

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

JAMES HARP,	)	
	)	
Plaintiff,	)	No. 020007E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	<b>DECISION AND JUDGMENT OF</b>
Defendant.	)	<b>DISMISSAL</b>

This matter is before the court on Defendant's Motion to Dismiss, which was filed as part of its Answer on January 28, 2002. The court discussed the motion with the parties during the case management conference held March 6, 2002. James Harp appeared on his own behalf. Anthony King, Auditor, appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the department."

**STATEMENT OF FACTS**

Taxpayer failed to file personal income tax returns for 1996 and 1997. In July 1998, the department sent taxpayer a request to file returns for both years. In August 1998, having not received returns for either year, the department sent taxpayer demand to file letters. In response to these letters, taxpayer sent the department a note advising it he did not have to file returns for these years because he did not have income as it is defined by federal law. Based on the information available to it, the department determined taxpayer did have taxable income and issued assessment notices on November 20, 1998. The assessment notices advised taxpayer to appeal to the Magistrate Division of the Oregon Tax Court if he disagreed with the assessments.

Sometime after receiving the assessment notices, taxpayer contacted Mr. King at

the department and told him he did not agree with the assessments. Mr. King advised taxpayer he needed to appeal the assessments to “Magistrate.” Mr. King believes he provided taxpayer with the address of the court. Taxpayer, believing “Magistrate” referred to a branch within the department, mailed an appeal letter to the department on February 22, 1999. The department, treating the letter as a request for a conference, sent taxpayer a letter informing him its conference unit was experiencing a backlog and would not get to his request for four to six weeks. Taxpayer waited for a response and subsequently followed up with another letter in February 2000. Taxpayer said he did not receive any response. In September 2000, taxpayer sent another letter to the department. Taxpayer said Mr. King responded by asking to see some of his records. On March 29, 2001, taxpayer filed returns for both years with the department. On December 7, 2001, taxpayer submitted another appeal letter to the department. The department forwarded this letter to the court. The court treated the letter as a complaint and opened a case for taxpayer.

Taxpayer explained that during this time period he had been in contact with Mr. King and that he was advised to go to “Magistrate.” Mr. King recalls advising taxpayer on several occasions to appeal to this court. Mr. King requests that the court dismiss the 1996 tax year because taxpayer failed to appeal from the assessment notice within 90 days. He does not request that the 1997 tax year be dismissed but, instead, requests time to audit the return.

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## **COURT’S ANALYSIS**

ORS 305.280(2)<sup>1</sup> provides that an appeal from a notice of assessment “**shall** be filed within 90 days after the date of the notice.” (Emphasis added.) ORS 305.265(14) states that assessments “**shall** be final after the expiration of the appeal period specified in ORS 305.280.” (Emphasis added.) The department issued the assessment notices on November 20, 1998. The court did not receive an appeal from taxpayer until January 9, 2002, a time well beyond the 90-day appeal period. Under the statutes, taxpayer’s appeal is not timely.

An exception to the 90-day appeal period is found in ORS 305.280(3), which allows a taxpayer to file an appeal with the court within two years of when the assessed tax, penalty, and interest are paid.<sup>2</sup> Taxpayer completed payment of the 1996 liability on February 22, 1999, and he completed payment of the 1997 liability on March 25, 1999. Taxpayer’s appeal was filed with the court on January 9, 2002. Taxpayer filed his appeal more than two years after he paid the liabilities. As a result, the exception to the 90-day appeal requirement has not been met. Consequently, taxpayer’s appeal is not timely and must be dismissed.

Taxpayer argues that throughout the past three years, he has been in contact with the department and thought he was appealing to the right forum by sending letters to the department. Taxpayer’s misunderstanding about the word “Magistrate” being a branch of the department rather than a division of the Tax Court, however, is not a sufficient basis for

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

<sup>2</sup> ORS 305.280(3) provides:

“Notwithstanding subsection (2) of this section [relating to the 90-day appeal requirement], an appeal from a notice of assessment of taxes \* \* \* may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.”

excusing the time limit. The assessment notices clearly referred taxpayer to appeal the notices to the court, and the notices included the court's address. Further, nowhere in taxpayer's December 7, 2001, letter that he sent to the department, which the department forwarded to this court, does he mention the word "Magistrate." If he was intending to appeal to the Magistrate Division as alleged, it seems he would have included the word "Magistrate" somewhere in his letter. In addition, attached to his letter is an information circular published by the department entitled "How to Appeal a Notice of Deficiency or Assessment." It clearly advises a taxpayer wanting to appeal an assessed tax to file an appeal with the Magistrate Division of the Oregon Tax Court. It advises a taxpayer on how much to pay for a filing fee and it further provides the court's address, telephone number, and internet address. Notwithstanding this information, taxpayer sent his appeal letter to the department.

In summary, the assessment notices advised taxpayer to appeal to this court, Mr. King advised him to appeal to this court, and the information circular advised taxpayer to appeal to this court. Instead, taxpayer ignored these instructions and sent his appeal letter to the department. It is the court's opinion that taxpayer had no reasonable basis for his alleged misunderstanding and, as a result, he should not be excused from failing to timely file his appeal with this court.

The court would further note that even if taxpayer was somehow reasonably misled into thinking he could send his appeal letter to the department, his first letter was not sent until February 22, 1999. This was more than 90 days after November 20, 1998, when the assessment notices were issued. As a result, his initial "appeal" was not within the 90-day period and any misadvice on where to appeal does not change the fact the initial "appeal" was not timely.

The department asks the court to dismiss only the 1996 tax year. For 1997, the department requests that the court grant it time to audit the return. This is presumably because the 1997 return was filed within three years of its due date and, pursuant to ORS 314.415, is within the period allowed for a refund. The 1996 return was not filed within this period and, consequently, a refund may not be issued for 1996.

Under ORS 305.265(10)(b), the department has authority to accept the filing of returns submitted by taxpayers who have been assessed a tax and have failed to timely file their appeals. It is under this statute the department has authority to review taxpayer's 1997 return. However, this authority is limited to the department. The court does not have authority to review the return unless taxpayer filed his appeal with the court within the requisite 90 days (or within two years of payment) or unless he filed the return with the department within 90 days of assessment. See ORS 305.265(10)(d). The return was not filed within 90 days of assessment. As a result, there is simply no basis for the court to review the 1997 return. The reasons for dismissing the 1996 tax year apply with equal force to the 1997 tax year.

### **CONCLUSION**

It is the court's conclusion that taxpayer's appeal of tax years 1996 and 1997 should be dismissed because he failed to timely file his appeal with the court. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that this matter be dismissed.

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

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COYREEN R. WEIDNER  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON  
MAY 15, 2002. THE COURT FILED THIS DOCUMENT ON MAY 15, 2002.**