

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

GLENN R. BROWN	)	
and MARILOU A. BROWN,	)	
	)	
Plaintiffs,	)	TC-MD 040853C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION and JUDGMENT</b>

Plaintiffs appeal from notices of proposed refund adjustment and refund denial regarding tax year 1999. For ease of reference, the parties will be referred to as taxpayers and the department.

I. STATEMENT OF FACTS

The department received a 1999 return from taxpayers on November 26, 2003, claiming a refund of \$965. Taxpayers assert that the return was “timely” filed March 26, 2003.<sup>1</sup> On February 24, 2004, the department denied taxpayers’ refund request pursuant to ORS 314.415, because the return was not filed within three years of the due date.<sup>2</sup> Taxpayers filed a written objection with the department dated March 22, 2004, which was received by the department on March 29, 2004. The department did not initially act on that objection, which alleged that the return was filed within three years of the due date. On June 17, 2004, taxpayers appealed to the Magistrate Division of the Oregon Tax Court. Taxpayers at some point submitted what they

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<sup>1</sup> Taxpayers repeatedly asserted that their 1999 return was “timely” filed. However, taxpayers view as timely any return filed within the three-year refund request cut-off date.

<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

purported to be a copy of their original 1999 return. That return was signed in original ink and dated April 14, 2000. Following the first case management conference, held October 7, 2004, the department issued a Notice of Refund Denial, dated October 20, 2004. According to that notice, taxpayers' return was deemed to be untimely filed based on a review and analysis of OAR 150-305.820(2).<sup>3</sup> The stated reasons for the department's determination were that:

- the return was received November 26, 2003;
- taxpayers do not have a receipt from the post office showing that the return was filed on the date alleged;
- there was no satisfactory evidence that it was filed on or before the due date or within the three-year period provided in ORS 314.415;
- taxpayers do not have a history of timely filed returns;
- taxpayers did not provide proof of a timely filed federal return;

According to information submitted by the department, taxpayers' 1996 return was received September 22, 1998, roughly 17 months after the due date; their 1997 return was received April 25, 2000, roughly 24 months after the due date; and taxpayers' 1998 return was received June 28, 2001, roughly 26 months after the due date. Moreover, taxpayers concede that their 1999 Federal income tax return was received more than three years after the due date.

## II. ANALYSIS

The issue is whether the department abused its discretion in determining that taxpayers' 1999 return was not filed within three years of the due date. *See Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498, 500 (1993) (finding that the standard of review of the county's determination under ORS 305.820 that the taxpayer did not timely submit the 1991-92 property tax payment is limited to abuse of discretion, rather than a *de novo* review); *The Dalles Furniture*

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<sup>3</sup> The department's notice actually cited the rule as OAR 150-305.280(2), but it is evident from the quoted text associated with that citation that the department simply transposed the "2" and the "8."

*Co. v. Dept. of Rev.*, TC-MD No 030807E, WL 1982225 (Aug 31, 2004) (ruling that the court’s review of the department’s determination of untimely filing of an income tax return is limited to abuse of discretion).

ORS 314.415(1)(b)(A) prohibits the department from issuing a refund on an original return filed more than three years after the due date.<sup>4</sup> The department received taxpayers’ 1999 return on November 26, 2003. The department denied taxpayers’ refund request because the return was not received within three years of the April 15, 2000, due date. Taxpayers contend their return was filed March 26, 2003, which is within the three-year window.

The department reviewed taxpayers’ assertion of timely filing under the provisions of OAR 150-305.820.<sup>5</sup> That rule was promulgated by the department to interpret ORS 305.820. Under the statute, a return is generally “deemed filed or received on the date shown by the cancellation mark or other record of transmittal [.]” ORS 305.820(1)(a). The department had no record of taxpayers’ alleged filing in March 2003. ORS 305.820(1)(c) governs the handling of returns lost in transmission. The statute provides, in relevant part:

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

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<sup>4</sup> The statute provides, in relevant part:

“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 in respect of which the tax might have been credited. If 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).

<sup>5</sup> References to the Oregon Administrative Rules (OAR’s) are to 2003.

“(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.

Subsection (2) of the department’s rule provides that “[i]f the department has no record of receiving a return, the taxpayer may be able to establish satisfactory proof of timely filing.”

OAR 150-305.820. Among the factors the department will consider are:

“(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.”

The department found that there was a lack of evidence that taxpayers’ return was filed before November 26, 2003, that there was no receipt or other evidence to show that the return was filed in March 2003, and that taxpayers did not have a history of timely filing their returns.

This is not a case where the return was lost in transmission. Rather, if taxpayers are to be believed, the return was apparently misplaced by the Postal Service and delayed in arriving at its destination. The court does not review the matter to determine whether it believes taxpayers filed their 1999 return in March 2003. The standard of review for abuse of discretion is whether the department “acted ‘capriciously or arrived at a conclusion which was clearly wrong’” in its

determination that the return was filed beyond the three-year window. *See Eyley v. Dept. of Rev.*, 14 OTR 160, 162 (1997) (citations omitted). Moreover, the court is not to substitute its judgment for that of the department and it must limit its review to the evidence presented to the department. *Resolution Trust Corp. v. Dept. of Rev.*, 13 OTR 276, 279 (1995). Reviewing the department's determination for an abuse of discretion, the court finds that the department did not act capriciously or arrive at a clearly wrong conclusion. In fact, the evidence strongly suggests that the return was not filed until sometime in November 2003. Taxpayers have not attempted to explain why a return transmitted in March 2003 was not received by the department until November 2003, some eight months after it was allegedly transmitted. Moreover, taxpayers are quite concerned about their \$965 refund, yet they let approximately 11 months pass without inquiring about the refund. Taxpayers claimed to have filed the return on March 26, 2003 and the department's written denial is dated February 24, 2004.

### III. CONCLUSION

It is the conclusion of the court that taxpayers have failed to demonstrate that the department abused its discretion in rejecting taxpayers' assertion that they filed their 1999 return, received by the department on November 26, 2003, in March 2003. Now, therefore,

IT IS ADJUDGED that the department's Notice of Refund Denial is upheld and taxpayers' request for a refund for 1999 is denied.

Dated this \_\_\_\_\_ day of March 2005.

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DAN ROBINSON  
MAGISTRATE

***This document is final and may not be appealed. ORS 305.514.***  
**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON MARCH 21, 2005. THE COURT FILED THIS DOCUMENT MARCH 21, 2005.**

