

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

LARRY R. LICHTENBERGER,)
)
 Plaintiff,) No. 001061E
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION**

Plaintiff appeals defendant's 1996 Notice of Tax Assessment, dated September 11, 2000, claiming defendant failed to timely notify him of the deficiency.¹ The court held a telephone trial in the matter on January 3, 2001. Larry R. Lichtenberger appeared on his own behalf. Kim Carey, Auditor, appeared and testified on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the department."

STATEMENT OF FACTS

Taxpayer filed a personal income return with the state of Oregon for the year 1996. Subsequently, the department received notice that the Internal Revenue Service (IRS) had adjusted taxpayer's 1996 federal return. The adjustments resulted in a deficiency for taxpayer's state return. Based on the federal adjustment, the department

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notified taxpayer of the deficiency on August 4, 2000. The department assessed the

¹ During the case management conference on November 15, 2000, plaintiff indicated he believed the adjustments made to his 1996 return that formed the basis of the assessment were in error. Plaintiff presented no evidence or testimony on this claim; therefore, the court accepts the validity of the underlying adjustments.

deficiency on September 11, 2000.

Taxpayer appeals claiming the department did not notify him of the deficiency in a timely manner. The department submitted a copy of a transmittal sheet it received from the IRS noting a receipt date of April 19, 1999. (Ex A.) The department claims this is the date it received notice of the federal correction and that, pursuant to statute, it had two years from this date to notify taxpayer of the deficiency.

COURT'S ANALYSIS

ORS 314.410(1) allows the department to notify a taxpayer of a deficiency at anytime within three years after the return was filed.² In this case, there was no discussion as to when taxpayer filed his 1996 return. The court will assume he filed it by the April 15, 1997, deadline. The department did not notify taxpayer of the deficiency until August 4, 2000, which is more than three years after he filed his return. Generally, the deficiency would be time barred. ORS 314.410(3), however, provides exceptions to the general three-year limit. The exception applicable here states:

“3(b) If the Commissioner of Internal Revenue or other authorized officer of the federal government * * * makes a change or correction as described in ORS 314.380(2)(a) and, as a result of the change or correction, an assessment of tax is permitted under any provision of the Internal Revenue Code[,] * * * then notice of a deficiency under any Oregon law imposing tax upon or measured by income for the corresponding tax year may be mailed **within two years after the department is notified by the taxpayer or the commissioner or other tax official of the correction, or within the applicable three-year or five-year period prescribed in**

² ORS 314.410(1) states:

“(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.”

All references to the Oregon Revised Statutes are to 1999.

subsections (1) and (2) of this section, respectively, *whichever period expires the later.*” ORS 314.410(3) (emphases added.)

The department maintains it received notice of the federal correction on April 19, 1999, when it received the transmittal and magnetic tape from the IRS. (Exs A, B.) Ms. Carey testified that the department generally receives four to six magnetic tapes per tax year from the IRS. A tape comes with a transmittal slip that is dated and signed upon receipt by the responsible department employee. Exhibit A shows that the department received the transmittal on April 19, 1999. Exhibit B is a computer printout of the information received from the IRS on taxpayer’s 1996 return. Ms. Carey testified this information was obtained from the tape accompanying the transmittal slip received April 19, 1999. The computer printout showing the adjustments to taxpayer’s return notes the department received it April 19, 1999. (Ex B.)

Taxpayer questions whether the department really received the transmittal slip on April 19, 1999. At the top of the slip, Ms. Carey hand wrote “1996-4th tape.” She then highlighted this information. She submitted photocopies of this page as an exhibit. The highlighted portion appears as a smudge mark on the paper. Taxpayer testified he was able to read the 1996 behind the smudge mark. He believes the 1996 may represent when the department really received the transmittal.

Taxpayer’s argument that the department may have received notice of the federal correction in 1996 is nonsensical because taxpayer did not file his 1996 return until 1997. Further, a receipt date of April 19, 1999, is clearly marked on the transmittal slip. No evidence has been offered to suggest the department received notice of the federal correction any sooner than the date specified on the transmittal. The court finds, therefore,

that the department received notice of the federal correction to taxpayer's 1996 return on April 19, 1999.

CONCLUSION

The court concludes that the department timely issued its deficiency notice to taxpayer for the 1996 tax year. ORS 314.410(3)(b) allows the department to give notice of a deficiency within two years of receiving notice of a federal correction. The evidence presented to the court is persuasive that the department received notice of the federal correction on April 19, 1999. The department gave taxpayer notice of a deficiency within two years of this date. As a result, the deficiency was timely. Now, therefore;

IT IS THE DECISION OF THIS COURT that taxpayer's appeal is denied and the 1996 Notice of Tax Assessment, dated September 11, 2000, is affirmed.

Dated this _____ day of January, 2001.

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 JANUARY 12, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 12, 2001.