

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

EDMUND W. BROWNING)	
and SUZANNE S. BROWNING,)	
)	
Plaintiffs,)	TC-MD 040077C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Defendant moved to dismiss Plaintiffs’ appeal as untimely. Defendant argues that a notice of assessment for the 2002 tax year was issued August 26, 2003, that Plaintiffs’ February 17, 2004, appeal was filed beyond the 90-day appeal period, and that the court should dismiss the appeal. Plaintiffs were represented by Jana S. Arbow (Arbow), Certified Public Accountant. Defendant was represented by Laurie Fery (Fery), Auditor. For ease of reference the parties will be referred to as taxpayers and the department.

Oregon law provides that an “appeal may be taken to the tax court from any notice of assessment.” ORS 305.265(15).¹ The appeal must be filed in a timely manner as set forth in ORS 305.280. That statute provides in relevant part that “an appeal * * * from any notice of assessment * * * shall be filed within 90 days after the date of the notice.” ORS 305.280(2). Taxpayers missed the 90-day appeal period.

Taxpayers’ representative, Arbow, objects to the motion to dismiss on the grounds of fairness. Arbow sent a letter to the department on June 5, 2003, in response to the department’s May 27, 2003, letter of inquiry, and insists she never received a

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

response and that she was eventually told by an advocate at the department that her June letter was not even opened until December 2003. Arbow feels that she was owed the courtesy of a response and that it was inappropriate for the department to issue a deficiency without reading her letter.

Fery responded that she reviewed the file in December and that the letter had been removed from the envelope, which shows it was opened and suggests it had been read previously by another employee. Moreover, Fery contends that the deficiency issued by the department on June 19, 2003, was the response to Arbow's letter. Page 2 of that deficiency, submitted by taxpayers and marked as Exhibit 3-2, explains that the department changed taxpayers' returns because taxpayers' "IRA/pension subtraction * * * does not qualify." The deficiency showed that the entire \$44,501 subtraction taken on line 18 of taxpayers' Oregon return was being disallowed. That decision was contrary to taxpayers' position.

The court has no way of knowing whether the department actually read Arbow's letter before concluding that the disputed income was taxable, but the deficiency put taxpayers and their representative, a certified public accountant, on notice that there was a problem. The June 19, 2003, deficiency was followed by a Notice of Assessment issued August 26, 2003. The assessment was consistent with the deficiency and showed that the department continued to believe the income was taxable. The assessment notice advised taxpayers of their appeal rights and began the running of the statutory appeal period. Arbow was apparently waiting for a letter in response to her June 5, 2003, letter, and did not believe (or understand) that the appeal clock was

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ticking. That is unfortunate. However, once the assessment was issued, taxpayers had 90 days from the date of the notice to file an appeal with the court, and taxpayers missed the deadline. Now, therefore,

IT IS THE DECISION OF THIS COURT that taxpayers' appeal is dismissed.

Dated this _____ day of May 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 MAY 17, 2004.
THE COURT FILED THIS DOCUMENT MAY 17, 2004.**