

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DANA A. TAYLOR,)	
)	
Plaintiff,)	TC-MD 020016D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	DECISION GRANTING
)	DEFENDANT’S MOTION
Defendant.)	FOR SUMMARY JUDGMENT

Plaintiff appeals Defendant's Notices of Determination and Assessment, dated February 2, 2001, for the 1995, 1996, and 1997 tax years. In response to Plaintiff's Complaint, Defendant filed a Motion for Summary Judgment (Motion) on February 21, 2002. Defendant's Motion states that Plaintiff's Complaint "is untimely." There is no dispute of fact. Oral argument was held on Monday, August 26, 2002.

Mr. Robert J. Gunn, Attorney at Law, Gunn & Gunn, appeared on behalf of Plaintiff. Ms. Melisse Cunningham, Assistant Attorney General, appeared on behalf of Defendant.

On January 16, 2003, Plaintiff filed its Supplemental Memorandum to Plaintiff's Response to Defendant's Motion for Summary Judgment (Supplemental Memorandum). Defendant filed its Reply to Plaintiff's Supplemental Memorandum to Plaintiff's Response to Defendant's Motion to Dismiss (Reply) on February 18, 2003.

STATEMENT OF FACTS

On February 2, 2001, Defendant sent its Notices of Determination and Assessment for tax years 1995, 1996, and 1997 to Plaintiff at his last known address. In addition, Plaintiff's representative, Mr. Gunn, requested that Defendant send copies of the notices to him. As requested, Defendant sent copies to Mr. Gunn.

On January 10, 2002, Plaintiff filed his Complaint with the Tax Court. Plaintiff alleged that “defendant lacked jurisdiction sufficient to assess income taxes against the plaintiff and the said assessments are therefore void.”¹ (Ptf’s Compl, paragraph 2.) Defendant’s Motion stated that the “appeal period has expired and the assessments at issue are final,” citing ORS 305.265, ORS 305.280, and *Arnold v. Dept. of Rev.*, 12 OTR 69 (1991). (Def’s Mem of Law in Support of Mot for Summ J at 2.) Further, Defendant stated that “caselaw on the issue of whether courts have personal jurisdiction over defendants is not applicable to the issue of the department’s authority to assess taxes or to the issue of whether the court may consider an appeal filed after the statutory time limits have expired.” (Def’s Reply to Plaintiff’s Resp to Mot for Summ J at 3-4.)

COURT'S ANALYSIS

Plaintiff alleges that in order for Defendant to assess Plaintiff for income taxes Defendant must obtain jurisdiction; “[t]he jurisdiction must precede the assessment.” (Ptf’s Supplemental Mem at 2.) (Emphasis in original.) With respect to the facts of this case, Plaintiff alleges that the court must hear the merits of Plaintiff’s appeal that he is not a resident of Oregon because Defendant lacks the authority to impose an assessment.

Plaintiff ignores the statutory requirements and steps taken by Defendant before it issued the Notices of Determination and Assessment (Notices), dated February 2, 2001. Prior to issuing its Notices, Defendant contacted Plaintiff, asking him to file an Oregon tax return or explain why he was not required to file a return.² Plaintiff was offered an

¹ Plaintiff’s Complaint requested a full refund of money seized by Defendant from one of Plaintiff’s family members. Defendant’s Amended Answer, filed February 21, 2002, stated that a full refund was made. Plaintiff’s representative acknowledged that the refund had been made and this issue resolved.

² ORS 314.370 provides: “If the Department of Revenue is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, it

opportunity to persuade Defendant that he was not a resident of Oregon and had no income subject to Oregon tax. Defendant states in its Notice that Plaintiff did not file a return nor show why a return was not required to be filed. Specifically, Defendant alleges that Plaintiff failed to submit documentation to support Plaintiff's conclusion that he was not subject to Oregon income tax as a resident or non-resident. Plaintiff alleges in his Complaint that he "notified defendant that he was not an Oregon resident and was not subject to assessment of the Oregon income tax but defendant has rejected plaintiff's claims, assessed income tax pursuant to its own estimates * * *." Considering both parties representation of the facts, Plaintiff was offered an opportunity to persuade Defendant that he should not be subject to Oregon income tax. Defendant was not persuaded. Using the best available information, Defendant assessed Plaintiff.³ Soon after Plaintiff received those assessments, he contacted his attorney, Mr. Gunn. Mr. Gunn contacted Defendant on March 19, 2001. In his letter to Defendant's representative, Ms. Jan Hunt, Mr. Gunn states that Plaintiff received the notices and Mr. Gunn requested that a copy of the notices be sent to him.

It is apparent to the court that Plaintiff did not agree with Defendant's assessment. Plaintiff sought legal counsel to dispute those assessments. ORS 305.265(15) provides that an "[a]ppeal may be taken to the tax court from any notice of assessment." ORS 305.280(2) provides that an appeal to the Magistrate Division of the

may require from the taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of the applicable tax law." Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

³ ORS 305.265(10)(a) provides: "In the case of a failure to file a report or return on the date prescribed therefor * * * the department shall determine the tax according to the best of its information and belief, assess the tax plus appropriate penalty and interest, and give written notice of the failure to file the report or return and of the determination and assessment to the person required to make the filing.

Oregon Tax Court from any notice of assessment issued by Defendant with respect to personal income tax “shall be filed within 90 days after the date of the notice.”

Defendant’s notices were issued February 2, 2001. Plaintiff filed his Complaint on January 10, 2002.

Plaintiff would like this court to distinguish the statutory requirements of filing a timely appeal based on whether a taxpayer is or claims he is a resident or non-resident of the state. That would result in an arbitrary application of the law. The law requires Defendant to follow certain statutory requirements in making assessments. Those statutory requirements apply equally to anyone it believes is subject to Oregon income tax. They do not apply differently to those who are residents and those who are not residents of Oregon. There is no evidence Defendant has not followed the statutory requirements in making its assessment. Once Defendant makes its assessment, the law provides an opportunity for the one assessed to challenge the assessment. The law specifically provides that the challenge must be made within 90 days of the date of assessment.

Plaintiff asks this court to ignore the statutory requirement that Plaintiff is required to file a timely appeal. Instead, even though Plaintiff filed his appeal beyond the 90 day period, Plaintiff asks this court to grant him an opportunity to argue that Defendant’s assessment is erroneous. The law requires Plaintiff to file a timely appeal in order to afford him an opportunity to argue the merits of Defendant’s assessment. The court has clearly stated that “[t]o have the assessments declared void or invalid, plaintiffs were obligated to appeal within the statutory time allowed. Since they did not, the court cannot consider any challenge to the assessments on the merits.” *Arnold v. Dept. of Rev.*, 12 OTR 69, 71 (1991). Plaintiff failed to follow the statutory requirements for filing a timely appeal. Plaintiff’s Complaint is dismissed.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion for Summary Judgment is granted and Plaintiff's Complaint is dismissed.

Dated this _____ day of April, 2003.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON APRIL 1, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 1, 2003.