

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DEBORAH R. DAWSON)	
and CARLTON S. DAWSON,)	
)	
Plaintiffs,)	TC-MD 040513D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss, filed as part of its Answer received May 17, 2004, requesting that Plaintiffs’ Complaint be dismissed. A trial was held in the Oregon Tax Courtroom, Salem, Oregon on Monday, October 18, 2004. Deborah Dawson (Dawson) appeared on behalf of Plaintiffs. Nancy Grigorieff, Tax Auditor and Certified Public Accountant, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The parties agree that for tax year 2002 Plaintiffs filed a joint Oregon state income tax return. Plaintiffs signed the income tax return on September 15, 2003, and requested a refund in the amount of \$681.

On October 6, 2003, Defendant mailed a Notice of Proposed Adjustment and/or Distribution (Notice) to Plaintiffs. (Ptf’s Ex A.) At trial, Dawson acknowledged receipt of Defendant’s Notice. The Notice advised Plaintiffs that “part or all of” their state income tax refund for tax year 2002 “was applied to” a delinquent liability “with the state agency (ies) listed below.” (*Id.*) The Notice stated that the application of the refund to the delinquent liability reported by the Department of Justice, Division of Child Services, will “be final unless” Plaintiffs submitted a written request “within 30 days of the date of this notice.” (*Id.*)

On October 9, 2003, Carlton S. Dawson wrote to the Department of Justice, Division of Child Services. Briefly, he wrote that the “letter constitutes my appeal of the determination and my request for a hearing.” (Ptf’s Ex B.)

A hearing was set for January 14, 2004. However, the hearing was not conducted because Carlson Dawson failed to appear. (Final Order by Default, Division of Child Support, dated January 16, 2004.) In its Final Order by Default, the Division of Child Support concluded that Carlton Dawson “owes past due child support and the Division of Child Support may use the obligor’s [Carlton Dawson’s] tax refunds to reduce that past due support.” (*Id.*)

On April 13, 2004, the court received Plaintiffs’ Complaint. In their Complaint, Plaintiffs requested that the “full refund (\$681.00)” be awarded “to Deborah R. Dawson.” Defendant alleges that Dawson failed to follow the procedure outlined in its Notice to request her share of the refund. (*See* Ptf’s Ex A at 2.)

II. ANALYSIS

The issues before the court are whether Defendant erred in (1) sending the Notice to Plaintiffs; and (2) denying Plaintiffs’ request to separately allocate a portion of their state income tax refund to Deborah Dawson.

Notice to Plaintiffs

Beginning with the first issue, Plaintiffs allege that Defendant had no authority to issue the Notice to Deborah Dawson. That is incorrect. Plaintiffs filed a joint income tax return. A notice issued by the Oregon Department of Revenue pertaining to Plaintiffs’ income tax return can be issued to both individuals because they are jointly and severally liable for the income tax liability. *See* ORS 316.567.¹

¹ All references to the Oregon Revised Statutes (ORS) are to tax year 2001.

Refund Allocation Request

With respect to the second issue, the law provides that the Oregon Department of Revenue “**may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return**, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the department.” ORS 314.415(6) (emphasis added.) Using the authority to promulgate rules granted to it by the legislature, Defendant put a time limit in place for taxpayers to file their request. OAR 150-314.415(6)(3) states that “if the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Refund Application. **No separate refunds will be made if the request is not received timely.**” (emphasis added.)

Defendant’s Notice was dated October 6, 2003. More than 30 days after the date of the Notice, Plaintiffs wrote to Defendant requesting a hearing to appeal the application of the refund to Carlton Dawson’s support obligation. (Def’s Letter to the court dated Aug 30, 2004.) That letter dated April 5, 2004, was Defendant’s first written communication from Plaintiffs requesting a hearing to appeal Defendant’s Notice. Plaintiffs admit that they did not make a timely appeal to Defendant, but allege that by Carlton Dawson requesting a hearing with the Department of Justice, they met their statutory obligation. Unfortunately, Plaintiffs are incorrect in their conclusion. The Notice stated that a hearing with the Department of Justice is “held **only** to determine whether you owe the debt.” (Ptf’s Ex A) (emphasis added.) Plaintiffs’ decision to request a hearing with the Department of Justice for the purpose of appealing the application of the refund was contrary to the printed instructions on the Notice and the governing statutory authority, ORS 314.415(6). Further, after receiving the Final Order of Default from the

Department of Justice, dated January 16, 2004, Plaintiffs took no action until April 5, 2004, when they wrote to the Department.² Plaintiffs' failure to follow the instructions on the Notice resulted in this appeal.

Defendant's Notice explains that, "A spouse who is not responsible for the" liability "may be allowed his or her share of the refund." (Ptf's Ex A.) Dawson alleges that she did not know that she needed to "respond to the ODR in yet another separate letter." (Dawson's letter dated Aug 16, 2004.) Apparently, Plaintiffs overlooked that portion of the Notice explaining how Dawson could request her share of the refund. Plaintiffs' failure to follow the instructions set forth on Defendant's Notice has resulted in a very unfortunate outcome. Dawson's delay in pursuing the recovery of her portion of the income tax refund resulted in the loss of an opportunity to prevent the application of her portion of the refund to Carlton Dawson's obligation. There is no legal authority for the court to extend the time for Plaintiffs to request a separate refund from Defendant.

Defendant's Notice did not state how to appeal Defendant's act of distributing the Plaintiffs' joint refund to pay Carlton Dawson's obligations. However, in a recent case, the tax court concluded that ORS 305.275 "afforded" a taxpayer "a right to appeal to this court within 90 days of the time she actually became aware" * * * "that some portion of the" joint income tax "refund computed to be due to the taxpayers was attributable to withholdings from [her] wages." *Fackler v Dept. of Rev.*, TC 4667 (Order) (Nov. 22, 2004). In this case, Plaintiffs admitted that they received Defendant's Notice dated October 6, 2003. Their receipt of Defendant's Notice and knowledge of Defendant's distribution of their joint income tax refund was confirmed by Carlton Dawson's letter dated October 9, 2003, to the Department of Justice and Dawson's

² Plaintiffs' appeal of the Final Order of Default would have been to the circuit court, not the Oregon Tax Court.

testimony. Unfortunately, more the 90 days expired before Plaintiffs filed their appeal in this court. (Ptf's' Compl was mailed Apr 13, 2004.) Therefore, even if this court's holding in *Fackler* was applicable to the facts of this case³, Plaintiffs' appeal was not timely.

III. CONCLUSION

Plaintiffs failed to file a timely request with Defendant to make a separate refund of their 2002 state tax income refund that was applied to a debt owing by Carlton Dawson. Further, if Plaintiffs had a right to appeal to this court, they failed to exercise it within the required time limits. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted and this matter is dismissed.

Dated this _____ day of December 2004.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON DECEMBER 10, 2004. THE COURT FILED AND ENTERED THIS DOCUMENT DECEMBER 10, 2004.

³ Defendant's distribution of Plaintiffs' refund was in compliance with its request from the Department of Justice to collect past due child support from income tax refunds due to Carlton Dawson. *See* ORS 25.610 and OAR 137-055-1020. It is unclear to the court whether Defendant's action meets the statutory requirement of an act by "The Department of Revenue in its administration of the revenue and tax laws of this state." ORS 305.275(1)(a)(A). However, because Plaintiffs failed to meet the statutory time line for filing an appeal, the court need not resolve that issue.