

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Income Tax

GRANT D. SHAFER and MARJORIE E.)
SHAFER,)
)
Plaintiffs,) No. 010995A
)
v.)
)
DEPARTMENT OF REVENUE,)
STATE OF OREGON,)
)
Defendant.) **DECISION AND JUDGMENT**

This appeal arises from the Department of Revenue's disallowance of expenses claimed on the Shafers' 1997 income tax return. Mr. Shafer was present at the proceedings, as was Anna Conaway, an Enrolled Agent. The Department of Revenue was represented by its employee, Kay Moreau.

STATEMENT OF FACTS

There is an issue as to the timeliness of this appeal. The first aspect of the question of timeliness relates to when the appeal was filed. The sequence of events is as follows:

May 22, 2001: The Notice of Assessment was made and mailed to the Shafers.

June 24, 2001: Ms. Conaway sent a letter disputing the assessment to the Department of Revenue.

July 5, 2001: The Department of Revenue sent a letter to Ms. Conaway stating that the appeal is to the Magistrate Division of the Oregon Tax Court, with the statement that the appeal must be filed within ninety days of the assessment.

August 23, 2001: The Court received the Complaint, which had been sent by

“Priority Mail” via the United States Postal Service. The postmark is unreadable. The ninety day appeal period had lapsed three days earlier. Ms. Conaway testified that she had mailed the complaint on August 16th.

The second element as to the filing of the appeal relates to who filed the appeal. The only signature on the document is Ms. Conaway's, who verified the complaint as the Shafers' representative. Ms. Conaway has the status of an Enrolled Agent with the Internal Revenue Service. When questioned, Ms. Conaway testified she had no license from the Oregon Board of Tax Service Examiners.

COURT'S ANALYSIS

The Shafers have not filed a timely appeal in this court. The reason is not because the Complaint was received by the court on August 23, 2001, after the ninety day limit set out in ORS 305.280¹ for appealing acts of the Department of Revenue. Instead, this appeal must be dismissed because, as of yet, a Complaint has not been filed at all.

The particular problem with the document that the court received on August 23rd is that it was neither filed by the Shafers, nor was it filed by an individual authorized by the state of Oregon to represent taxpayers. ORS 305.230 sets out the individuals who may act as representatives before the court. It does not include persons recognized as Enrolled Agents by the federal government. As Ms. Conaway lacks a license to represent taxpayers in the state of Oregon, she cannot appear as a representative. The document filed by her has no effect.

Is the court therefore dismissing the Shafers' appeal because of a technicality? If so, it is probably not because of one error, but three. The first mistake is that the initial

¹All references to the Oregon Revised Statutes are to 1999.

attempt to appeal, done in June, was made to the wrong entity. The second error is that the appeal to the court was mailed too late. The third error is that the appeal was filed, not by the Shafers, but by an individual who had no ability to represent taxpayers in the state of Oregon.

However, the conclusion that the Shafers' appeal must be dismissed does not preclude the eventual ability of the Shafers to contest the disputed taxes. ORS 305.280(3) was enacted to assist taxpayers caught in this situation. Under its terms, the Shafers may revive their protest by paying the tax. Paying the tax gives the Shafers new appeal rights, and they may then come again to the Oregon Tax Court. Next time, if their appeal is filed timely, by an individual with the ability to appear before the Oregon Tax Court, the merits of the assessment will be determined.

CONCLUSION

IT IS HEREBY ADJUDGED AND DECREED that this appeal must be dismissed.

Dated this ____ day of January, 2002.

SCOT A. SIDERAS
PRESIDING MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SIDERAS ON JANUARY 18, 2002. THE COURT FILED THIS DOCUMENT ON THAT SAME DATE.