

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

ELLIOTT J. MANTELL,)
)
 Plaintiff,) TC-MD 021277A
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiff appealed the Department of Revenue's denial of a refund requested for the 1997 tax year. He appeared and made his arguments. The agency was represented by Laurie Fery, of its staff.

STATEMENT OF FACTS

Plaintiff filed his 1997 Oregon income tax return on August 30, 2002. The return was due on or before April 15, 1998. The return requested a refund. The department, observing the return was filed more than three years after its due date, denied the refund.

As explanation for the delay Plaintiff presented the birth of two children, his family situation, changes in business, moving his household, and a cousin's death. Plaintiff urged that he not be penalized for earlier paying more than his fair share of taxes. He argued that it is unfair for him to be denied the ability to carryforward a refund to apply against subsequent year's tax liabilities when he would be required to pay a tax if the circumstances were reversed. Plaintiff stated that he had counted on the refund as part of his tax planning, and observed that the federal government had accepted his return on the date it was filed.

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ANALYSIS

Plaintiff has presented a series of reasons explaining why his return was filed late, and gone on to argue how it is unfair for his refund to be cut off by the passage of time. These are legitimate points. However, the law has been written on this matter. The legislature, after considering if and when a taxpayer's ability to claim a refund should be cut off, enacted ORS 314.415(1)(b)(A).¹ Under this statute Plaintiff's refund request was filed more than a year too late.

ORS 314.415(1)(b)(B) does recognize that some circumstances ought to extend the time during which a refund might be requested. In its choice the section limited the reasons to those listed under section 6511(h) of the Internal Revenue Code. Section 6511(h) does not grant a broad exception. It is limited to a medical impairment of the individual. Although Plaintiff's explanations are sympathetic, they do not show that he had a physical or mental impairment that could be expected to result in his death, or that continually lasted for at least 12 months.

Plaintiff has presented the conduct of the federal government as additional points. Although under ORS 314.415(5), agreements with the Internal Revenue Service may serve to extend the period during which an Oregon refund might be requested, that section does not apply here. Plaintiff's problem was that he failed to file the federal and state tax returns when due. Under these circumstances there is no need for an extension of the time for proposing and assessing deficiencies. Instead, the period is without limitation. Although the federal government may have chosen to not issue the assessment as soon as it might have, this is not the same as a mutual agreement to extend the time during which a deficiency may issue.

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

A final point is Plaintiff's references to an instance where a request for an extension of time to file a return served as a timely request for a refund. *Edward J. Kaffenberger v. U.S.*, Nos 01-2171/01-2919 (8th Cir. Jan. 14, 2002). Although this was a federal case, this point alone is not as fatal to Plaintiff's case as the observation that the *Kaffenberger's* extension specifically requested a refund. That degree of specificity is lacking in the events at issue here.

The essence of Plaintiff's claim is that it is simply not fair that he be denied the use of moneys, even as an offset against taxes due for subsequent years, under these circumstances. Of course there is much merit to his position. However the legislature has not chosen to revise the statute. This court, in the course of many appeals construing the law, can find no provision allowing it to be implemented other than as written. Now, therefore,

IT IS ADJUDGED AND DECREED that this appeal is denied.

Dated this ____ day of May, 2003.

SCOT A. SIDERAS
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON MAY 21, 2003. THE COURT FILED THIS DOCUMENT ON MAY 21, 2003.