

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

SUSAN P. HOWE,)	
)	
Plaintiff,)	TC-MD 031126D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s denial of the allocation of estimated income tax payments for tax years 2001¹ and 2002. This matter is before the court on stipulated facts and cross motions for summary judgment.

I. STATEMENT OF FACTS

After the death of her husband, Plaintiff filed an Oregon state income tax return for tax year 2001, electing a filing status of married filed separately. (Stip Facts Aug 07, 2002.) Plaintiff erroneously told her tax preparer, Alden E. Hamlin (Hamlin), that she and her deceased husband made two \$1,000 estimated tax payments for tax year 2001. (Hamlin letter dated June 8, 2004.) On her tax return, Plaintiff claimed \$1,000 as an estimated tax payment for 2001. (*Id.*) The other payment in the amount of \$1,000 was credited to her deceased husband’s return, showing a filing status of married filing separately. (*Id.*)

Subsequently, Plaintiff and Hamlin discovered that Plaintiff and her deceased husband had made estimated tax payments totaling \$7,000. (*Id.*) There were three payments in the amount of \$1,000 and one payment in the amount of \$4,000. (*Id.*) On each of the checks written for the estimated tax payments, the social security numbers of both Plaintiff and her deceased

¹ On June 16, 2004, Plaintiff amended the Complaint to add tax year 2001 when she filed an amended 2001 Oregon state income tax return. In its June 22, 2004 letter, Defendant did not object to the addition of another tax year to Plaintiff’s appeal.

husband were handwritten on the check. Because the parties had previously filed joint returns, the pre-printed estimated tax coupons submitted with each payment listed the names of both Plaintiff and her deceased husband, including their social security numbers.

(Def's Ex D, E, F and G.)

For tax year 2002, Plaintiff and her deceased husband elected the same filing status as tax year 2001, married filing separately. The parties agree that the total estimated tax payments for tax year 2002 were \$2,000.

For both tax years, 2001 and 2002, Defendant proposes to “apportion the estimated tax payments * * * according to OAR 150-316.567² (Separate Tax Liability divided by Combined Separate Tax Liability multiplied by Joint Estimated Tax Payments * * *.)” (Def's Letter dated June 22, 2004 at 2.) Plaintiff argues that the estimated tax payments made for each of the tax years should be split evenly between her and her deceased husband. (Ptf's Mo Summ J at letter dated June 8, 2004, p 2.)

II. ANALYSIS

The issue before the court is the allocation of estimated tax payments made by Plaintiff and her deceased husband for tax years 2001 and 2002. Guidance for resolving this dispute is found in ORS 316.567(3)³ which provides as follows:

“If a husband and wife make a joint declaration but not a joint return for the taxable year, the husband and wife may, in such manner as they may agree, and after giving notice of the agreement to the Department of Revenue:

“(a) Treat the estimated tax for the year as the estimated tax of either the husband or of the wife; or

“(b) Divide the estimated tax between them.”

² All references to the Oregon Administrative Rules (OAR) are to year 2001.

³ All references to the Oregon Revised Statutes (ORS) are to year 2001.

Plaintiff alleges that both she and her deceased husband agreed to divide the estimated tax payments equally between them. (Hamlin's letter dated June 8, 2004.) Defendant alleges that because Plaintiff's husband is deceased, he "can not agree to this allocation." (Def's letter dated June 22, 2004.)

ORS 316.567(3) allows a husband and wife to allocate estimated payments between them "in such manner as they agree" **and** they must give "notice of the agreement to Defendant." (Emphasis added.) Plaintiff asks this court to agree with her conclusion that "marriage is a partnership of two people" and to conclude that "absence of a written agreement to the contrary, partnerships are deemed to have equal ownership." (Ptf's Mo Summ J.) The statute requires the parties to make an affirmative agreement. *See* ORS 316.567(3). There is no evidence submitted to the court that indicates Plaintiff and her deceased husband discussed the allocation of the estimated tax payments between them prior to his death. Plaintiff's equal allocation of what she believed to be the total amount of estimated tax payments for 2001 after the death of her husband is not persuasive evidence of an agreement between the parties. To the contrary, there is some evidence, based on Plaintiff's signature and both social security numbers appearing on all checks for the estimated payments for tax year 2001, that they did not discuss an allocation of the payments. Because they filed joint returns for the tax years prior to those at issue and used the pre-printed estimated tax payment coupons to make their estimated payments, there is strong evidence that Plaintiff and her deceased husband intended to file joint income tax returns for 2001 and 2002. If they had filed a joint return, there would have been no need to agree on the allocation of the payments because all estimated payments would have been applied against their joint tax liability. Further, there is no evidence that Plaintiff and her deceased husband gave notice of the agreement to Defendant. If notice as required by the statute had been given to

Defendant, there would be no need for Plaintiff to ask this court to conclude that they had an agreement in place as to the allocation of the estimated tax payments.

Having failed to comply with the statutory requirements, specifically, agreement and notice, the court must look to ORS 316.567(4) which provides:

“If a husband and wife fail to agree, or fail to notify the department of the manner in which they agree, to the treatment of estimated tax for a taxable year for which they make a joint declaration but not a joint return, the payments shall be allocated between them according to the rules adopted by the department.”

The department has adopted a rule entitled Allocation of Joint Estimated Tax Payments (OAR 150-316.567). That rule states that the department “shall divide the joint estimated tax payments by allocating to each spouse an amount of the payments in the proportion that the spouses’ separate tax liability computed after credits, other than the credits for withholding and estimated tax payments, bears to the combined separate tax liabilities of both spouses.” That is the method Defendant used in allocating Plaintiff a share of the estimated tax payments for tax years 2001 and 2002. The court finds that Defendant has correctly followed its rule and made an appropriate allocation of the estimated payments because Plaintiff and her deceased husband failed to make an agreement and notify the department of their agreement as required by ORS 316.567(3).

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s Motion for Summary Judgment is denied.

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IT IS FURTHER DECIDED that Defendant's Cross Motion for Summary Judgment is granted.

Dated this _____ day of December 2004.

JILL A. TANNER
PRESIDING 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 PRESIDING MAGISTRATE JILL A. TANNER ON DECEMBER 23, 2004 . THE COURT FILED THIS DOCUMENT DECEMBER 23, 2004.