

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Income Tax

ROBERT LUCAS,	)	
	)	
Plaintiff,	)	No. 001066C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff's Complaint challenged the Defendant's assessments for 1990 and 1992. After extensive informal negotiations the parties were largely able to resolve the appeal. There remains one legal question affecting the 1992 tax year. The trial set for October 31, 2001, was converted to a hearing on that legal question. The parties agreed to the relevant facts and the matter is submitted to the court essentially on cross-motions for summary judgment.

Plaintiff appeared on his own behalf. Defendant appeared through Mr. Mike Hamilton, an auditor with the Oregon Department of Revenue.

**STATEMENT OF FACTS**

The parties agree that, after making adjustments, Plaintiff's net income tax for the 1990 tax year is \$6,587. The parties further agree that the penalty will be reduced to \$1,647 and that the interest will be adjusted accordingly.

For the 1992 tax year the parties agree that the net income tax is \$3,918. The parties further agree that Plaintiff paid \$458 in withholding in 1992 and that he made a single estimated tax payment of \$500 for 1992. There is also a \$779 carry-over from 1991.

Defendant issued a refund payment of \$1,671 to Plaintiff in 1995 for the 1992 tax year. Thereafter, Plaintiff returned the refund to Defendant with instructions to apply the amount to “subsequent tax years.” The question the parties have asked the court to decide is whether the returned refund payment can now be applied to the tax due for 1992. The following facts are relevant to the court’s analysis.

Plaintiff filed his original 1992 state tax return on or about April 11, 1995, two years after it was due. The return reported a net income tax of \$75. Defendant issued a \$1,671 refund several months later because of the \$958 combined tax payments (from withholding and estimated payments) plus a carryover from 1991. Thereafter Plaintiff’s 1992 federal return was audited by the Internal Revenue Service (IRS) and was finally resolved in 1998. The federal audit report was signed by the IRS examiner and the Plaintiff in April 1998. Defendant received notice of the federal audit report on November 6, 1998. Based on the outcome of the federal audit, Defendant adjusted Plaintiff’s 1992 return and determined that Plaintiff’s net income tax was not \$75 but \$3,918. (Def’s Ex B-2.) A deficiency was issued by Defendant on April 12, 2000.

(Def’s Ex B-1.) Defendant’s calculations, reflected on page 2 of it’s deficiency, included the amount of the refund previously issued in 1995 for the 1992 tax year.

*Id* at 2.

The parties agree that Defendant applied the 1992 refund to 1996 and possibly one or more subsequent tax years based on Plaintiff’s written instructions included with the return of the refund check in 1995. It is this amount that Plaintiff is now asking to be reapplied to 1992. Plaintiff views the matter as a simple accounting adjustment and argues that the \$1,671 payment in 1995 was not a refund because Defendant later determined (and Plaintiff now concedes) Plaintiff was not entitled to a refund (because the

tax finally determined to be due exceeded all payments and carry-overs). Defendant objects to the requested adjustment based on an administrative rule and the fact that it will require adjustments to many other tax years.

### **COURT'S ANALYSIS**

The administrative rule relied upon by Defendant is OAR 150-314.415(1)(e)-(B), and provides in relevant part:

“(2) The department shall offset a refund to assessed accounts and may offset a refund to nonassessed accounts when the taxpayer sends the department a written authorization to offset the refund.”

Relying on this rule, Defendant treated the money sent to it by Plaintiff in 1995 as a payment and applied it to Plaintiff’s nonassessed account(s) for other tax years. It did so based on Plaintiff’s instructions to that affect. Plaintiff argues that the administrative rule is inapplicable because his adjusted tax liability for 1992 exceeds the amount of payments made and as a result there is no refund for 1992. Plaintiff urges the court to order the Defendant to apply the money issued erroneously as a refund in 1995 to the 1992 tax year.

The court finds several problems with Plaintiff’s position. First, while Plaintiff was not entitled to a refund for 1992, he received a refund check because the return he filed claimed a refund (payments exceeded liabilities). ORS 314.415(1)(a).<sup>1</sup> Plaintiff accepted the money. Because money is fungible, what Plaintiff did with the check after he received it is largely irrelevant. It is helpful to consider the options available to Plaintiff when he received the refund check and the consequences of each choice. First, Plaintiff could have cashed the check and pocketed the money. Second, Plaintiff could have deposited the

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<sup>1</sup> The statute provides in relevant part as follows:

“If the Department of Revenue determines pursuant to ORS 305.270 that the amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the department with interest \* \* \*.” ORS 314.415(1)(a).

funds in a checking or savings account and then written a personal check to Defendant for the amount of the refund and sent it to Defendant with instructions to apply the money to tax liabilities for subsequent tax years. Third, Plaintiff could have endorsed the refund check and returned it to Defendant with instructions to apply it to tax liabilities for subsequent tax years. Plaintiff chose the third option. Each option, however, begins with acceptance of the money by endorsing the refund check. Whatever a taxpayer does after accepting a refund later found to be erroneously issued is irrelevant. He has already accepted the money and the liability attaches to the tax year for which the refund was issued.

There is simply no mechanism, either through statute or administrative rule, by which Plaintiff is entitled to reapply the money he paid Defendant in 1995, which was a payment for future tax years, back to 1992. The payment was a separate transaction. There is no magic to the fact that, once Plaintiff accepted the refund in 1995, he then paid that amount of money to Defendant as opposed to another creditor. This is the fundamental flaw in Plaintiff's assertion that this is a matter of accounting only.

Under ORS 314.417, the unpaid tax became a lien on the date the tax was due. It would not be equitable to credit Plaintiff's account in calendar year 2001 as though payment were made some eight years earlier when in fact Plaintiff caused the money to be refunded in 1995. Had Plaintiff's return been timely filed and shown the correct amount due, the refund would never have been made. Rather, Plaintiff would have found himself owing Defendant money. To accept Plaintiff's position is to reward him for filing an incorrect return that took some five years to correct. Defendant, on behalf of the state of Oregon, was entitled to all of Plaintiff's tax payment by April 15, 1993.

### **CONCLUSION**

IT IS THE DECISION OF THIS COURT that the assessments for 1990 and 1992 will

be adjusted as agreed to by the parties, but that no further adjustments will be made. Specifically, Plaintiff's payment in 1995 will not be applied to the 1992 liability, for the reasons set forth above. Accordingly,

Plaintiff's net income tax for the 1990 tax year is \$6,587. The penalty will be reduced to \$1,647 and the interest will be adjusted accordingly.

For the 1992 tax year Plaintiff's net income tax is \$3,918. Penalties and interest to be adjusted accordingly.

Dated this \_\_\_\_\_ day of January, 2002.

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DAN ROBINSON  
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 DAN ROBINSON ON JANUARY 10, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 10, 2001.**