

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

THE DALLES FURNITURE CO.,)	
)	
Plaintiff,)	TC-MD 030807E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	DECISION and GENERAL
Defendant.)	JUDGMENT

Plaintiff appeals Defendant's 1998 Notice of Refund Denial dated September 25, 2002. Defendant denied Plaintiff's refund claim for 1998 because it did not receive the refund request within three years of the 1998 return's due date. A telephone hearing in the matter was held August 19, 2004. James T. Broehl, CPA, appeared on behalf of Plaintiff. Karla Skeels, Auditor, appeared on behalf of Defendant. Plaintiff argues it timely submitted its 1998 return. The matter is before the court for decision.

I. STATEMENT OF FACTS

On September 20, 2001, Defendant sent Plaintiff a Notice of Deficiency for the 2000 tax year. After corresponding with Defendant, Plaintiff became aware on August 26, 2002, that the 2000 deficiency was the result of Defendant's failure to receive Plaintiff's 1998 and 1999 returns. Both those returns showed refunds due, which Plaintiff requested be applied as prepayments on the next year's liabilities. Without those returns, Defendant had no record of prepayments made on the 2000 account. As a result, a deficiency resulted.

After becoming aware that Defendant had not received its returns, Plaintiff immediately sent Defendant a copy of its 1998 and 1999 returns. Defendant received the 1998 return on

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August 29, 2002. The return was signed August 8, 2002. Because the return was filed more than three years after its due date, Defendant denied the requested refund under ORS 314.415.¹

Plaintiff claims it timely filed its 1998 return in September 1999. Although the return would typically have been due April 15, 1999, Plaintiff filed an application for automatic extension of time with the Internal Revenue Service, which permitted it to file its return by September 15, 1999. Oregon follows federal extensions. *See* OAR 150-314.385(1)-(B)(2). Because Plaintiff claims it timely filed its return, Plaintiff argues it is entitled to the refund claimed on the return.

II. ANALYSIS

ORS 314.415(1)(b)(A) provides that no refund shall be allowed on an original return that is filed more than three years after its due date. The statute states, in pertinent part:

“(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, excluding extensions, of the return in respect of which the tax might have been credited.”

ORS 314.415(1).

Defendant denied Plaintiff’s refund for 1998 because it did not receive a return until August 29, 2002, which is more than three years after the return’s due date. Plaintiff claims, however, that it timely filed the return in September 1999. ORS 305.820 addresses when remittances are deemed received by tax officials. Generally, a return is “deemed filed or received on the date shown by the cancellation mark or other record of transmittal[.]” ORS 305.820(1)(a). The September 1999 filing, however, is nowhere to be found. As a result, no record of transmittal is available. ORS 305.820(1)(c) provides the standard to be used when writings are lost in mail. It provides, in pertinent part:

¹ All references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 1999.

“(1) Any writing or remittance required by law to be filed with or made to the Department of Revenue * * * which is:

“* * * * *

“(c) Lost in transmission through the United States mail or private express carrier, shall be deemed filed and received on the date it was mailed or deposited for transmittal if the sender:

“(A) Can establish by competent evidence satisfactory to the addressee that the writing or remittance was deposited on or before the date due for filing in the United States mail, or with a private express carrier, and addressed correctly to the addressee; and

“(B) Files with the addressee a duplicate of the lost writing or remittance within 30 days after written notification is given by the addressee of its failure to receive such writing or remittance.”

ORS 305.820(1)(c).

Therefore, if a taxpayer can demonstrate through competent evidence that the return was submitted by the due date, and the taxpayer provides a copy to Defendant within 30 days of notice that Defendant did not receive the return, then a taxpayer’s return is deemed timely filed. The court notes that the statute requires the evidence provided must be “satisfactory to the addressee.” Defendant is the addressee in this matter and makes the initial determination as to whether a taxpayer’s proof is sufficient. The court reviews Defendant’s determination under an abuse of discretion standard. *See Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498, 500 (1993). As a consequence, the court is not evaluating de novo (or “anew”) whether Plaintiff submitted satisfactory evidence that it mailed the return in September 1999. Instead, the court is only reviewing whether Defendant abused its discretion in determining satisfactory evidence was not provided. In doing so, the court is limited to determining whether Defendant “acted ‘capriciously or arrived at a conclusion which was clearly wrong.’” *Eyler v. Dept. of Rev.* 14 OTR 160, 162 (1997) (describing the court’s review of discretionary acts by the Department of Revenue) (citation omitted).

As a first step, the court notes that Plaintiff satisfied the second requirement of the statute by providing a copy of the return within 30 days of receiving notice that Defendant did not receive it.² The question becomes, therefore, whether Plaintiff has provided competent evidence that it timely submitted the return. Defendant has adopted a rule that sets forth factors to be considered when evaluating whether a taxpayer's proof is sufficient. OAR 150-305.820(2) states:

“(2) If the department has no record of receiving a return, the taxpayer may be able to establish satisfactory proof of timely mailing. Examples of evidence the department will consider include:

“(a) A history of timely filing returns with the department;

“(b) Proof of timely filed federal returns;

“(c) Written documentation from the taxpayer which would indicate that the taxpayer had timely filed. Such documentation may include correspondence to the department about refunds not received, or about checks for payment of tax which remain uncashed.”

Plaintiff argues that, by timely submitting a copy of the 1998 return, it no doubt had prepared the return. Although demonstrating a return was prepared may suggest a return was mailed, it does not necessarily prove it. The statute requires that additional evidence be provided. As proof, Plaintiff offers its record of timely filing returns with Defendant. Although Plaintiff does have a general history of timely filing its returns, Defendant failed to receive a timely filed 1999 return in addition to the 1998 return. Furthermore, Plaintiff was unable to obtain proof that it timely filed its 1998 federal return.

As stated above, the court's task is to determine whether Defendant abused its discretion by concluding Plaintiff failed to timely file its return. Although some facts suggest Plaintiff may have filed its return on time, Plaintiff has not provided sufficient evidence to cause the court to

² The court notes that the statute requires the return be filed within 30 days after written notification is received. ORS 305.820(1)(c)(B). Plaintiff never received written notification that Defendant failed to receive the 1998 return. The information came via a telephone call.

determine Defendant acted arbitrary or capricious in its determination. Considering the available facts, the court finds Defendant did not abuse its discretion when it concluded that Plaintiff failed to timely file its 1998 return. As a result, the court finds Defendant properly denied Plaintiff's claimed refund under the provisions of ORS 314.415.

III. CONCLUSION

It is the conclusion of the court that Plaintiff failed to demonstrate through competent evidence that it timely filed its 1998 tax return. As a result, Plaintiff's claimed refund must be denied. Now, therefore,

IT IS ADJUDGED AND DECREED that Defendant's denial of Plaintiff's claimed refund for 1998 is affirmed.

Dated this ___ day of August 2004.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER
AUGUST 31, 2004. THE COURT FILED THIS DOCUMENT AUGUST 31, 2004.**