

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ROBERT M. BRINK and NANCY R. BRINK,	)	
	)	
Plaintiffs,	)	No. 010828F
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant's denial of a refund for tax year 1996. A telephone trial was held on December 10, 2001. The court allowed the parties time after the trial to submit additional materials. John Parker, CPA, appeared for Plaintiffs. Susan Crum, Mr. Parker's business partner, also testified for Plaintiffs. Linda Carroll appeared for Defendant.

**STATEMENT OF FACTS**

Plaintiffs (the taxpayers) filed their personal income tax return for tax year 1996 in June 2000. Defendant (the department) received the return on June 27, 2000. The department denied the requested refund because the return was filed more than three years after the due date. See ORS 314.415(1)(b)(A).<sup>1</sup> The taxpayers filed a written objection with the department, claiming that their tax preparer had been misled by remarks made by a department employee at a continuing education course. The department's position did not change after the written objection. This appeal followed.

Mr. Parker and Ms. Crum attended a Portland State University tax course sometime during the fall of 1999 "in preparation for the upcoming filing season." (Ptf's' Mar 28, 2001, Ltr at 1.) Ms. Crum testified that at the beginning of the department's

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<sup>1</sup> Unless otherwise noted, all references to the Oregon Revised Statutes are to 1999.

portion of the course a department employee told the class that "[e]veryone is going to be happy. We are now fully tied to federal law." No exceptions were noted by the employee. Ms. Crum further testified that after the comment was made, participants in the class clapped.

Mr. Parker testified that he knew the IRS would process the federal refund even though the return was filed more than three years after the original due date. Therefore, he advised his clients that he would file their return after the filing season. He submitted *Weisbart v. United States*, 222 F3d 93 (2<sup>nd</sup> Cir 2000), in support of his understanding of federal law. Indeed, he testified that the taxpayers received their federal refund.

The department submitted portions of their annual updates for tax years 1998 through 2001. The pages submitted are those pages that discuss the relation of Oregon income tax law to federal tax law. The page submitted for 1998 has a topic labeled "Permanent reconnect." (Def's Ex A at 11.) Defining the topic are lines stating "[d]efinition of taxable income, not:" "[e]stimated tax", "[c]redits" or "[a]dministrative provisions." (*Id.*) Plaintiffs submitted a page from the 2001 update course labeled "Changes For Tax Year 2001." The background paragraph states that "Oregon has generally connected to changes in the IRC that affect taxable income[.] \* \* \* Beginning in 1997, Oregon tax law automatically connects to changes in the definition of taxable income as they are incorporated in the IRC \* \* \* ." (Ptf's' Ex 1 at 6.)

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## COURT'S ANALYSIS

The only issue in this case is whether the department should be estopped from denying the requested refund even though the return was filed more than three years after the due date. See ORS 314.415(1)(b)(A). Plaintiffs raise a claim of estoppel against the department. Estoppel is granted in limited circumstances when certain elements have been met. The Oregon Supreme Court held in *Johnson v. Tax Commission*, 248 Or 460, 463-464, 435 P2d 302 (1967), that:

"The policy of efficient and effective tax collection makes the doctrine of rare application. It could only be applied when there is proof positive that the collector has misinformed the individual taxpayer and the taxpayer has a particularly valid reason for relying on the misinformation and that it would be inequitable to a high degree to compel the taxpayer to conform to the true requirement."

In order for Plaintiffs to successfully prove estoppel, they must show that: 1) the department misled them by its conduct, 2) they had a good faith reliance on the conduct; and 3) they were injured by their reliance on the department's conduct. *Sayles v. Dept. of Rev.*, 13 OTR 324, 328 (1995). See also *Portland Adventist Hospital v. Dept. of Rev.*, 8 OTR 381, 388 (1980) and *Cascade Manor, Inc. et al v. Dept. of Rev.*, 5 OTR 482, 486-487 (1974).

Estoppel is more difficult to prove where the alleged misleading conduct is oral misinformation. That is because "[t]here are many possibilities for misunderstanding with oral communication." *Mahler v. Dept. of Rev.*, 11 OTR 367, 370 (1990) (cited with approval in *Schellin v. Dept. of Rev.*, 15 OTR 126, 132 (2000)). On the other hand, written information "is given greater weight than mere testimony." *Schellin*, 15 OTR at 132.

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Plaintiffs, through their accountant, relied on statements made at a tax course that was held "in preparation for the upcoming [1999] filing season." (Ptf's' Mar 28,

2001, Ltr at 1.) By Mr. Parker's own statement, the course applied to tax year 1999. There was no evidence, via testimony or exhibits, that the statements made by the department employee had any relevance to tax year 1996. Further, the written materials submitted by the parties, although for different tax years, clarify the oral statement by pointing out that Oregon's connection to federal tax law applies only to the definition of taxable income. Assuming without deciding that the oral statement was misleading, this court has previously held that "[w]hen written materials containing accurate information and advice are given to taxpayers, taxpayers may not continue to rely on an understanding based on oral representations or discussions which are contrary to the written information." *Smith v. Dept. of Rev.*, 13 OTR 206, 210 (1994).

### **CONCLUSION**

For the reasons stated above, the court finds that estoppel does not apply against the department. Because Plaintiffs' personal income tax return for tax year 1996 was filed in June 2000, the department correctly denied Plaintiffs' refund. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

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

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SALLY L. KIMSEY  
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 SALLY L. KIMSEY ON SEPTEMBER 24, 2002. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 24, 2002.**