

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

EDWARD KIM and BARBARA M. KIM,	)	
	)	
Plaintiffs,	)	TC-MD 041019C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs request cancellation of interest imposed by Defendant for underpayment of estimated taxes for the 2003 tax year. Edward Kim (Kim) appeared for Plaintiffs and testified at trial. Kimberly Lougee appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Although Plaintiffs appear to be California residents, they filed an Oregon full-year resident return for 2003 that Defendant received on April 21, 2004. Plaintiffs did not have any Oregon income tax withheld in 2003, nor did they make estimated tax payments that year. The return reported federal adjusted gross income of \$1,437,558 (Oregon Form 40, line 8), interest on underpayment of estimated tax in the amount of \$4,341 (line 53), and a tax due of \$113,807 (line 55). Defendant issued a Notice of Assessment May 17, 2004, with self-assessed interest on underpayment of estimated taxes in the amount of \$4,341. Plaintiffs subsequently filed a nonresident return (Form 40N) that substantially decreased their Oregon taxable income, reported no underpayment interest, and reported a tax due of \$33. That return was received by Defendant on June 1, 2004. Defendant issued a Notice of Assessment on July 6, 2004.

Plaintiffs filed a written objection to the second assessment, challenging the interest on underpayment of estimated taxes. Defendant reviewed Plaintiffs' objection and issued a Notice

of Liability Balance on September 17, 2004. Defendant's notice states that Plaintiffs' objections were reviewed and denied. That notice states that Plaintiffs' owe a tax of \$33, a nominal 5 percent penalty (\$1.65), interest on underpayment of estimated tax in the amount of \$4,341.51 and interest on unpaid tax (\$1.07).

Among the explanations given for the denial is the following:

“Interest on underpayment of estimated tax can't be changed by an amended return unless the amendment is received by the due date of the original return. Since your amended return was filed after the original due date, the UND charges can't be changed. (OAR 150-316.587 (1))”

Defendant also refused to cancel the assessment under the statutory exceptions found in ORS 316.587(5)(a) (precluding interest for prior year residents with no tax liability) and ORS 316.587(5)(b) (precluding interest where there are unusual circumstances) and the corresponding administrative rule, OAR 150-316.587(5)(b).

## II. ANALYSIS

The disputed interest was imposed under the provisions of ORS 316.587(1)<sup>1</sup>, based on Plaintiffs' original return. In fact, Plaintiffs calculated the amount of interest on the Defendant's Form 10. Plaintiffs now challenge that charge. Plaintiffs contend they are not liable for interest because there is virtually no tax due. Alternatively, Plaintiffs request that the court cancel the interest based on reasonable cause, pursuant to ORS 316.587(5)(c), specifically OAR 150-316.587(5)(c)(2)(b)<sup>2</sup> (reasonable, good-faith reliance on an information return or other facts), and OAR 150-316.587(5)(c)(2)(c)(C) (incorrect professional advice).

Plaintiffs' first claim involves a challenge to the validity of the interest charged. That issue can be appealed to the court, as recognized in Defendant's administrative rule,

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

<sup>2</sup> All references to the Oregon Administrative Rules (OAR) are to 2003.

OAR 150-305.265(1)-(B)(1). The court's review is *de novo*. Plaintiffs at various times have claimed that they either did not file the resident return Defendant reports receiving April 21, 2004, which Defendant considers to be the original return (Form 40), or that the return "was triggered by a system error." (Ptf's' Compl. at 2.) In any event, Plaintiffs would like Form 40N to be considered the original return. Plaintiffs' argue that Form 40N reported a tax due of only \$33 (after a \$1,058 credit for taxes paid to another state) and that the resulting interest would be *de minimis*.

Defendant acknowledges that the initial return (Form 40) may have been erroneously filed, but denies having prepared that return itself on behalf of Plaintiffs, as Kim suggested at trial. Defendant argues that the interest must be based on the first return, because the nonresident return (Form 40N) is an amended return and, under OAR 150-316.587(1), interest is not affected by such a return, unless the amended return is filed on or before the due date of the original return. The court agrees. The rule provides: "[a]mended returns filed on or after October 6, 2001 will not affect the underpayment interest amount unless the amended return is received by the statutory due date of the original return or within the extension period granted for the original return." *Id.* Plaintiffs did not file for an extension, and the Form 40N was not filed before the due date of the original return. Accordingly, the interest cannot be canceled on the basis of the recalculated tax appearing on the amended Form 40N.

Turning to Plaintiffs' alternative arguments, the court has the authority to review the claims because Plaintiffs are not seeking waiver based on "good and sufficient cause" as provided in OAR 150-305.265(1)-(B)(2) and OAR 150-305.145(3)-(F). The court's review is limited to abuse of discretion. *See DeFrank v. Dept. of Rev.*, TC-MD No 020180C, WL 1300005 (June 12, 2002).

As indicated above, Defendant refused to cancel the assessment under the statutory exception found in ORS 316.587(5)(a), because Plaintiffs were not full-year residents of Oregon for the preceding year with no tax liability.<sup>3</sup> Defendant also denied relief under ORS 316.587(5)(b) because the reported underpayment of tax was not due to “unusual circumstances” as required by the statute and corresponding administrative rule, OAR 150-316.587(5)(b). Defendant’s written explanation for the denial based on the “unusual circumstances” provision indicates that Defendant considered the various examples provided in its administrative rule, OAR 150-316.587(5)(b)(2).

The court finds that Defendant did not abuse its discretion in making its determinations under ORS 316.587(5)(a) and ORS 316.587(5)(b), because it did not exercise its discretion “in an arbitrary, capricious or wrongful manner,” and its decision was not “clearly wrong.” *See Perkins and Wiley v. Dept. of Rev.*, 13 OTR 426, 428 (1995) (citations omitted); *Pratum Co-Op Whse. v. Dept. of Rev.*, 6 OTR 130, 134 (1975). Plaintiffs in this court have pressed for relief based on “reasonable cause.” That factor is found in ORS 316.587(5)(c) and the corresponding rule, OAR 150-316.587(5)(c). Defendant’s notice does not address the reasonable cause standard. However, Plaintiffs have not alleged that they requested relief from Defendant at the administrative level based on that standard. Defendant’s denial indicates that it considered a claim of lack of knowledge, suggesting that its review was comprehensive and responsive to

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<sup>3</sup> The ORS 316.587(5)(a) provides:

“(5)(a) Interest accruing under subsection (1) of this section shall not be imposed if the individual was a resident of this state throughout the preceding taxable year and had no tax liability for that year, and the preceding taxable year was a taxable year of 12 months.”

Plaintiffs' claims. Defendant's notice explains "[t]here are no provisions in estimated tax law for waiver of UND for first time estimated tax payers or for lack of knowledge of tax laws."<sup>4</sup>

There was some discussion at trial about the "reasonable cause" standard. One of the prerequisites for relief under that standard, both in the statute and the rule, is that the taxpayer be retired. Kim contended that he was retired but, on cross examination, acknowledged that he continued to work on a "very limited" basis, although he is reportedly not involved in day-to-day operations. That acknowledgment appears to bar relief under the reasonable cause standard, although Plaintiffs have not satisfactorily demonstrated that they raised the issue below.

### III. CONCLUSION

Plaintiffs are not entitled to cancellation of assessment because the amended return was not filed within the time required under OAR 150-316.587(1). Nor are Plaintiffs entitled to relief under ORS 316.587(5) because Defendant did not abuse its discretion in reviewing Plaintiffs' various requests for relief under that statute. Now, therefore,

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

Dated this \_\_\_\_\_ day of June 2005.

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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 June 30, 2005. The Court filed and entered this document June 30, 2005.**

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<sup>4</sup> The court is unable to tell whether additional claims were made to Defendant at the administrative level because the document presenting Plaintiffs' written objections was not submitted into evidence.