

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

| | | |
|------------------------|---|-----------------|
| SHAWNDA RESZEL, |) | |
| |) | |
| Plaintiff, |) | No. 010120D |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| STATE OF OREGON, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiff appeals defendant's Notice of Refund Denial, dated October 31, 2000, denying plaintiff's refund request for tax year 1996. A telephone trial was held on Wednesday, June 27, 2001. Ms. Shawnda Reszel represented herself. Ms. Susan Farnsworth, Tax Auditor, appeared on behalf of defendant.

STATEMENT OF FACTS

Plaintiff, Ms. Reszel, testified that she was involved in a lawsuit for over four years. During that time, Ms. Reszel testified that because she knew she was entitled to a refund of income taxes she did not file her income tax returns. Ms. Reszel testified that she did not want to file an incorrect tax return until the lawsuit was final. Once the lawsuit was settled, Ms. Reszel stated that she filed her Oregon income tax returns for five years, including the 1996 tax year which is at issue.

Ms. Farnsworth testified that on September 12, 2000, defendant received Ms. Reszel's 1996 income tax return requesting a refund. On October 31, 2000, defendant sent Ms. Reszel a Notice of Refund Denial (Notice). Ms. Reszel contacted defendant about the Notice. On February 13, 2001, Ms. Reszel filed her Complaint with the court.

Ms. Reszel testified that she was unaware of the statutory requirement that she must

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file her request for a refund within three years of the due date of the income tax return. Ms. Reszel testified that the Internal Revenue Service has denied her refund request for tax year 1996. She testified that she does not see the “sense in the legislation.” Ms. Reszel testified that in her opinion it is unfair to retain funds that should be returned to the taxpayer. In addition, if she owed income taxes, the three year rule would not apply.

COURT'S ANALYSIS

Plaintiff is seeking a refund of her 1996 income tax. The law governing requests for refunds is ORS 314.415(b)(A)¹ 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 * * *.”

The law clearly states that a taxpayer must file a claim for refund no later than three years from the due date of the return. Ms. Reszel’s 1996 claim for refund was filed almost five months after the three year deadline. According to the law, Ms. Reszel’s claim must be denied. Regrettably, this is an unfortunate result for Ms. Reszel.

Ms. Reszel stated that she thinks the law is unfair and refund requests should be allowed when filed. The court explained that it does not have the authority to change the law. Any change in the law must come from the legislature.

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CONCLUSION

¹All references to the Oregon Revised Statutes are to 1999.

IT IS THE DECISION OF THIS COURT that plaintiff's appeal is denied.

Dated this _____ day of July, 2001.

JILL A. TANNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. 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 JILL A. TANNER ON JULY 13, 2001. THE COURT FILED THIS DOCUMENT ON JULY 13, 2001.