

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD RUBY and ADRIENNE RUBY,

Plaintiffs–Appellants,

v

DEPARTMENT OF TREASURY,

Defendant–Appellee.

UNPUBLISHED

June 28, 1996

No. 184053

LC No. 170502 & 170503

Before: Young, P.J., and Corrigan and M.J. Callahan,* JJ.

MEMORANDUM.

Plaintiffs Edward and Adrienne Ruby appeal by right a Michigan Tax Tribunal order affirming tax assessments against them after they failed to inform defendant Department of Treasury about modifications in their federal tax liabilities. We affirm.

Plaintiffs argue that because defendant failed to notify them of the assessment within two years of defendant’s notice of their modified state tax assessment, defendant is barred from collecting taxes, interest and penalties. Michigan statutory law requires defendant to assess taxes and penalties within two years of its discovery when taxpayers fail to notify it of changes in their federal tax liability. MCL 205.27a(2); MSA 7.657(27a)(2). The taxes become due only after defendant provides notice and a hearing. *Id.* The two year statute of limitations does not extend to the notification requirement. Even though defendant failed properly to notify plaintiffs of its intent to assess within two years because it mailed the notice to the wrong address, defendant had actually assessed plaintiffs’ deficient taxes within two years. In addition, the taxes, penalties and interest did not become due until plaintiffs had actually received actual notice and a hearing. Therefore, defendant was not barred from collecting taxes and penalties for plaintiffs’ failure to notify defendant of modifications in their federal tax liability.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Maura D. Corrigan

/s/ Michael J. Callahan