

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

| | | |
|------------------------|---|---|
| SELWYN R. BINGHAM |) | |
| and MEGAN D. BINGHAM, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 041065E |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| State of Oregon, |) | |
| |) | |
| Defendant. |) | DECISION and JUDGMENT OF DISMISSAL |

This matter is before the court on Defendant’s request that the above-entitled matter be dismissed. Defendant submitted its request as part of its Answer filed December 2, 2004. The court discussed the matter with the parties during the case management conference held January 6, 2005. Selwyn R. Bingham appeared on behalf of Plaintiffs. Nancy Grigorieff appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs filed their 2001 personal income tax return on August 9, 2002. On September 19, 2002, Defendant sent Plaintiffs a letter requesting additional information. Specifically, Defendant requested a copy of Plaintiffs’ 2001 Wisconsin state return to support Plaintiffs’ claim that they are entitled to a credit for taxes paid to another state. Plaintiffs do not recall receiving Defendant’s letter. As a result, they did not respond to the request. Receiving no response, on January 21, 2003, Defendant issued a Notice of Proposed Adjustment and/or Distribution (notice). In that notice, Defendant advised that it was proposing to deny the credit for taxes paid to another state. The notice advised that “[t]o claim the credit for taxes paid to another state, you must send a copy of the other state’s return and proof of payment.”

(Ptf's' Compl at 4.) The notice advised Plaintiffs of their appeal rights. Specifically, it advised Plaintiffs that, to appeal within the first 30 days, they could file a written objection with Defendant or request a conference with Defendant. After 30 days, if Plaintiffs did not pursue the above actions, they could appeal the adjustment to the Magistrate Division of the Oregon Tax Court. Plaintiffs apparently received that notice, as it is attached to the Complaint they filed with this court.

On October 29, 2004, Plaintiffs filed a Complaint challenging Defendant's adjustment to their return. Defendant responded by filing its Answer December 2, 2004, and requesting that the case be dismissed because Plaintiffs' appeal rights had expired.

II. ANALYSIS

When a taxpayer receives a notice of a proposed adjustment to their return, he has 30 days to file a written objection with the Department of Revenue and/or request a conference on the matter. ORS 305.270(4)(b).¹ If no conference is requested or written objection made, "the notice of any proposed adjustment shall be final after the [30-day] period has expired."

ORS 305.270(5)(b).

In the subject appeal, the Notice of Proposed Adjustment and/or Distribution is dated January 21, 2003. As a result, Plaintiffs had until February 20, 2003, to make their objection or request a conference. Having failed to do so, the adjustment became final.

ORS 305.280(2) provides that an appeal to the court "from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final." As already stated, Defendant's adjustment became final on February 20, 2003. As a result, Plaintiffs

///

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

had until May 21, 2003, to file their appeal with this court. Plaintiffs did not file their appeal until October 29, 2004. Consequently, their Complaint was not timely.

Plaintiffs recognize the untimeliness of their appeal. However, they request leniency from the court because they do not recall receiving Defendant's first request for information, and they have the information to show their entitlement to the credit. However, the period within which a taxpayer may appeal an adjustment to this court is set by statute. The legislature created no exceptions to that time period, and it is beyond the court's authority to judicially create exceptions to the clear statutory language. As a result, the court finds Plaintiffs' appeal is not timely and must be dismissed. Now, therefore,

IT IS ADJUDGED that this matter be dismissed.

Dated this ____ day of January 2005.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JANUARY 19, 2005 . THE COURT FILED THIS DOCUMENT ON JANUARY 19, 2005.

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.