

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

EARL A. DOMAN and DONNA DOMAN, )  
 )  
 Plaintiffs, ) No. 011189D  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION AND JUDGMENT**

Plaintiffs appeal Defendant's computation of a penalty for failure to file their Oregon income tax return for tax year 1999. A telephone trial was held on Monday, May 20, 2002. Mr. Earl Doman appeared on behalf of Plaintiffs. Ms. Linda Carroll, Tax Auditor, appeared on behalf of Defendant.

**STATEMENT OF FACTS**

The parties agree to the following facts. Plaintiffs' Oregon personal income tax return was due on April 17, 2000. On May 16, 2000, Plaintiffs made a tax payment of \$3,611, the full amount of their income tax liability for tax year 1999. Plaintiffs' return was not filed with Defendant until April 13, 2001.

Defendant assessed Plaintiffs two penalties. First, Defendant assessed a 5 percent penalty for failure to pay the tax due by the due date. ORS 314.400(1).<sup>1</sup> Plaintiffs agree with Defendant that it correctly computed this penalty.

Second, Defendant assessed a 20 percent penalty because Plaintiffs did not file their tax return within three months of the due date, including extensions, or August 15, 2000. ORS 314.400(2). While Plaintiffs agree that they did not submit their

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<sup>1</sup>All references to the Oregon Revised Statutes are to 1999.

return by August 15, 2000, they dispute Defendant's method of calculating the penalty.

Mr. Doman testified that the 20 percent penalty should be computed on the tax to pay as of the extended due date, August 15, 2000. Because Plaintiffs paid the tax prior to August 15, 2000, Mr. Doman concluded that the penalty amount should be zero.

Ms. Carroll testified that the 20 percent penalty should be computed on the tax to pay as shown on the tax return, without regard to any payments made after the tax return due date of April 17, 2000. She testified that the tax to pay shown on the return is Plaintiffs' tax liability reduced by credits and withholdings. Ms. Carroll testified that "credits" do not include payments made after the date the return was due, without extension(s).

### **COURT'S ANALYSIS**

The issue before the court is the computation of the 20 percent penalty when a taxpayer files a return more than three months after the due date.<sup>2</sup> ORS

314.400(2)(a)(A) sets forth how the amount is computed:

"There shall be added to the amount of tax required to be shown on the report or return a failure to file penalty of 20 percent of the amount of such tax; \* \* \*." (Emphasis added.)

ORS 314.400(6) describes the "amount of tax" as follows:

"\* \* \*the amount of tax required to be shown or that is shown on the report or return shall be reduced by the amount that is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax that is claimed on the report or return." (Emphasis added.)

The parties agree that the amount of tax shown on Plaintiffs' income tax return

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<sup>2</sup>For the sole purpose of determining when the 20 percent penalty will be added to the tax shown on the return, Defendant promulgated a rule requiring that the return must be filed within three months after the due date. The three month period is "measured from the last day of any extension granted to file the return." OAR 150-314.400(2).

for tax year 1999 was \$3,611. ORS 314.400(6) permits the tax shown on the return to be reduced by payments and tax credits.

Beginning with Plaintiffs' first allegation that the tax payment made by Plaintiffs in May 2000 is a tax credit, the court finds that the law makes a clear distinction between a "tax credit" and a "tax payment." For example, tax credits and other related tax credit information for individuals are found in ORS Chapters 314 through 316. In these ORS chapters, tax payments are not specifically listed as tax credits. Tax payments are discussed in separate subsections, e.g., ORS 316.417, or ORS 316.557. In computing the amount of tax, Defendant was correct in its conclusion that Plaintiffs' tax payment was not a tax credit and cannot reduce the amount shown on the return for the purpose of computing the penalty.

In interpreting ORS 314.400(6), Plaintiffs incorrectly conclude that "the date prescribed for payment of the tax" was the extended due date of August 15, 2000, not the original due date of April 17, 2000. The time prescribed for payment of tax is found in ORS 314.395(1) which reads:

"The tax shall be paid to the Department of Revenue at the time fixed by ORS 314.385 for filing the return without regard to extensions. (Emphasis added.)

ORS 314.385 sets the state filing date for personal income tax returns to correspond to the due date of an individual's federal tax return. For purposes of tax year 1999, the due date for timely filing of federal and state income tax returns and paying the tax due was April 17, 2000. ORS 314.395(1) and ORS 314.385. Plaintiffs' payment was made on May 16, 2000. Plaintiffs' tax payment was made after the date (April 17, 2000) prescribed for payment of tax and cannot reduce the amount shown on the tax return for purpose of computing the penalty. See OAR 150-314.400(1)(2)(c), example 5 (January, 1996.)

In accordance with Oregon statutes, the court concludes that Defendant has properly computed the 20 percent penalty assessed to Plaintiffs.

**CONCLUSION**

Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that Plaintiffs' appeal is denied.

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

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JILL A. TANNER  
PRESIDING MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON  
JULY 19, 2002. THE COURT FILED THIS DOCUMENT ON JULY 19, 2002.**