

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TERAH ELIAS NOELLE)	
and KEVIN THOMAS PATE,)	
)	
Plaintiffs,)	TC-MD 091363B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss (motion), filed October 6, 2009, as part of its Answer, requesting that the Complaint be dismissed.

A case management conference was held on December 3, 2009, to discuss Defendant’s motion. Terah Elias Noelle appeared on Plaintiffs’ behalf. Allen #3938, Tax Auditor, appeared for Defendant. Subsequently, written materials were filed; the record closed January 8, 2010.

Plaintiffs’ initial appeal to this court cited two tax years: 2004 and 2005. During the conference call, the parties confirmed that no issue remained for the 2004 tax year. The following discussion applies to the 2005 tax year.

Oregon law requires that claims for refunds be submitted within three years of the due date of the return. ORS 314.415(2)(a).¹ The due date of the original return starts the period running. For the 2005 tax year, the deadline was April 15, 2009. Plaintiffs’ return was received on May 10, 2009, which is more than three weeks overdue.

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¹All references to the Oregon Revised Statutes (ORS) are to 2007.

In *Webb v. Dept. of Revenue*, 19 OTR 20, 21 (2006) it was held that: “* * * state statute[s] of limitation leave[] taxpayer no state remedy unless the department is estopped from asserting the bar of ORS 314.415(1)(b)(A).”

Plaintiffs contend that they were misadvised by Defendant’s legal counsel as to a filing extension. However, a reading of electronic mail excerpts provided by Plaintiffs demonstrate a different conclusion. For instance, on April 15, 2009, Defendant’s representative wrote:

“If your 2005 return was corrected by the IRS and you received a refund as a result then you *may* have time to claim an Oregon refund as a result. I am not permitted to offer you advice and I am not doing so now.” (Emphasis in original.)

There is no evidence of estoppel or incorrect advice being provided by Defendant. Plaintiffs were not prevented from submitting an earlier claim.

Plaintiffs filed their 2005 refund claim past the three-year deadline. No extensions apply to this situation. *Tirrill v. Dept. of Rev.*, TC-MD No 040694A (Aug 9, 2004) and *Stubbs v. Dept. of Rev.*, TC-MD No 041047D (Mar 2, 2005). Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is dismissed as to tax years 2004 and 2005.

Dated this ____ day of February 2010.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on February 18, 2010, and filed and entered by the court on the same day.