

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DONNA JEAN LEPLEY, aka DONNA JEAN KINDRED,	)	
	)	
Plaintiff,	)	TC-MD 021017C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE, STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appealed Defendant's assessment for the 1988 tax year. Trial was held February 6, 2003, at Salem. Plaintiff appeared on her own behalf. Defendant appeared through Laurie Fery, an auditor with the Oregon Department of Revenue (department).

**STATEMENT OF FACTS**

On September 19, 2001, the department sent Plaintiff a request to file because it had not received a return from Plaintiff for 1988. The department received a copy of the 1988 return on October 23, 2001. The word "amended" was written at the top of that return. The department then received another copy of a 1988 return on October 30, 2001. The returns are identical and show a tax due of \$484.73 based on a filing status of married filing jointly. Plaintiff submitted a copy of the return with the Complaint. (Ptf's Comp at 4 and 5.)

In the Complaint Plaintiff states that the 1988 return was filed on August 12, 1989, and that the tax was paid at that time. In her initial case presentation (case-in-chief), Plaintiff testified that the return was filed in August 1989 and that she had filed an extension for that year. The extension form was not submitted into evidence. On cross examination Plaintiff acknowledged that at an earlier proceeding in this matter she may have stated that

the 1988 return was filed with the 1989 return, in 1992, and that the 1988 return may in fact have been filed in 1992, and not 1989. The department has no record of receiving a return from Plaintiff until October 2001 and no record of receiving a copy of the federal extension.

### **COURT'S ANALYSIS**

Plaintiff has appealed the department's assessment for 1988 and the primary question is whether the tax has been paid. Plaintiff insists she filed the return and paid the tax in either 1989 or 1992. Alternatively, Plaintiff argues that the return she submitted in October 2001 was merely a copy of the 1988 return submitted to the department as proof of an earlier filing and that, if the court concludes that the return was not filed in 1989 (or 1992), Plaintiff should be afforded an opportunity to file a return claiming a filing status of married separate as opposed to married joint. Defendant responds that it has no record of an earlier filing and no record showing that the tax was paid. Additionally, Ms. Fery argues that a taxpayer's filing status for Oregon must match the filing status taken on the federal return.

The statute places the burden of proof on the taxpayer to prove by a preponderance of the evidence that the tax has been paid. ORS 305.427.<sup>1</sup> Plaintiff has no written documentation to support her claim that the \$484 tax was paid back in 1989 or 1992, when the return was allegedly filed. Plaintiff testified that the bank she was using at that time, Far West Federal Savings and Loan, is "defunct" and that there is no way to obtain proof (such as a canceled check or bank statement) that she paid the tax. Plaintiff did not elaborate on the efforts taken to obtain the bank records. Given the conflicting testimony as to the year when the tax may have been paid, the lack of substantiation of the payment by Plaintiff and the absence of a record of the payment in the department's files, the court

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

concludes that Plaintiff has not met the burden of proof.

The court will not offer an advisory opinion as to whether Plaintiff can submit another 1988 return to the department with a filing status different from that appearing on the return previously submitted. As a related matter, Plaintiff objects to the department's claim that the return was first "filed" in 2001 because the return Plaintiff mailed to the department was merely a copy of a return allegedly filed in either 1992 or 1989. The objection was first made by Plaintiff in closing and seems to be linked to Plaintiff's desire to file another return with a different filing status if the court concludes Plaintiff did not file the return and pay the tax in 1992 (or earlier). In other words, the submission was merely intended as substantiation of an earlier filing and if the court concludes there was no earlier filing Plaintiff objects to being bound by the information in the "copy" submitted in 2001. The court will not be drawn into the question of whether the 2001 submission constituted a filing. Plaintiff appealed the assessment. The assessment is based on a filing status reported by Plaintiff on her federal return and on the state return Plaintiff swore under oath was filed in 1989 or 1992, a copy of which was submitted in 2001. Generally the filing status on the federal return determines the filing status on the Oregon return. See OAR 150-316.122.

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## CONCLUSION

Plaintiff has failed to prove by a preponderance of the evidence that the tax for 1988 was paid in 1989 or 1992, when Plaintiff allegedly filed the return. Now therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied and Defendant's assessment stands.

Dated this \_\_\_\_ day of February, 2003.

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DAN ROBINSON  
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 DAN ROBINSON ON FEBRUARY 28, 2003. THE COURT FILED THIS DOCUMENT ON FEBRUARY 28, 2003.**