

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

JAMES J. PENDLETON and DAWN C.)
PENDLETON,)
) No. 011170E
Plaintiffs,)
)
v.)
)
DEPARTMENT OF REVENUE,)
STATE OF OREGON,)
)
Defendant.) **DECISION AND JUDGMENT**

Plaintiffs appeal Defendant's denial of their refund claim for the 1997 tax year. Trial in the matter was held January 29, 2002.¹ Dawn C. Pendleton appeared on behalf of Plaintiffs. Laurie Fery, Auditor, appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as "taxpayers" and "the department."

STATEMENT OF FACTS

For the 1997 tax year, taxpayers received an extension to file their return by August 15, 1998. Instead of filing their return by this date, taxpayers waited until August 1, 2001, to file their 1997 return. On their return, taxpayers requested a refund of taxes paid for the 1997 tax year. On September 12, 2001, the department sent taxpayers a Notice of Refund Denial. The department denied the refund claiming taxpayers' refund request was not submitted within the time required by statute.

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COURT'S ANALYSIS

¹ The court converted the proceeding from a case management conference into a trial after the parties indicated they were prepared for the court to issue a ruling in the case.

ORS 314.415(1)(b)² sets forth the time required for submitting a claim for refund.

It provides, in pertinent part:

“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.**” ORS 314.415(1)(b) (emphases added).

The statute makes clear that when a refund is claimed on an original return, the return must be filed within three years of the return’s due date. The parties disagree as to the due date for taxpayers’ 1997 return. Taxpayers maintain the period should run from August 15, 1998, because they received an extension to file their return by that date. The department maintains the period should run from the original due date of the return, *i.e.*, April 15, 1998. As can be seen from the text of the statute, the legislature intended the date to run from the original due date of the return because the statute specifically notes the due date excludes extensions. As a result, the court finds that the three-year period must run from the original due date of April 15, 1998. As a consequence, the court finds taxpayers failed to submit their claim for refund within the time required.

Ms. Pendleton testified that taxpayers submitted their 1997 federal return at the same time as their state return and that the Internal Revenue Service issued them a refund for that year. She argues that the state should similarly grant the refund. Whether the service issued a refund for 1997 is irrelevant to determining the timeliness of taxpayers’ refund request for state purposes. The federal and state systems differ in many areas. It is the state statute the court must follow and that statute clearly required

² All references to the Oregon Revised Statutes are to 1997.

taxpayers to file their refund request, as part of their original return, within three years of the original due date of the return.³

CONCLUSION

The court concludes that ORS 314.415 requires a taxpayer claiming a refund on an original return to file their return within three years of the original due date of the return. Extensions of time granted are not considered. As a consequence, the court finds taxpayers failed to timely file their claim for refund. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that taxpayers' appeal is denied and the department's 1997 Notice of Refund Denial is upheld.

Dated this _____ day of February, 2002.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON FEBRUARY 28, 2002. THE COURT FILED THIS DOCUMENT ON FEBRUARY 28, 2002.

³ Section 6511 of the Internal Revenue Code sets forth the limitations period for filing a claim for refund with the Internal Revenue Service. It provides, in pertinent part:

"Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid." IRC § 6511(a).

This statute is similar to the state statute except it does not provide that if the refund is claimed on the original return, the return must be filed within three years of the return's due date. The court expresses no opinion as to whether the federal refund was properly issued under the federal statute.