

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

EDGAR T. NUMRICH,)	
)	
Plaintiff,)	TC-MD 030026B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

This case is before the court on Defendant's motion to dismiss, filed on February 19, 2003. A case management conference was held on April 8, 2003. Edgar T. Numrich participated on his own behalf. Jason Barbee and Mark Noble appeared for Defendant.

STATEMENT OF FACTS

Plaintiff appeals an income tax deficiency assessed for the 1976 tax year. The Notice of Assessment was mailed by Defendant on June 18, 1991. The immediate Complaint to the Oregon Tax Court was filed on January 22, 2003. The evidence reveals that no other earlier appeal was tendered for this 1976 tax year.

Plaintiff contends the statutory period for collection has elapsed. He cites ORS 314.037(2) and ORS 314.037(3)(a).¹

Defendant, in its Answer, contends the Complaint should be dismissed as untimely. Its representative cites ORS 305.275 and ORS 305.280.

ANALYSIS

Plaintiff's appeal to this court was submitted over 10 years after Defendant's initial

¹ All references to the Oregon Revised Statutes are to 2001.

Notice of Assessment. Under no feasible reading of the Oregon Revised Statutes may a protest be brought to and adjudicated by this court after such an extended length of time.

Plaintiff's references to ORS 314.037 are not helpful to his cause. That statute relates to Oregon's treatment of P.L. 101-140, Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) and Omnibus Budget Reconciliation Act of 1991 (P.L. 101-508).

Defendant's assessment is not barred by application of this statute.

ORS 314.037(3)(a) states "[i]f a deficiency is assessed against any taxpayer for a tax year beginning before January 1, 1991, and the deficiency, or any portion thereof, **is attributable to any retroactive treatment under this Act**, then any interest or penalty assessed under ORS chapter 305, 314, 316, 317 or 318 with respect to the deficiency or portion thereof shall be canceled." (Emphasis added). What this means is that had these federal changes resulted in a deficiency being assessed where there had not been one, it would be cancelled. That is not the case herein. The deficiency that Defendant assessed is not attributable to any retroactive treatment under that act; it is attributable to the existing law in effect in 1976. Therefore ORS 314.037 does not have any relevance to Plaintiff's case.

Plaintiff appealed to the court after the Defendant pursued collection through garnishment. However, that later action of garnishment does not give rise to an independent right of appeal. It is the earlier date of assessment that triggers the right of appeal; here that date was June 18, 1991. Plaintiff had 90 days from that date to appeal. He did not appeal until well over a decade after his right of appeal had expired.

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CONCLUSION

IT IS THE DECISION OF THIS COURT that the appeal is dismissed for the 1976 tax year; and

IT IS FURTHER DECIDED that Plaintiff's remaining motions are all denied.

Dated this ____ day of July, 2003.

JEFF MATTSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, 1163 STATE ST. N.E., 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 JEFF MATTSON ON JULY 3, 2003. THE COURT FILED THIS DOCUMENT ON JULY 3, 2003.