs a taxpayer to “[f]ill in the total Oregon estimated tax payments you made before filing your 1999 Oregon return.” (Ptf’s Complaint at 2.) Taxpayers argue that the instruction does not specify the payments had to be **for 1999** in order to be included. As a result, they entered the tax payments they made for 1998 during 1999 on line 64.

The court understands taxpayers were confused as to the correct amount they should have included on line 64 of their return. However, even if the court was to conclude the instruction booklet was misleading, it would not order the assessed tax-to-pay to be canceled. A taxpayer is responsible for paying the tax liability they rightfully owe. They should not escape this responsibility simply because an instruction misled them into making an incorrect entry. Once the mistake is discovered, taxpayers should be expected to pay the tax amount because it is the amount they legally owe. If an instruction misleads a taxpayer, they could perhaps argue for waiver of the assessed penalty and interest because these are amounts they would not have paid had the return been prepared correctly in the beginning. The department, not the court, has authority to waive penalties and interest. See ORS 305.145(3).

In any case, the court does not believe the instruction is misleading. The heading for line 64 states: “Estimated tax payments for 1999.” (Def’s Answer at 1.) Also, line 64 on the return specifically states: “Estimated tax payments **for 1999** and payments

made with your extension.” (Def’s Answer at 3) (emphasis added.) Combining the headings with the instruction, it becomes clear a taxpayer is supposed to enter only 1999 estimated tax payments. Furthermore, the instruction is clear that line 64 pertains to *estimated* tax payments. The tax payments included by taxpayers did not represent estimated tax payments. The payments were on their actual (versus estimated) 1998 liability. Estimated tax payments are of a different nature than the payments made by taxpayers in 1999 for 1998.

The court wants to make it clear to taxpayers that they are not being asked to pay a tax that is greater than what they rightfully owe. Had the return been prepared correctly in the beginning, they would have had to pay the tax at that point in time. If the court were to reduce their 1999 liability as taxpayers request, they would be receiving credit twice for the payments made in 1999: once against their 1998 liability and once against their 1999 liability. This is simply impermissible.

CONCLUSION

The court concludes that the instruction booklet was not misleading as to the proper amount a taxpayer should include on line 64. The court further finds that, even if the instruction booklet was misleading, it should not excuse taxpayers from paying the tax they rightfully and legally owe.

IT IS HEREBY ADJUDGED AND DECREED that the 1999 Notice of Tax Assessment dated June 27, 2000, is affirmed.

Dated this _____ day of October, 2000.

COYREEN R. WEIDNER
MAGISTRATE

OCTOBER 24, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 24, 2000.