

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JEFF R. TAYLOR,)	
)	
Plaintiff,)	TC-MD 050626C (Control)
)	050627C
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on its own motion to dismiss the above-referenced appeals as untimely. The appeal involves tax years 1986 and 1987. Defendant issued assessments on September 23, 1994. Plaintiff appealed on May 12, 2005, more than 10 years after the assessments were issued.

Defendant issues assessments under the provisions of ORS 305.265.¹ Subsection (14) of ORS 305.265 provides that “[a]ssessments and billings of taxes shall be final after the expiration of the appeal period specified in ORS 305.280, except to the extent that an appeal is allowed under ORS 305.280(3) following payment of the tax.” ORS 305.280(2) requires that an appeal from a notice of assessment “be filed within 90 days after the date of the notice.” Plaintiff clearly missed the 90-day appeal period. Plaintiff may be able to re-appeal under ORS 305.280(3) if he pays any outstanding tax for the years at issue.

Plaintiff suggested that his appeal rights may not have expired because on January 3, 1995, Defendant placed a hold on his account, pending the completion of a federal tax appeal. Two observations are in order. First, Defendant’s action in placing an administrative hold on the

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

account occurred after the expiration of the 90-day appeal period. Second, the hold was merely an administrative action regarding the pursuit of collection.

As for Plaintiff's federal actions, Plaintiff is simultaneously pursuing an appeal with the United States Court of Appeals, Ninth Circuit, and seeking innocent spouse relief from the Internal Revenue Service (IRS). Plaintiff will have a right to appeal under ORS 305.305(3) after the federal "appeal"² is resolved, provided Plaintiff notifies Defendant "in writing within 30 days after the appeal is finally resolved." However, Plaintiff's present appeal is premature because there is no federal resolution at this time. Now, therefore,

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

Dated this _____ day of August 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 August 29, 2005. The Court filed and entered this document August 29, 2005.

² ORS 305.305(1) defines "appeal" as "an appeal to the Internal Revenue Service or any federal court * * * ."