

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

EDWIN R. WARD,)	
)	
Plaintiff,)	TC-MD 030424A (Control);
)	030425A, 030426A
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

This is an appeal as to personal income taxes for the 1996, 1997, and 1998 tax years. Plaintiff was unrepresented. Defendant was represented by a member of its staff.

Plaintiff did not file personal income tax returns for the years at issue. Defendant estimated Plaintiff's income according to the best information available to it, assessed the tax, and imposed interest and penalty. Plaintiff requests that the court void the assessments based on the reasoning that they are fatally flawed.

Defendant has moved for damages, asserting this is a frivolous appeal.

I. STATEMENT OF FACTS

The court makes the following findings of fact:

A. *Plaintiff did not file Oregon personal income tax returns for the 1996, 1997, and 1998 tax years.*

This allegation was asserted by Defendant and uncontested by Plaintiff.

B. *Defendant did not, as to any of the tax years in dispute, issue a notice of proposed deficiency.*

Plaintiff alleged that Defendant issued notices of proposed deficiency as to the 1997 and 1998 tax years. Plaintiff's exhibits do not support that assertion. Rather, the documents are

Notices And Demand To File declaring that Plaintiff was required to file a return, had not done so, and that if no return was filed within 30 days Defendant would calculate the tax based on the best available information. As Plaintiff remained intransigent, Defendant issued Notices of Determination and Assessment for each tax year determining the amount of tax, interest, and penalty it sought from Plaintiff.

C. Information supported Defendant's calculation of tax.

Although the court did not order discovery in this case, it did schedule proceedings to accommodate Plaintiff's request for information under ORS Chapter 192. Defendant calculated its taxes using information from the Internal Revenue Service and state agencies, particularly the Department of Employment.

II. ANALYSIS

Plaintiff, in his original filing and a sequence of amended and corrected complaints, raised the following arguments.

A. The timeliness of the assessments

Plaintiff asserts that Defendant took no action against him until more than three years after it knew, or ought to have known from federal sources, that he owed tax to Oregon. Referencing Internal Revenue Code (IRC) section 6501(a), ORS 305.265,¹ ORS 305.305, ORS 314.410, and ORS 314.466, Plaintiff asserts that the assessments against him for all years are void as they were made beyond the period of limitation.

Plaintiff is wrong. IRC section 6501(a) does not apply to Oregon's application of its own revenue laws. The referenced Oregon statutes do not limit when Defendant might take action against those who ought to file an Oregon personal income return, but fail to do so. In fact,

¹ References to the Oregon Revised Statutes (ORS) may be to the 1995 or 1997 version, depending upon the year in controversy. As the relevant part of the statutes were not amended as to the particulars that apply here, the court will not pursue the distinctions further.

ORS 314.410(3)(a) specifically sets out that it does not apply when no return has been filed. Defendant's assessments are timely.

B. The Notices of Proposed Deficiency

Plaintiff asserts that Defendant either did not issue notices of proposed deficiency, or issued notices of proposed deficiency that did not contain the essential allegations of good faith and were not followed in a timely manner by the Notices of Determination and Assessment. That argument is misplaced.

Any reference to notices of proposed deficiency is without consequence in this appeal; defendant did not issue any. That was proper. Notices of proposed deficiency are used when, after a taxpayer files a return and pays a tax, Defendant subsequently determines that not enough tax has in fact been paid and seeks to recover the additional amount, specifically the deficiency, from a taxpayer. It does not apply when no return has been filed and no tax has been paid. *Compare* ORS 305.265(2) with ORS 305.265(10). Plaintiff's arguments as to the presence, absence, timing, or contents of what Plaintiff described as a notice of proposed deficiency do not carry weight.

C. The Notices of Determination and Assessment

Plaintiff asserts that the Notices of Determination and Assessment are fatally flawed in that they fail to state the origin of the alleged tax liability, are not verified under oath, and constitute bad faith.

The court sees no shortcomings in the Notices of Determination and Assessment. Plaintiff is superimposing the requirements for notices of proposed deficiency upon notices of determination and assessment. Notices of proposed deficiencies must contain a statement of the origin of the alleged tax liability, be verified under oath, and state that they are made in good faith. No such requirements apply to notices of determination and assessment. *Compare*

ORS 305.265(2), (3), and (5) with ORS 305.265(10).

The Notices of Determination and Assessment in this case unequivocally declare that Defendant asked Plaintiff to either file an Oregon return or show why a return is not due, and that Plaintiff has not complied. Each Notice of Determination and Assessment goes on to say that Defendant calculated a tax on the basis of the best information available to it. That is all the Notices of Determination and Assessment need to state in this situation.

D. The information from which Defendant calculated the tax

Plaintiff argues the assessments are flawed in that they rely upon erroneous information from the Internal Revenue Service. Plaintiff spoke of “naked assessments” and “dummy returns.” That point is not persuasive.

All that is required of Defendant in the face of Plaintiff’s failure to file a return or show why no return is due, is that Defendant calculate a tax according to the best information available to it. It is not necessary that the information be true. All that is required is that Defendant acquire the information under circumstances that give it some reliability and that the most credible of the information is used to calculate the tax.

The information from the Internal Revenue Service meets that standard. There is also the information Defendant acquired from other state agencies. Until Plaintiff provides his returns and if necessary demonstrates their credibility, Defendant’s summary qualifies as the best source of information from which to calculate the taxes.

E. Federal preclusion

Plaintiff asserted that Defendant may not act with respect to the years at issue because there has been no federal assessment.

There is no such requirement in the law. In fact, Defendant may act because there has not been a federal assessment. If there had been a federal assessment and Plaintiff had proof of a

timely federal appeal, ORS 305.305 would have the potential to waive penalties, suspend interest, extend the time for filing a Complaint or petition, or bar collection action. However, in this case there is no federal assessment or appeal. Although the Internal Revenue Service evidently identified Plaintiff as the subject of its inquiry, that level of attention does not preclude Defendant from taking action against Plaintiff. Defendant is free to assess taxes against Plaintiff despite the fact that the federal government has not.

F. Notice of Intent to Offset Federal Income Tax Refund

Plaintiff charged that Defendant prepared a false Notice of Intent to Offset Federal Income Tax Refund. The court disagrees. Until such time as Plaintiff prepares accurate Oregon returns, the tax as assessed by Defendant is Plaintiff's liability. Defendant's notice of an intention to collect those taxes was proper.

There remains the matter of Defendant's request for damages, in an amount not to exceed \$5,000, on the basis that this appeal has been instituted primarily for delay or is frivolous or groundless. The court will not award Defendant damages. Defendant did not use counsel. Its participation in this matter was limited to talking over the telephone for a relatively brief period of time on three occasions. Although Defendant did have to search its files in response to Plaintiff's request under ORS Chapter 192, Plaintiff had to pay the statutory fee to receive the materials. Any award of damages would be minimal. However, that reasoning applies only to this level of the Tax Court. Upon an appeal to the Court's Regular Division, the court could well apply different criteria.

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III. CONCLUSION

At one point Plaintiff remarked that he would file Oregon returns when it was shown that he had to. From the court's perspective, it would be in Plaintiff's best interests to decide that time is now. Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied. Defendant is not awarded damages.

Dated this _____ day of August 2004.

SCOT A. SIDERAS
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON AUGUST 16, 2004. THE COURT FILED THIS DOCUMENT ON AUGUST 16, 2004.

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.