

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JEFF R. TAYLOR,)	
)	
Plaintiff,)	TC-MD 050570C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s May 11, 2005, request for dismissal¹ of Plaintiff’s Complaint as untimely. A hearing was held by telephone October 7, 2005, to receive sworn testimony and legal arguments from the parties concerning Defendant’s dismissal request.

The appeal involves a 1989 state income tax assessment notice issued on June 18, 1993, which Plaintiff appealed some 12 years later, on April 29, 2005. By statute, Plaintiff had 90 days from the date of the Notice of Assessment to appeal to this court. *See* ORS 305.265(15) (providing for an appeal to the tax court from a notice of assessment); ORS 305.280(2) (requiring the appeal be filed “within 90 days after the date of the notice”).² Plaintiff clearly missed the 90-day appeal deadline.

Plaintiff asserts Defendant’s assessment notice was mailed to the wrong address, which renders the assessment notice void and makes the statutory appeal deadline inoperative.

Defendant responds that the notice was mailed in accordance with ORS 305.265(11), which

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¹ Defendant included the request in its Answer filed May 11, 2005.

² References to the Oregon Revised Statutes (ORS) are to 2003 for the court’s discussion of Plaintiff’s appeal rights, based on the date of Plaintiff’s appeal, and to 2001 with respect to Defendant’s assessment notice, issued in June 2003, before the 2003 statutes became operative.

provides: “[m]ailing of notice to the person at the person’s last-known address shall constitute the giving of notice as prescribed in this section.”

Defendant has promulgated an administrative rule governing the use of addresses for Notices of Deficiency and Notices of Assessment. OAR 150-305.265(11)(2) provides, in part:

“The department shall use the address on the most recently filed return as the last known address unless the taxpayer has notified the department in writing or through a documented phone call that this address is incorrect.”

Defendant’s deficiency notice was issued April 16, 1993, and its assessment notice was issued June 18, 1993. The deficiency notice was mailed to Plaintiff (and his ex-wife Janet) using an address of “11153 SW Davies Road, No. 212 Beaverton, OR 97007.” (Ptf’s Compl at 3.) Defendant asserts that the assessment notice was mailed to “23535 Johnson Rd, West Linn, OR 97068.” At an earlier proceeding, Plaintiff assumed the assessment notice was mailed to the same address as the deficiency notice (Davies Road, which was also the address on his 1991 return), and contended that the notice should have been mailed to some other “correct” address, although that latter point was never clarified. At the October 7, 2005, hearing, Plaintiff contended that the assessment notice should have been mailed to the Davies Road address because that is the address appearing on his 1992 federal income tax return, filed sometime in April 1993. Plaintiff does not have a copy of his state return and he did not submit the 1992 federal return.

According to Plaintiff, he and his ex-wife lived at the Johnson Road address in West Linn in the 1980s, but sold that home in either 1989 or 1990. Plaintiff then moved into an apartment on Davies Road in Beaverton, where he lived for “a couple of years,” before moving to 7505 SW Beveland Road, Portland (or Tigard).

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Defendant's records reveal that on March 25, 1992, Plaintiff filed a 1991 amended return reflecting the Davies Road address, and Defendant updated its records accordingly. (Def's Exs D and E.) Later that year, on October 7, 1992, Plaintiff filed an amended 1990 return and a second amended 1991 return. (Def's Ex D.) One of those returns reflected the Johnson Road address and the other reflected the Davies Road address. (Def's Exs D and E.)³ Two different employees of Defendant updated Defendant's records on October 7, 1992; the first changed the address to Johnson Road, and the second employee, later that same day, changed the address back to Davies Road. (Def's Ex E.) On April 15, 1993, the day before the deficiency notice was issued (which was sent to the Davies Road address), Plaintiff submitted an original 1992 return and a second amended 1990 return. (Def's Ex E.) The second amended 1990 return reported the Johnson Road address, and, that same day (April 15, 1993), Defendant updated its records accordingly (showing Plaintiff's address as Johnson Road).

Plaintiff asserts that the other return (the 1992 return) reported the Davies Road address. Accordingly, Plaintiff argues Defendant's records should have been updated April 15, 1993, to show the Davies Road address, and that the June 18, 1993 assessment notice should have been sent to Davies Road. Again, Plaintiff did not submit the 1992 federal or state returns (neither he nor Defendant has a copy of the 1992 state return). Thus, there is no evidence supporting Plaintiff's claim that the 1992 state return showed the Davies Road address. Moreover, even if the 1992 state return had shown the Davies Road address, the second amended 1990 return was submitted the same day as the original 1992 return (April 15, 1993) and it showed

³ It appears that Plaintiff used the same address on successive returns for the same tax year. For example, Plaintiff's first 1991 amended return (filed March 25, 1992) showed the Davies Road address, and one of the two amended returns (1990 or 1991) filed October 7, 1992, showed the Davies Road address. Plaintiff's second amended 1990 return, filed April 15, 1993, showed the Johnson Road address. If the first amended 1990 return showed the Johnson Road address, then the second amended 1991 return (filed October 7, 1992, the same day as the first amended 1990 return) would have been the one showing the Davies Road address.

the Johnson Road address. Given that Defendant's records currently (on April 15, 1993) showed the Davies Road address, if the original 1992 return had shown Davies Road, and if it was processed before the second amended 1990 return (showing Johnson Road), the first employee would not have changed Defendant's address records (because they already showed Davies road); the second employee, seeing a different address on the second amended 1990 return, would have made the change to Johnson Road, which is where the assessment notice for 1989 was sent.

In his closing arguments to the court, Plaintiff argued that the court could not rule in Defendant's favor because the only information Defendant submitted to support its address records were copies of computer records which, according to Plaintiff, could have been manipulated for the hearing. Plaintiff misunderstands the burden of proof. It is he, not Defendant, who must prove the assessment notice was mailed to an incorrect address.

ORS 305.427 provides:

“In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation.”

Plaintiff has not shown by a preponderance of the evidence that Defendant's assessment notice should have gone to the Davies Road address. There is no evidence proving that the 1992 return, filed approximately two months before the assessment notice, showed the Davies Road address; and, as explained above, the simultaneous submission (on April 15, 1993) of the second amended 1990 return, showing the Johnson Road address, with the original 1992 return (address unknown), could, nonetheless, have caused Defendant to change its records to show the Johnson Road address.

On the evidence before it, the court concludes that, not only has Plaintiff failed to establish that Defendant mailed the assessment notice to the wrong address; the court is persuaded that Defendant mailed that notice to the “last-known address,” as required by ORS 305.265(11), and in accordance with the administrative rule, OAR 150-305.265(11)(2). Therefore, Defendant’s motion to dismiss Plaintiff’s appeal as untimely is granted. Because Plaintiff’s complaint is dismissed, the court need not reach Plaintiff’s alternative request for waiver of interest. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s motion to dismiss is granted;
and

IT IS FURTHER THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of November 2005.

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 November 9, 2005. The Court filed and entered this document November 9, 2005.