

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JODY K. KACALEK,)
)
 Plaintiff,) TC-MD 030794E
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant's Proposed Refund Adjustment dated April 15, 2003. In that notice, Defendant denied Plaintiff's claimed refund for the 1998 tax year. A telephone trial in the matter was held August 26, 2003.¹ Jody K. Kacalek appeared on her own behalf. Laurie Fery, Auditor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff filed her original 1998 income tax return in March 2003 requesting a refund of estimated tax payments made in April 1999. Defendant denied the refund under the provisions of ORS 314.415(1)(b)(A)² because Plaintiff's original return was not filed within three years of its due date. The following are excerpts of a written statement Plaintiff provided to explain why she did not file the return in a timely manner:

"In the late spring of 1996, my husband, Randy R Kacalek was diagnosed with advanced prostate cancer at the age of forty. I was then thirty-nine years old and our children were fourteen, twelve, and six years old. My husband was running a business * * * and he handled almost all of our tax related concerns. * * * By the fall of 1997 * * * the cancer had spread to his bones and Randy was soon no longer able to work. We spent the first half

¹ The proceeding began as a case management conference but was converted to a trial after Plaintiff stated she was prepared for the court to issue a ruling based on her oral and written statements.

² All references to the Oregon Revised Statutes (ORS) are to 2001.

of 1998 with Randy undergoing extensive cancer treatments in hopes of slowing down the spread of the cancer. By May of 1998, it became clear there was no hope that the treatments would make a difference and since they were reducing the quality of life for our family, we made a decision to switch to palliative care only to keep Randy's pain reduced. Early in 1998, both Randy and I were put on anti-depression medicine and we sought counseling in an effort to cope with our rapidly changing life situation. By early 1999, Randy was continually in and out of the hospital, on hospice care, and we were preparing our three young children and ourselves for his death. By early 1999, I was suffering also from an inability to sleep, so a sleeping pill prescription was added to my medications. Randy died on July 12, 1999 at the age of forty-three. * * * Coping with my own deep loss and trying to nurture my children at such vulnerable ages through such a devastating loss took all of my energy."

(Ptf's Compl at 1-2.) In the years following the death of her husband, Plaintiff struggled extensively with depression, requiring her to seek professional assistance.

In early spring 2003, Plaintiff began working with an accountant to organize her financial affairs and file tax returns for the past several years. Plaintiff and her husband had always timely filed returns until 1998. In April 1999, having neither the time nor the energy to prepare their 1998 return, Plaintiff made an estimated tax payment to cover any liability owing for 1998. When preparing her return for 1998, Plaintiff discovered she in fact had a zero tax liability and was entitled to a refund of the entire estimated tax payment made in April 1999. Defendant accepted the return as filed but denied the refund because the 1998 original return was filed more than three years after its due date. Plaintiff asks the court for an exception to the three-year rule based on her circumstances the past several years.

II. ANALYSIS

ORS 314.415(1) sets forth time limits for when a taxpayer is required to submit a claim for refund. It provides, in pertinent part:

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“(b)(A) * * * 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 * * * of the return in respect of which the tax might have been credited.”

ORS 314.415(1)(b)(A).

Plaintiff’s 1998 return was due April 15, 1999. The three-year period passed on April 15, 2002. Plaintiff filed her original 1998 return in March 2003. As a result, Plaintiff filed her original return more than three years after its due date. The statute is clear that no refund request made on an original return is allowed unless the return is filed “within three years of the due date.” *Id.* Plaintiff asks for an exception based upon the devastating circumstances experienced by her and her family the past several years. The court is sympathetic to Plaintiff’s claim. However, the Oregon Legislature was aware that individuals, although entitled to a refund, would not submit their requests on time, and it determined that three years was a sufficient window to allow taxpayers an opportunity to request their refund. At some point, finality to tax years is required and the legislature determined three years to be a sufficient period of time.

The legislature did provide certain exceptions to the refund limitations period, *e.g.*, deductibility of the worthlessness of stock, ORS 314.415(3); claim of a net operating loss carryback or a net capital loss carryback, ORS 314.415(4). Unfortunately, the legislature did not provide a hardship exception to the limitations period, and it is beyond the court’s authority to judicially create such an exception to the statute.

III. CONCLUSION

It is the court’s conclusion that Plaintiff’s refund must be denied because her original return requesting the refund was not filed within three years of its due date. Now, therefore,

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

Dated this _____ day of September, 2003.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON SEPTEMBER 4, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 4, 2003.