

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JAMES SISK and ANNETTE SISK,)	
)	
Plaintiffs,)	TC-MD 040122F
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant's denial of Plaintiffs' personal income tax refund for the 1999 tax year. The case was decided based on materials submitted by the parties.

I. STATEMENT OF FACTS

Plaintiffs dispute the date their 1999 personal income tax return was filed. Plaintiffs claim they filed their 1999 return on or about February 20, 2003.¹ However, on July 28, 2003, Plaintiffs received a Request-to-File Notice from Defendant stating that Defendant had not received Plaintiffs' 1999 tax return. Plaintiffs responded with a telephone call during which Defendant's representative suggested Plaintiffs may have inadvertently sent their Oregon tax return to the Internal Revenue Service (IRS). Plaintiffs called the IRS and were told that any such errors would result in the state tax return being returned to the sender. Following those telephone conversations, Plaintiffs sent Defendant a copy of their 1999 tax return along with a letter requesting a refund. Defendant received the copy of the tax return with the accompanying letter September 12, 2003.

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¹ The signature date on the Plaintiffs' tax return was February 20, 2003. Plaintiffs filed their personal income tax returns late in the past. Their 2000 tax year return was received by Defendant on April 16, 2003.

Defendant denied Plaintiffs' requested refund of \$5,139² because Defendant received the return more than three years after the return was due. *See* ORS 314.415(1)(b)(A).³ Plaintiffs filed their appeal claiming their tax return was filed prior to the three-year deadline and was lost by either Defendant or the postal service.

II. ISSUE

Did Defendant abuse its discretion when it determined that Plaintiffs did not have satisfactory proof that they filed their 1999 personal income tax return within three years of its due date? *See* ORS 314.415.

III. ANALYSIS

Oregon income tax refunds are governed by ORS 314.415. ORS 314.415(1)(b)(A) provides:

"No refund shall be allowed or made after three years from the time the return was filed * * * 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 * * *."

ORS 305.820(1)(a) governs the date a tax return is deemed filed.

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

(a) Transmitted through the United States mail * * * shall be deemed filed or received on the date shown by the cancellation mark or other record of transmittal, or on the date it was mailed or deposited if **proof satisfactory to the addressee establishes that the actual mailing** or deposit occurred on an earlier date (emphasis added)."

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² Plaintiffs' tax return lists a net refund of \$5,129.64. Plaintiffs' March 5, 2004, letter to the Tax Court lists \$5,139.

³ All references to the Oregon Revised Statutes (ORS) are to 1999.

In interpreting the above statutes, this court must follow the guidelines set forth in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993), which held that "[t]he court's task is to discern the intent of the legislature" by examining the statute's text and context. In determining legislative intent, the *PGE* court further held that "if the legislature's intent is clear * * * further inquiry is unnecessary." *Id.* at 611.

From the text of ORS 314.415, it is clear that a refund may not be granted for any tax return filed more than three years after the due date of the return, excluding extensions. The issue then becomes determining when the return was filed and who makes that determination. The text of ORS 305.820(1)(a) states that tax returns sent through the mail are deemed filed on the date of the postmark, but that an earlier date may be used if the taxpayer **provides proof satisfactory to the addressee** that the tax return was mailed earlier. By the language emphasized above, the statute also grants the addressee, in this case Defendant, the discretionary authority to determine what constitutes satisfactory proof that a tax return was mailed at an earlier date. When such discretionary authority has been granted to an administrative body, a court may not substitute its own judgment unless there has been an abuse of discretion by the administrative body. *Casciato v. Oregon Liquor Control Com.*, 181 Or 707, 716-717, 185 P2d 246, 250 (1947).

Plaintiffs' 1999 tax return was due April 17, 2000.⁴ Thus, the statutory three-year time period for requesting a tax refund expired April 17, 2003. The evidence shows that Defendant received Plaintiffs' 1999 tax return September 12, 2003, nearly five months after April 17, 2003. Pursuant to ORS 314.415, Plaintiffs may not receive a refund for their 1999 tax return unless they can provide evidence satisfactory to Defendant that their return was mailed prior to the April 17, 2003, statutory deadline.

⁴ Because April 15, 2000, was a Saturday, the return was due the following Monday, April 17, 2000. *See* ORS 305.820(2).

Notwithstanding the signature date of February 20, 2003, on Plaintiffs' tax return, Plaintiffs presented no evidence, such as a mailing receipt, that their tax return was mailed prior to the April 17, 2003, deadline. Plaintiffs appeal to logic, reasoning that since their 2000 tax return was received by Defendant April 16, 2003, their 1999 return must have been filed first. However, based on the internal policies of Defendant, that was not considered satisfactory evidence.⁵ In following its internal policies in determining that Plaintiffs had not provided satisfactory proof of an earlier mailing date, Defendant did not abuse the discretionary authority granted by ORS 305.820(1)(a). Defendant acted properly in denying Plaintiffs' refund.

IV. CONCLUSION

The statutory scheme created by the legislature sets a three-year deadline for allowing income tax refunds. Unfortunately for Plaintiffs, their tax return was received by Defendant past the statutory deadline, and they could not provide satisfactory evidence that their tax return was mailed prior to the deadline. For the reasons mentioned above, Defendant did not abuse its discretion in denying Plaintiffs' 1999 tax refund. Now, therefore,

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

Dated this _____ day of July 2004.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON JULY 21, 2004. THE COURT FILED THIS DOCUMENT JULY 21, 2004.

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.

⁵ Defendant noted that when taxpayers file tax returns late, those returns are often filed out of sequence.