

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JULIE LIEBERMAN,)	
)	
Plaintiff,)	TC-MD 040902A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

On January 28, 2005, the court issued an Order discussing the particulars of Plaintiff's claim for a refund of income taxes overpaid for the 1997 and 1999 tax years. The court will not repeat its findings. Instead, the Order's discussion is incorporated by reference. The court also incorporates its statements as to ORS 314.415(1)(b)(B),¹ Internal Revenue Code (IRC) sections 6511(h) and 6511(h)(2)(B), and Rev Proc 99-21, 1999-1 CB 960.

I. STATEMENT OF FACTS

Pursuant to the Order, Plaintiff subsequently submitted the medical opinion of Dr. Warner B. Swarner, M.D.; Physician, General Psychiatry; Diplomate of American Board of Psychiatry and Neurology. Dr. Warner certified that Plaintiff has been diagnosed with bipolar disorder, depression, obsessive-compulsive disorder, and attention-deficit disorder. He noted she has required psychiatric hospitalization six times since 1995; one such stay in 2001 lasted 16 days. Her psychotic symptoms have lasted at least 13 years and required the prescription of several psychotropic medications that Plaintiff was required to take on a daily basis. Pathological guilt, worry, and depression, Dr. Warner medically certified, were the major contributing factors that prevented her from filing her returns in a timely manner.

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

Plaintiff also furnished the second statement required by the Order, establishing that she had no one to act on her behalf in financial matters during the period in question.

II. ANALYSIS

Defendant does not dispute that Plaintiff suffered from depression and associated mental illness during the time income tax returns ought to have been filed. However, Defendant maintains that because Plaintiff remained employed and lived independently in a home she was purchasing, she ought to have been able to manage her financial affairs to the degree necessary to file returns.

Defendant's reasoning makes an important point. However, the lawmakers have taken a different path. They have decided that the critical piece is not what Defendant thinks of Plaintiff's mental state, but what a physician certifies as a medical impairment. The certificate of Dr. Swarner meets all the particulars of Rev Proc 99-21, 1999-1 CB 960. Neither that conclusion, nor the qualifications of Dr. Swarner, have been disputed by Defendant. That is enough to carry the day for Plaintiff.

III. CONCLUSION

Plaintiff has demonstrated an impairment sufficient to excuse her failure to file timely requests for refund within the period otherwise set out in ORS 314.415. Now, therefore,

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IT IS THE DECISION OF THIS COURT that her appeal is granted. She is entitled to the refunds for the 1997 and 1999 tax years.

Dated this _____ day of May 2005.

SCOT A. SIDERAS
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 Scot A. Sideras on May 19, 2005 . The Court filed this document on May 19, 2005.