

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

WILLIAM RAY SMITH,)	
)	
Plaintiff,)	No. 010921C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiff has appealed Defendant's state income tax assessments for 1990, 1991 and 1993. Defendant asserted in its Answer that Plaintiff's appeal was untimely filed for all three tax years and asked the court to dismiss the case.

The court heard argument on the motion to dismiss November 19, 2001. The hearing was conducted by telephone. Plaintiff appeared on his own behalf. Defendant appeared through Ms. Christi Daniken, an Auditor with the Department of Revenue.

STATEMENT OF FACTS

Defendant issued assessment notices for 1990 and 1991 on August 28, 1995. Plaintiff timely appealed those assessments to the Oregon Department of Revenue (department) and, following an administrative hearing on October 9, 1996, Defendant issued an Opinion and Order on November 14, 1996, upholding the assessments. (Def's Ex C.) Both the assessment notices and the Opinion and Order were mailed to Plaintiff's home address at 4479 Corn Creek Road, Days Creek, Oregon 97429. The Opinion and Order was sent by certified mail. The assessment for 1993 was issued August 5, 1998, and was mailed to Plaintiff via "General Delivery", Days Creek, Oregon 97429. The

change of address to general delivery was made at the Plaintiff's request because he was having difficulty with his mail. None of the correspondence sent by the department was returned as undeliverable or refused. Plaintiff's Complaint was filed with the Tax Court on July 10, 2001. Plaintiff filed for chapter 13 bankruptcy on February 26, 1996, and the court issued an order January 28, 2001, discharging Plaintiff "from all debts provided for by the plan." (Ptf's Ex F.) Plaintiff did not list the department as a creditor in the bankruptcy proceeding because he did not feel he owed the department any money.

COURT'S ANALYSIS

Under the law in effect at the time the department issued its Opinion and Order, Plaintiff had sixty days in which to file a Complaint with the Tax Court. ORS 305.560(1)(1995). The Opinion and Order was issued November 14, 1996. Plaintiff's Complaint was filed more than three years after the Opinion and Order was issued, well beyond the 60-day appeal period. Plaintiff insists he did not receive a copy of the Opinion and Order and that if he had received that document he would have forwarded it to the bankruptcy trustee. The court does not accept that explanation. The court originally understood Plaintiff to claim he did not receive the assessments for 1990 and 1991. Plaintiff then backed away from that position when the court noted that the department's Opinion and Order indicates in the second full paragraph that Plaintiff's appeal to the department was timely filed from the assessment notices. (Def's Ex C.) Moreover, in spite of Plaintiff's contention that it was in his best interest to submit the Opinion and Order to the bankruptcy court, other statements made by Plaintiff indicate that he was trying to conceal his state income tax liability from that tribunal. Plaintiff stated that when he attempted to inform the court that he owed money to the federal IRS the bankruptcy judge

asked Plaintiff whether he knew how much he owed the IRS and that when Plaintiff responded that he did not believe he owed them any money the judge instructed him not to list the IRS as a creditor. Following the same logic Plaintiff determined not to inform the bankruptcy court that the state believed Plaintiff owed it money for unpaid income taxes. This determination was made in spite of the fact that Plaintiff had received several assessment notices and had a hearing with the state department of revenue. In addition, Plaintiff's statements about mail difficulties is too generalized for the court to accept. Plaintiff indicated that he had experienced trouble with his mail "on and off" for several years. Plaintiff knew he had a decision coming from the department following the hearing and should have made arrangements to ensure reliable receipt of that and other correspondence.

Turning to the assessment for 1993, the notice was mailed to Plaintiff via general delivery. Plaintiff acknowledges that he had notified the department of this address sometime back in 1995 or so. Plaintiff had no specific recollection of receiving the assessment notice but in his defense argues that he would likely not have done anything with it because he was instructed by the bankruptcy court not to address any billing issues during the pending bankruptcy. The court finds this explanation inadequate. The appeal deadline was 90 days from the August 5, 1998, notice of assessment. ORS 305.280(2) (1997). Plaintiff missed that deadline by nearly three years. It appears Plaintiff simply disregarded the department's 1993 assessment. This may be understandable given the difficulties Plaintiff was experiencing with a pending bankruptcy and mounting tax liabilities at both the state and federal level. Ignoring the assessment, however, was not prudent.

CONCLUSION

After considering Defendant's request to dismiss the Complaint in light of the evidence adduced at the hearing, the court concludes the Complaint was in fact untimely as to all three tax years. Accordingly, the court is granting the motion to dismiss.

IT IS THE DECISION OF THIS COURT that Plaintiff's Complaint for 1990, 1991 and 1993 is dismissed.

IT IS FURTHER DECIDED that all other motions are denied.

Dated this _____ day of November, 2001.

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 NOVEMBER 27, 2001. THE COURT FILED THIS DOCUMENT ON NOVEMBER 27, 2001.