

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JAMES B. HILARY and MAE A. HILARY,)	
)	
Plaintiffs,)	TC-MD 030037B (Control)
)	030054B
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	
)	

JAMES HILARY and MAE HILARY,)	TC-MD 031071B
)	
Plaintiffs,)	
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal from the Department of Revenue’s (the department) assessments of certain income taxes for the years 1989, 1990, 1991, 1992, 1995, 1996, 1999, and 2000.¹ Those years at issue have been consolidated in the above three cases.

Tax years 1989, 1990, 1991, 1992, and 1999 were appealed in case TC-MD 031071B; tax years 1995 and 1996 in TC-MD 030054B; and tax year 2000 in TC-MD 030037B.

Plaintiffs seek to have penalties and interest imposed by the department reversed, to have taxes due for certain years abated, or to establish a payment plan with the department.

¹ The Notice of Liability Balance for tax year 1993 was attached to the Complaint in TC-MD 031071B but not one of the years listed in the Complaint as being appealed. That tax year has never been discussed during the proceedings.

During the course of their appeals, Plaintiffs filed some additional returns. The department then revised some of its estimates accordingly.

I. STATEMENT OF FACTS

Plaintiffs filed timely returns for 1989, 1990, and 1991. The department issued Notices of Liability Balance, which Plaintiffs timely protested. Subsequently, the department denied their protest on November 25, 1997. That was appealed to this court on February 23, 1998. After oral arguments, a Judgment of Dismissal² was filed August 12, 1999. Plaintiffs then **again** appealed those same years to the Magistrate Division of this court on November 10, 2003.

Plaintiffs filed their 1992 joint return on September 11, 1995. A Notice of Assessment was issued October 1, 1997, and was not appealed within the appropriate period. Taxes due for 1992 were discharged in Plaintiff James Hilary's bankruptcy. Plaintiff Mae Hilary was not affected by that bankruptcy action. The department later notified Plaintiff Mae Hilary of her individual liability for the 1992 taxes on September 10, 2003.

Defendant issued Notices of Deficiency on November 14, 2002, for the 1995 and 1996 tax years. Plaintiffs appealed to the Oregon Tax Court on February 14, 2003. Upon receipt of Plaintiffs' W-2s, the department reduced the 1995 tax due to \$9,134 and the 1996 tax due to \$1,184, both years to include 100 percent penalty and statutory interest.

Plaintiffs filed their 1999 return late on April 15, 2002. That return resulted in a self-assessed tax due. Plaintiffs seek to appeal that assessed amount they alone computed. Plaintiffs did not file an amended return prior to filing this appeal with the court.

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² TC-MD 980577 (1999).

A 2000 tax return was due on April 15, 2001. The 2000 return was dated August 10 and 12, 2001, but received by the department on April 15, 2002. Certain penalties were assessed by the department.

II. ANALYSIS

Plaintiffs' most recent appeal of taxes for years 1989, 1990, and 1991 follows an earlier appeal dismissed by this court. A decision of a Tax Court magistrate is final unless appealed to the Tax Court judge within 60 days. ORS 305.501(7).³ Plaintiffs failed to appeal the magistrate's decision to the Regular Division of this court; they may not then appeal to this division a second time.

Plaintiffs question the joint liability of Mae Hillary pursuant to ORS 316.567 for 1992 taxes. A timely appeal "shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no event later than one year after the act or omission has occurred, or the order or determination has been made." ORS 305.280(1). That was not done. Plaintiffs failed to appeal from Defendant's original assessments within the time provided by ORS 305.280. Defendant's notification in 2003 merely informed Plaintiff Mae Hilary of her continuing liability. Because that letter of information was not the initial act or omission, Plaintiffs have no right to appeal from that notice.

Plaintiffs seek to appeal self-assessed taxes for 1999 and 2000. Defendant argues that a taxpayer may not appeal a self-assessed tax. *See* ORS 305.275. Prior to appealing to this court, a taxpayer must receive a notice of deficiency, otherwise there is nothing to appeal. *Rosin v. Dept. of Rev.*, TC-MD 991142C (Dec 15, 1999).

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³ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

Plaintiffs seek to have the court determine that taxes due for 1989, 1990, 1991, 1992, 1995, and 1996 were discharged in bankruptcy. The Tax Court may decide questions arising under only the tax laws of the state of Oregon. *Hough v. Dept. of Revenue*, TC-MD 030073E (Apr 17, 2003); ORS 305.410(1). Questions regarding discharge of debt under bankruptcy fall under the exclusive jurisdiction of the Bankruptcy Court. *See Sayles v. Dept. of Revenue*, 13 OTR 324 (1995). As to tax years 1995 and 1996, Defendant requests damages pursuant to ORS 305.437. That request is denied.

In their appeal of taxes assessed for the year 2000, Plaintiffs seek to have penalties and interest abated. Penalties and interest imposed under ORS 314.400 are mandatory. Defendant followed the statutory scheme and assigned penalties for nonpayment and late filing. Despite Plaintiffs' assertions to the contrary, the evidence demonstrates the 2000 return was neither filed nor even signed by the due date. Penalty waivers pursuant to ORS 305.145 are within the discretion of Defendant. Plaintiffs' request for relief is outside the specialized jurisdiction of this court. ORS 305.410.

Finally, Plaintiffs ask the court to extend the payment due date for all those unpaid taxes until such time as their financial situation improves. All taxes due must be paid at the time the return is to be filed.⁴ ORS 314.395. Payment plans may be directly negotiated with Defendant.

III. CONCLUSION

For all years, Plaintiffs are either too late with their appeal or ask the court to grant relief that is not within its authority. Now, therefore,

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⁴ The statute, in relevant part, provides, "[t]he tax shall be paid to the Department of Revenue at the time fixed by ORS 314.385 for filing the return without regard to extensions." ORS 314.395(1) (1999).

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeals for 1989, 1990, 1991, 1992, 1995, 1996, 1999, and 2000 are denied;

IT IS FURTHER DECIDED that damages are not awarded.

Dated this ____ day of _____ 2004.

JEFF MATTSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 SEPTEMBER 1, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 1, 2004.