

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Income Tax

THOMAS GENE MARTIN,)	
)	
Plaintiff,)	
)	No. 000526F
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

A case management conference and telephone trial were held on June 5, 2000. Thomas Martin represented himself. Mike Halter appeared for defendant. Mr. Martin appealed a refund denial for the 1995 tax year. The Department of Revenue denied the refund as untimely under ORS 314.415(1)(b).

STATEMENT OF FACTS

Mr. Martin's employer filed for bankruptcy in late October 1995. Numerous paychecks and expense reimbursements that Mr. Martin cashed were returned for insufficient funds. His claim against the bankruptcy estate totaled \$14,401.76. On March 31, 1999, the bankruptcy court allowed \$566.70 as a priority claim, \$7,100.31 as a general unsecured claim and disallowed the balance of the claim. Mr. Martin ultimately received 65% of his priority claim, or \$368.67.

On July 1, 1999, he filed his 1995 return. He asked for a refund of \$566, the amount of his overpayment. Defendant denied the refund as being untimely.

COURT'S ANALYSIS

The statute which must be construed is ORS 314.415(1)(b)(A), which reads:

“No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with ORS 305.270, **nor shall a refund claimed on an original return be allowed or made in any case unless the return is filed within three years of the due date**, excluding extensions, of the return in respect of which the tax might have been credited.”

(Emphasis added).

This statute precludes allowing a refund to Mr. Martin. Mr. Martin paid his 1995 tax in 1995. He filed his original 1995 return in 1999. The statute’s clauses precluding any refund after two years from the time the tax was paid, and prohibiting refunds when the return is filed three years after its due date, are definitive.

Mr. Martin requested that the court look to the circumstances of his employer’s bankruptcy rather than the exact determination of the law, applying an interpretation that considers the human element behind this situation. The consistent decision of the court has been that it simply lacks the power to do what Mr. Martin requests. This thinking was most recently expressed in *DeArmond v. Dept. of Rev.*, 14 OTR 112, 117-118 (1997) which stated:

“There are many circumstances where a taxpayer may fail to file a refund claim within the three-year period. This court has heard cases involving house fires, divorced spouses holding the tax records hostage, and taxpayers engaged in extensive travel that results in involuntary delays. The legislature has not seen fit to make provision

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for any of these particular circumstances and due process

does not require it to do so.”

The court has a great deal of sympathy for Mr. Martin. However, ultimately his situation is no different than others who have, for good reasons, not filed a timely refund claim. The same result must apply. Mr. Martin may not receive his requested refund.

CONCLUSION

IT IS HEREBY ADJUDGED AND DECREED that plaintiff's appeal is denied.

Dated this ____ day of June, 2000.

SALLY L. KIMSEY
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON
JUNE 9, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 9, 2000.**