

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

EDGARDO CRUZ JUAREZ,)	
)	
Plaintiff,)	TC-MD 060680C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss, included in its Answer filed October 10, 2006. Defendant asserts that Plaintiff’s Complaint was not filed in a timely fashion. The motion was heard during the December 14, 2006, hearing. Plaintiff appeared on his own behalf, with the aid of a court certified interpreter. Defendant was represented by Michael Hamilton (Hamilton).

I. STATEMENT OF FACTS

The appeal involves Plaintiff’s 2000 Oregon income tax liability. The material facts in this case are not in dispute. Plaintiff filed his state return for 2000 in April 2001. Plaintiff reported a filing status of “Head of Household,” with three dependents. On December 18, 2001, the Internal Revenue Service (IRS) issued an audit report adjusting Plaintiff’s federal income tax return for 2000. That report changed Plaintiff’s filing status to single and added additional unreported income. The Oregon Department of Revenue (department) subsequently received a copy of that IRS audit report and, on April 23, 2003, issued a Notice of Deficiency based on the changes to Plaintiff’s federal return; that is, the department changed Plaintiff’s filing status from head of household to single and added the additional income.

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Plaintiff did not timely respond to the department's deficiency notice, and on June 24, 2003, the department issued an assessment notice. Approximately one year later, on July 13, 2004, Plaintiff filed an Oregon amended return with the department. Plaintiff's amended return claimed a filing status of "married filing joint return" and added additional dependents. The department reviewed that return and, on May 31, 2006, sent Plaintiff a letter stating that it had received Plaintiff's July 13, 2004 "response" to its June 24, 2003, assessment, and that if Plaintiff disagreed with the department's assessment, he must file an appeal with the Magistrate Division of the Oregon Tax Court.

On September 14, 2006, Plaintiff filed his appeal with this court. In his Complaint, Plaintiff requests that the court correct his 2000 taxes by adding his wife and son.

II. ANALYSIS

The department issued its assessment notice for the 2000 tax year on June 24, 2003. ORS 305.275(1)(a)(A)¹ gave Plaintiff the right to appeal that assessment to the Magistrate Division of the Oregon Tax Court. Plaintiff had 90 days to file his appeal. *See* ORS 305.280(2) (providing that an appeal of an assessment "shall be filed within 90 days after the date of the notice.") Plaintiff's appeal deadline was September 22, 2003. Plaintiff's appeal was filed approximately three years later, on September 14, 2006. Plaintiff clearly missed the deadline.

ORS 305.265(14) 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(3) authorizes an appeal "within two years after the date the amount of tax * * * is paid." Under ORS 305.265(14), the department's assessment is final and Plaintiff's appeal must be dismissed.

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

Plaintiff does have the option of paying the tax and filing another appeal with this court under ORS 305.280(3). According to the auditor, Hamilton, Plaintiff's tax liability, including interest, was \$1,458.20 as of December 14, 2006. Plaintiff can also request relief from the department under the doubtful liability provisions of ORS 305.295. The court offers no opinion as to whether Plaintiff should pursue either of those options. Nor does the court have any opinion at this time as to whether Plaintiff is entitled to change his filing status or add additional dependents.

III. CONCLUSION

Plaintiff's appeal of the department's assessment must be dismissed because the assessment was issued on June 24, 2003, and Plaintiff did not file his appeal until September 14, 2006, which was well beyond the 90-day appeal period provided in ORS 305.280(2). Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Complaint must be dismissed because Plaintiff did not file his appeal within 90 days of the date of the department's assessment.

Dated this _____ day of January 2007.

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 on January 4, 2007. The Court filed and entered this document on January 4, 2007.