

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

HAROLD R. BRENNING)	
and CAROLE J. BRENNING,)	
)	
Plaintiffs,)	TC-MD 031118B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the denial by Department of Revenue (the department) of an income tax refund requested for the 1999 tax year. A case management conference was held February 6, 2004. Harold R. Brenning appeared for Plaintiffs. Laurie Fery, Auditor, represented Defendant. Written submissions were offered; the record closed on March 15, 2004.

I. STATEMENT OF FACTS

An Oregon income tax return for 1999 was due on April 17, 2000. Plaintiffs filed their 1999 Oregon income tax return on October 13, 2003, requesting a refund of \$1,496. The Internal Revenue Service (IRS) had granted Plaintiffs federal extensions to file their 1999 federal return not later than October 15, 2003.

On November 12, 2003, the department issued Plaintiffs a Notice of Proposed Refund Adjustment denying the refund because Plaintiffs did not file their refund request within three years as required by statute.

Plaintiffs offered many reasons for the delay including numerous and severe health problems, the death of family members and friends, and a struggling business.

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Plaintiffs believed that they fulfilled their state tax obligations and expected the federal extensions to likewise apply to the state income tax deadline for the 1999 tax year.

II. ANALYSIS

Plaintiffs presented compelling reasons for the delay in filing their 1999 state income tax return. However, the Oregon Legislature considered the possibility of taxpayers delaying to request tax return refunds and enacted ORS 314.415(1)(b)(A)¹ to establish the time required for submitting refund claims. The statute states:

"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)(A) (emphasis added).

The parties disagree about the final due date of Plaintiffs' 1999 state return. Plaintiffs maintain the due date should be October 15, 2003, the date the IRS granted extensions to Plaintiffs for filing their 1999 federal return. The department maintains that the due date should be April 15, 2003, three years after the original return was due. By analyzing the text of the statute, the court determines the legislature intended the date for filing an original return to be three years from the original due date because the statute specifically mentions that the due date excludes extensions. The court interprets extensions to include both state and federal extensions. Therefore, the court finds that Plaintiffs' due date for filing their original 1999 state return was April 15, 2003, and, as a result, Plaintiffs failed to file their return within the required time.

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¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

Plaintiffs also claim that because they filed the 1999 state return before the federal return due date of October 15, 2003, the department should grant Plaintiffs their 1999 refund. In *Pendleton v. Dept. of Rev.*, TC-MD 011170E, WL 976323 (Feb 28, 2002), the court examined a similar situation. In *Pendleton*, the plaintiffs received a federal extension for filing their 1997 federal return and, subsequently submitted their state return at the same time as the federal return. *Pendleton*, WL 976323. The IRS granted the plaintiffs a refund for 1997 and the plaintiffs argued the department should also grant a refund. *Id.* In *Pendleton*, the court stated:

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

Id. (Emphasis added.) Such extensions for federal taxes do not modify or alter the state result. Therefore, in the case at issue, the court must deny Plaintiffs' request to apply the October 15, 2003, due date and grant the 1999 state refund because state law requires Plaintiffs to file the original state return within three years of the original due date of April 17, 2000, and Plaintiffs failed to do so.

Finally, Plaintiffs requested the court to apply the 1999 refund to subsequent tax years in which Plaintiffs owe taxes. However, the applicable statute states, "[i]f a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this paragraph, the excess shall not be allowed as a credit against any tax occurring on a return filed for a subsequent year." ORS 314.415(1)(b)(A). Therefore, because Plaintiffs filed their 1999 state return after the three year time limit allowed by statute, the court cannot apply the 1999 refund to subsequent tax years.

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Plaintiffs offered compelling information concerning their difficulties and circumstances in not filing a timely return for the 1999 tax year. Plaintiffs request the court to interpret the law in a manner that grants a refund. The court understands Plaintiffs' difficult situation. Unfortunately, the Oregon Legislature has not allowed for any exceptions to the strict filing period for tax returns. "Until changed by the legislature, the law limits refunds without regard to why refund claims are filed more than three years after the return was due." *DeArmond v. Dept. of Rev.*, 14 OTR 112, 117 (1997). Because the legislature did not provide a hardship exception under these specific situations, the court is without authority to order a refund for the 1999 tax year.

III. CONCLUSION

The court sympathizes with Plaintiffs. However, Plaintiffs' situation is no different than many others who, for various reasons, did not file a original return requesting a refund within the three year time limit and did not receive relief from this court. Now, therefore,

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

Dated this _____ day of April 2004.

JEFF MATTSON
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 JEFF MATTSON ON APRIL 7, 2004. THE COURT FILED THIS DOCUMENT ON APRIL 7, 2004.