

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Small Claims  
Income Tax

JOSE LUIS HERNANDEZ, )  
 )  
 Plaintiff, ) No. 001216F  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION AND JUDGMENT**

A case management conference was held on February 20, 2001. Jose Hernandez appeared for himself. Mike Halter, Auditor, appeared for defendant. With the agreement of the parties, the court agreed to decide the case based on the information before it. At issue is a refund claim for tax year 1996.

**STATEMENT OF FACTS**

Plaintiff did not timely file a 1996 Oregon income tax return. Plaintiff ultimately filed his 1996 return. It was received by defendant November 13, 2000. Plaintiff asks for a refund of \$96. Defendant denied the refund as untimely under ORS 314.415(1)(b)(A).

**COURT'S ANALYSIS**

The applicable statute is ORS 314.415(1)(b)(A), which provides:

"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. If a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this paragraph, the excess shall not be allowed as a credit against any tax

occurring on a return filed for a subsequent year. \* \* \*

(Emphasis added.)

This statute precludes allowing a refund to plaintiff. Plaintiff paid his 1996 tax in 1996. They filed their original 1996 return in November 2000. The statute's clauses prohibiting any refund more than two years from the time the tax was paid or prohibiting refunds when the return is filed three years after its due date, are definitive.

Plaintiff asks the court to apply an interpretation that would allow a refund. Plaintiff is not the first individual to make such a claim. The consistent decision of the court has been that it simply lacks the power to do what plaintiff requests. As the court explained in *DeArmond v. Dept. of Rev.*, 14 OTR 112, 117 (1997), "[u]ntil changed by the legislature, [ORS 314.415(1)(b)(A)] limits refunds without regard to why refund claims are filed more than three years after the return was due."

### CONCLUSION

The court has sympathy for the plaintiff. However, in the end his situation is no different than others who have, for good reasons, not filed a timely refund claim. The same result must apply. Plaintiff may not receive his requested refund. Now, therefore;

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

Dated this \_\_\_\_\_ day of February, 2001.

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SALLY L. KIMSEY  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON FEBRUARY 27, 2001. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2001.**