

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CORALEE ANN SPENCE,)
)
 Plaintiff,) TC-MD 030586A
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION**

Plaintiff appealed Defendant's denial of a refund for the 2000 tax year. Plaintiff appeared and made her arguments. Defendant responded through Laurie Fery, of its staff.

I. STATEMENT OF FACTS

Defendant allocated a refund that otherwise would have been payable to Plaintiff for the 2000 tax year on the basis of an outstanding liability owed by her husband's business.

Plaintiff asserts that this action was incorrect, asserting that she was due a separate refund. Defendant's response is that Plaintiff would otherwise be entitled to a separate refund, but is now barred from the claim by her failure to make a timely request.

Defendant issued its Notice of Refund Allocation on February 4, 2003. Plaintiff's first act in response to the notice was to appeal to this court, filing the appeal on April 14, 2003

II. ANALYSIS

An appeal of the Department of Revenue's decision to deny a refund in whole or in part is surprisingly complicated. The court will not repeat the discussion of *Scott v. Department of Revenue*, OTC-MD No 020886C (Mar 11, 2003) or *Mobley v.*

Department of Revenue, OTC-MD No 000126F (June 9, 2000).

It is enough to note that both these cases are consistent with finding that, as to this appeal, Plaintiff's claim against the allocation of her refund is timely. Both *Mobley* and *Scott* declare that the appeal period from a refund denial or adjustment is at least 90 days. Moreover, the court notes that language in the Notice of Refund Allocation reads as follows:

"TO APPEAL AFTER THE 30TH DAY YOU MUST APPEAL DIRECTLY TO THE MAGISTRATE DIVISION. YOU MUST APPEAL WITHIN 120 DAYS FROM THE DATE OF THIS NOTICE."

Plaintiff appealed to this court in more than 30, but less than 90, days. Her appeal is consistent with the holdings of this court, and the direction of the agency. This appeal is timely.

III. CONCLUSION

The decision is that Plaintiff's appeal from the Notice of Refund Allocation resolves this appeal because Defendant stated that she would otherwise be entitled to her separate refund. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff has come to this court in a timely manner, and as a consequence the agency shall issue to Plaintiff her separate refund.

Dated this _____ day of September, 2003.

SCOT A. SIDERAS
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY *MAILING* TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY *HAND DELIVERY* TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 SCOT A. SIDERAS ON SEPTEMBER 18, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 18, 2003.