

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

RALF TOWNSLEY and GRACE L.)
TOWNSLEY,)
)
Plaintiffs,) No. 020911F
)
v.)
)
DEPARTMENT OF REVENUE,)
STATE OF OREGON,)
)
Defendant.) **DECISION AND JUDGMENT**

This matter is before the court on Defendant's motion to dismiss, filed with its Answer on June 5, 2002, requesting that the Complaint be dismissed. A case management conference was held on August 21, 2002.

STATEMENT OF FACTS

This appeal concerns tax years 2000 and 2001. Plaintiffs' return for tax year 2000 and their check for \$679 was received by Defendant on May 11, 2001. Defendant assessed a 5 percent penalty and interest. That amount was received by Defendant on June 11, 2001. The return for tax year 2001 with a payment of \$1,688 was received by Defendant on April 15, 2002. For tax year 2000, Plaintiffs filed a part-year resident return, indicating that they were Oregon residents from August 7, 2000, through December 31, 2000.¹ Plaintiffs filed a nonresident return for tax year 2001. Plaintiffs ask "that some fair amount of taxes * * * be returned to him as this has been a financial hardship." (Ptf's Compl.) Defendant points out that these taxes were self-assessed.

¹ It is unclear to the court if Plaintiffs lived in Oregon during the year 2000. Their Complaint states that "Ralf only worked in the state of Oregon, (approximately Aug 2000 to March 2001)." If Plaintiffs never resided in Oregon they may wish to consider filing an amended return as nonresidents. Such an amended return could result in at least a partial refund.

COURT'S ANALYSIS

Claim for relief from taxation

Defendant's duty to enforce the tax laws is set forth in ORS 305.120(1).² It reads as follows:

"The Department of Revenue shall see that revenue officers comply with the tax and revenue laws, that all taxes are collected, that complaint is made against any person violating such laws and that penalties prescribed by such laws are enforced."

Taxes are imposed on part-year residents pursuant to ORS 316.037(2).

Nonresidents are also required to pay taxes on their Oregon-source income. ORS 316.037(3).

The taxes shown on Plaintiffs' 2000 return were due on April 15, 2001. When taxes are not paid when due, "the difference between the tax computed to be owing by the taxpayer and the tax submitted with the return is considered as 'assessed' on the due date of the return." ORS 314.407(1). The court finds that Defendant properly assessed the taxes pursuant to the statute.

Claim for relief from interest and penalties

ORS 314.400(1) sets forth when Defendant must impose the 5 percent penalty.

It reads as follows:

"(1) In the case of a failure:

"(a) To pay a tax at the time the tax becomes due, there shall be added to the amount of tax that is shown as tax on the report or return filed by the taxpayer a delinquency penalty of five percent of the amount of such tax[.]"

Defendant is required to impose the 5 percent penalty by the statute cited above.

The court finds that Defendant properly assessed the penalty pursuant to the statute.

² All references to the Oregon Revised Statutes (ORS) are to 1999.

CONCLUSION

Plaintiffs are subject to the assessed taxes, 5 percent penalty and interest under the statutes cited above. Now, therefore,

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

Dated this _____ day of October, 2002.

SALLY L. KIMSEY
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON
OCTOBER 2, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 2, 2002.**