

THIS OPINION WAS SIGNED BY JUDGE CARL N. BYERS ON MARCH 8, 2000
AND FILE STAMPED MARCH 8, 2000

IN THE OREGON TAX COURT
REGULAR DIVISION
Income Tax

PETER C. BROWN,)	
)	Case No. 4300
Plaintiff,)	
)	OPINION
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	

Plaintiff's (taxpayer) appeal of a 1993 income tax assessment was denied by a Magistrate Decision as untimely. Taxpayer claims he timely mailed his 1993 return to Defendant Department of Revenue (the department), and the department should not have dismissed his appeal. Trial was held January 18, 2000, in the courtroom of the Oregon Tax Court, Salem.

FACTS

Taxpayer did not file an Oregon personal income tax return for 1993. On May 25, 1995, the department sent taxpayer a request to file a return. The auditor's records indicate that taxpayer's wife called and indicated that they were waiting to obtain more information before filing a return. However, after waiting a reasonable time and receiving no return, on January 16, 1996, the department sent taxpayer a notice and demand to file a

return. When no return was filed, on May 29, 1996, the department issued a Notice of Determination and Assessment of tax for 1993. (Def's Ex D.) No response was received until September 27, 1996, when the department received a joint return for 1993.¹ However, the return was received after the 90-day appeal period allowed by statute. Therefore, the department dismissed the appeal as late.

ISSUE

Did the department err in dismissing taxpayer's appeal?

ANALYSIS

Statutory law requires a taxpayer to appeal within 90 days of the assessment. ORS 305.275 and ORS 305.280.² If the taxpayer does not timely appeal, the assessment becomes final and cannot be changed by subsequent appeal.

Taxpayer does not question the law. Taxpayer does raise questions of fact. He testified that the notice dated May 29, 1996, was not received until approximately June 20. He also testified that he mailed the return in early August 1996 or perhaps in late July. Taxpayer further testified that he or his wife called the department to see if the return had been received. He stated that the first time they called, someone at

¹ Where the department has assessed a tax based on information due to failure to file, if the taxpayer files a return, it will treat the return as a form of appeal.

² All reference to Oregon Revised Statutes are to 1995.

the department told them the return had been received in early September. The second time they called, they were told that it was received on September 27. In offering this testimony, taxpayer appears to suggest either error by the United States Postal Service or by the department, or both.

However, taxpayer also testified that the return in question was prepared by Mrs. Brown and that both of them signed the return. The return shows that it was signed by taxpayer on September 15, 1996. Taxpayer was unable to explain how the return could have been mailed before it was signed.

The court finds that the preponderance of the evidence establishes that the return was not mailed to the department until on or after September 15, 1996. Therefore, taxpayer's appeal was not filed within the time period required by statute, and the assessment became final. Judgment will be entered consistent with this Opinion. Costs to neither party.

Dated this ____ day of March, 2000.

Carl N. Byers
Judge