

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

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|------------------------|---|-----------------|
| LONNIE C. JONES |) | |
| and MARGARET A. JONES, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 030991C |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| STATE OF OREGON, |) | |
| |) | |
| Defendant. |) | DECISION |

This matter is before the court on Defendant’s request for dismissal on the basis that the issue brought by Plaintiffs was adjudicated by the Regular Division of the Tax Court in 2000 and any right of appeal expired when Plaintiffs failed to timely appeal that decision to the Oregon Supreme Court. During the case management conference held November 10, 2003, the court asked both parties to submit written explanations as to whether or not the case should go forward. Margaret Jones appeared on behalf of Plaintiffs. Defendant appeared through Jeanne McNa, an auditor with the Department of Revenue. For ease of reference the parties will be referred to as taxpayers and the department.

I. STATEMENT OF FACTS

This appeal involves the 1995 and 1996 tax years and a \$10,000 payment taxpayers made to the department in 1994.

Background

Tax Year 1994

Taxpayers inherited sizable estates due to their mothers’ deaths in 1993. That same year they sold their business and put their belongings (including tax documents)

in long-term storage. Taxpayers subsequently left Oregon and established a residence in Boise, Idaho. Concerned that they lacked knowledge of inheritance tax law, and anticipating that taxes might be due, on September 15, 1994, taxpayers mailed a check to the department in the amount of \$10,000. The name Lonnie Cy Jones (Jones) was written in the memo area of the check along with Jones's social security number. No documents were sent with that check instructing the department on what it should do with the money. Because their financial records were in storage, taxpayers did not file their 1994 tax return until August 1998.¹ Although no tax liability was shown on that tax return, taxpayers indicated that the \$10,000 payment made back in 1994 had been a payment of estimated tax and marked that it should be applied to their 1995 taxes. Subsequently taxpayers asked the department to refund the \$10,000 to them, but the department denied their request. Taxpayers appealed to the Magistrate Division of the Tax Court, which upheld the refund denial. *See Jones v. Dept. of Rev.*, OTC-MD No 990248A (June 15, 1999). Taxpayers then unsuccessfully appealed the magistrate's Decision to the Regular Division of the Tax Court. *See Jones v. Dept. of Rev.*, 15 OTR 92 (2000) (*Jones I*).

In its January 12, 2000, Opinion, the Regular Division held that although taxpayers wished to characterize their payment as something other than a payment of tax, the evidence indicated that the \$10,000 was an estimated tax payment and, as taxpayers did not file a refund request within the statutory time limit provided in ORS 314.415(1) (1997), they were no longer entitled to a refund of the money.

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¹ One month prior to taxpayers' \$10,000 payment to the department, taxpayers filed their 1993 return, with an extension. That return was accompanied by a check for \$1,676, which was the amount due on the 1993 return. Also, taxpayers sent the department a check for \$8,500 in April 1994 along with an application for a time extension for the 1993 return.

Taxpayers did not appeal that decision. That brought to a close litigation of taxpayers' claim regarding tax year 1994.

Tax years 1995 and 1996

On January 22, 2002, taxpayers filed tax returns for tax years 1995 and 1996,² reporting taxes due of \$248 and \$642 respectively, but making no payment. The department responded with notifications of deficiencies, including accrued interest and late filing penalties. (Def's Ltr dated Dec 1, 2003) Taxpayers filed their current appeal with the Tax Court on September 20, 2003, again asserting that the \$10,000 paid in 1994 was not an estimated tax payment, but rather an "Advance Payment," money "on deposit" for their "future liabilities." (Ptf's Compl at 1.) In their appeal, taxpayers requested that the \$10,000 payment be applied to their outstanding tax liability for 1995 and 1996 and that the balance be returned to them.³ (*Id.*)

II. ANALYSIS

The issue presented is whether taxpayers are entitled to have their \$10,000 payment made in 1994 applied to their outstanding liabilities for 1995 and 1996 and the balance refunded, or whether this court's previous decision in *Jones I* bars their request. Resolving that question requires consideration of the doctrines of claim and issue preclusion, matters fairly raised by the department in its Answer,⁴ as well as the application of relevant statutory authority governing credits and refunds.

² There is some confusion regarding the date on which taxpayers' 1995 and 1996 tax returns were filed. The department's letter (dated December 1, 2003) identifies the filing as December 6, 2002; the 'Liability Details' supplied to the court with the department's earlier submissions identify the date of both returns as January 22, 2002. The court finds the most probable date of submission to be the latter.

³ During the case management conference held November 10, 2003, taxpayers made certain statements suggesting they were withdrawing their refund request. Because the Complaint was not amended, the court will assume the refund request is still at issue.

⁴ In its Answer, the department requested that the case be dismissed "as a determination was made by Oregon Tax Court and Judge Carl N. Byers that the three-year rule to file a return and claim a refund was not met by the plaintiff's [sic]."

A. *Claim Preclusion*

Claim preclusion (otherwise known as ‘*res judicata*’) is an affirmative defense that “bar[s] the same parties from litigating a second lawsuit on the same **claim**, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit.” *Black’s Law Dictionary* 1312 (7th ed 1999) (emphasis added). The Oregon Supreme Court has stated:

“[A] plaintiff who has prosecuted one action against a defendant through to a final judgment * * * is barred [*i.e.*, precluded] * * * from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action.”

Drews v. EBI Companies, 310 Or 134, 140, 795 P2d 531 (1990), quoting *Rennie v. Freeway Transport*, 294 Or 319, 323, 656 P2d 919 (1982).

The application of both claim and issue preclusion under Oregon tax law is laid out in *U.S. Bancorp v. Dept. of Rev.*, 15 OTR 13 (1999). Concerning claim preclusion, the Tax Court held:

“With regard to property taxes, the cases recognize that they are imposed on an annual basis and that each year stands by itself. Oregon income and corporate excise taxes are also imposed on an annual basis.”

Id. at 15 (internal quotation marks omitted; citations omitted). That application follows the federal rule, which holds:

“Each year is the origin of a new liability and of a separate cause of action. Thus if a claim of liability or non-liability relating to a particular tax year is litigated, a judgment on the merits is *res judicata* as to any subsequent proceeding involving the same claim and the same tax year.”

Id. (quoting *C.I.R. v. Sunnen*, 333 US 591, 598, 68 S Ct 715, 92 L Ed 898 (1948)).

In the case at hand, taxpayers do not seek to relitigate their tax liability for 1994. Rather, with this suit taxpayers seek to litigate two tax years not previously litigated:

1995 and 1996. Hence, their suit is not prevented by claim preclusion. Claim preclusion would only prevent taxpayers from bringing a second suit regarding their 1994 tax liability, including the disallowance of the refund claim. That is so even though the return for 1994 requested that the \$10,000 payment be applied to 1995, a year now under appeal, because the court's holding in the previous case was limited to the refund claim and to characterization of the payment. The court could not decide a claim for credit towards taxpayers' 1995 taxes, as that year was not before the court in the earlier litigation and any determination on that claim would be advisory.⁵ Moreover, claim preclusion does not directly bar taxpayers from suing for a refund on their 1995 and 1996 returns because each year stands on its own, and the request for 1994 was denied because that return was not timely filed.

B. *Issue Preclusion*

The next question is whether the doctrine of issue preclusion prevents the \$10,000 payment from being refunded or applied against a tax debt for a subsequent year. Issue preclusion (otherwise known as collateral estoppel) is an affirmative defense that prevents "a party from relitigating an **issue** determined against that party in an earlier action, even if the second action differs significantly from the first one."

Black's Law Dictionary 256 (7th ed 1999) (emphasis added). The Oregon Supreme Court has stated the rule as follows: "If a claim is litigated to final judgment, the decision on a particular issue or determinative fact is conclusive in a later or different action between the same parties if the determination was essential to the judgment."

⁵ The court did say in *Jones I* that no refund **or credit** may issue because the 1994 return was filed more than three years after the due date. *Jones*, 15 OTR at 94. The basis for the court's statement that a credit may not issue is presumably tied to a statutory provision pertaining to credits where refunds are disallowed (ORS 314.415(1)(b)(A)), although the court did not reference the statute. However, any credit would be applied to subsequent tax years and only the 1994 year was before the court in *Jones I*. Moreover, the court's holding was limited to the refund claim and the issue of whether the payment was an estimated tax payment. *Jones*, 15 OTR at 95.

North Clackamas School Dist. v. White, 305 Or 48, 53, 750 P2d 485 (1988); *rev'd and rem'd*, 305 Or 468, 752 P2d 1210 (1988).

The rule under Oregon tax law parallels the general rule. As stated by the court in *U.S. Bancorp*:

“[whether] the later proceeding is concerned with a similar or unlike claim relating to a different tax year, the prior judgment acts as a collateral estoppel **only as to those matters in the second proceeding which were actually presented and determined in the first suit.**”

U.S. Bancorp., 15 OTR at 15 (citation omitted; emphasis added). “[I]ssue preclusion can apply equally to issues of fact and issues of law.” *Evangelical Lutheran Good Samaritan Society v. Bonham*, 176 Or App 490, 498, 32 P3d 899 (2001) (citation omitted) *rev den*, 334 Or 75, 45 P3d 449 (2002).

Taxpayers’ appeal to the Tax Court in *Jones I* asked for a refund of the \$10,000 payment made on September 15, 1994. (*Jones I*, Ptf’s Compl at 1.) The court held that the \$10,000 payment was an estimated tax payment and that taxpayers were not entitled to a refund because they failed to file their return requesting the refund within three years of the due date, as required by ORS 314.415(1). In so holding, the court rejected taxpayers’ argument that “the amount involved is not a tax and therefore is not governed by refund statutes.” *Jones*, 15 OTR at 94. It is clear that the doctrine of issue preclusion prevents taxpayers from relitigating the question of whether the \$10,000 payment was an estimated tax payment or something else. In the earlier case, Judge Byers found that “the overwhelming evidence indicates that the \$10,000 paid to the department was an estimated tax payment.” *Jones*, 15 OTR at 95. The court’s determination of that issue in the prior case precludes taxpayers from raising the matter again in this or any future proceeding.

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It is less clear whether the doctrines of claim and issue preclusion prevent taxpayers from litigating other aspects of this case. However, this court's holding with regard to the preclusive effect of the court's prior determination that the \$10,000 payment was an estimated tax payment effectively resolves the appeal. That is because taxpayers' premise in the instant appeal is that the statutory time limitations governing refund requests are inapplicable to "advance payments" or "cash bond deposits." That issue is not open for review. Because taxpayers are not able to argue for a recharacterization of the \$10,000 payment, they are subject to the statutory provisions governing credits and refunds.

C. *Tax Credit*

The statutory mechanism allowing for a credit of estimated tax for a subsequent year is found in ORS 316.583.⁶ Subsection (1) of that statute provides that estimated tax payments "shall be considered payment on account of the income taxes imposed by this chapter for the taxable year."⁷ The availability of a credit for overpayment is governed generally by subsections (2) and (3), with a distinction between timely and untimely filed returns. Subsection (3) addresses untimely returns and allows a credit for an overpayment "against an installment of estimated tax for a subsequent taxable year." Thus, a credit for 1995 and 1996 would appear to be available. However, ORS 314.415(1)(b)(A) limits the availability of a credit as follows:

"If a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this paragraph, the excess shall not be allowed as a credit against any tax occurring on a return filed for a subsequent year."

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⁶ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

⁷ "The taxable year" was 1994, the year payment was made.

The department previously disallowed the refund for 1994 for a reason set forth in paragraph (b) ORS 314.415(1). This court upheld that determination. Taxpayers then filed returns for the two subsequent years - 1995 and 1996. Applying the statutory rule set forth above to this case, “the tax year during which excess tax was paid” was 1994 and taxpayers’ refund request was denied; therefore, “the excess shall not be allowed as a credit against any tax occurring on a return filed for a subsequent year.” ORS 314.415(1)(b)(A).

D. *Refund Request*

Taxpayers’ refund request for 1995 and 1996 fails for two reasons. First, “a refund claimed on an original return [cannot] be allowed or made in any case unless the return is filed within three years of the due date, excluding extensions, of the return in respect of which the tax might have been credited.” ORS 314.415(1)(b)(A). Taxpayers did not file their 1995 and 1996 returns until January 22, 2002. Those returns, which were originals, were not filed within three years of the due date. The 1996 return was almost five years late, and the 1995 return nearly six years overdue.

The second reason taxpayers are not entitled to a refund is based on a more practical consideration. In order to be entitled to a refund, taxpayers must have paid excess taxes for 1995 and 1996. The only way taxpayers can be considered to have paid more than was due for those years is if a credit was allowed for the \$10,000 payment they made in 1994. Taxpayers are not entitled to a credit for that payment because of the statutory prohibition found in ORS 314.415(1)(b)(A), as discussed above. No credit means no payment, which means no excess tax paid, which means no refund.

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III. CONCLUSION

After considering the matter, the court concludes that the doctrine of issue preclusion prevents taxpayers from litigating the issue of whether the \$10,000 payment was an estimated tax payment. Because the \$10,000 payment must be considered an estimated tax payment and because taxpayers' 1994 refund request was disallowed, taxpayers are statutorily barred from receiving a credit on their 1995 or 1996 returns (stemming from that payment) by operation of ORS 314.415(1)(b)(A). Finally, taxpayers are not entitled to a refund because the returns were not filed within three years of the due date. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of March, 2004.

DAN ROBINSON
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 DAN ROBINSON ON MARCH 26, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 26, 2004.