

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

VALERIE KASNER,)	
)	
Plaintiff,)	TC-MD 041037A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appealed requesting relief from a personal income tax liability for the 1998 tax year. She appeared and made her arguments. Defendant was represented by Laurie Fery, of its staff.

I. STATEMENT OF FACTS

In March 2002, Plaintiff and her spouse filed a joint return for the 1998 tax year showing a tax due of \$1,322. Defendant subsequently billed Plaintiff for the unpaid tax, penalty, and interest. Plaintiff requested relief as an innocent spouse under ORS 316.369.¹ The agency denied the request on July 7, 2004, through a decision of its conference officer. That decision told Plaintiff of her right to appeal and specifically spoke of the need to present the dispute to the Magistrate Division of the Tax Court within 90 days.

Plaintiff subsequently contacted Defendant. A letter from Defendant to Plaintiff followed. On July 23, 2004, Defendant again told Plaintiff that her administrative appeal had been denied, and that her recourse for receiving a different result was to appeal to the Magistrate Division of the Oregon Tax Court.

///

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

Plaintiff's appeal to the court was received on October 12, 2004. It was postmarked October 8, 2004. In her appeal, and during the subsequent proceeding, Plaintiff spoke of her limited earnings, scant assets, age, dependents, and the domestic violence attached to her marriage.

II. ANALYSIS

ORS 316.369 is a remarkable statute in several respects. It permits a spouse to be relieved of the liability resulting from the filing of a joint return in instances where either the Internal Revenue Service, or Defendant, has made the determination that is the proper action to take. The statute is also noteworthy in that it does not set out any time period during which a spouse must file such a claim or else, through the passage of time, lose the ability to make the request. ORS 316.369 specifically delegates to Defendant the ability to make rules to define how it will make its determinations.

Defendant's rule is OAR 150-316.369². Two provisions of the rule are applicable to this appeal. The first is OAR 150-316.369(6), which permits, under some circumstances, a spouse to be relieved from unpaid liabilities that were reported properly on the joint return. The second is OAR 150-316.369(7), which sets out the appeal rights to this court from denials of relief requests. That portion of the rule declares that Defendant's decision will take the form of a conference decision letter, and that the requesting spouse must file an appeal with the court within 90 days of its date.

If the appeal provisions of OAR 150-316.369(7) stand, Plaintiff's appeal must be dismissed. Defendant's conference decision letter was dated July 7, 2004. Her appeal was not postmarked until October 8, 2004. Applying ORS 305.418(1) leads to the conclusion that

² All references to the Oregon Administrative Rules (OAR) are to 2003.

Plaintiff's appeal was filed three days too late. However, the court has reservations about that specific requirement of the rule.

The court's reasoning is that the general statute setting out the time limit for filing appeals from Defendant's acts declares that the 90 days are counted, not from when the act occurred, but from when the act becomes actually known to the person. ORS 305.280(1). The legislature has gone on to make specific exceptions to this general rule as to appeals involving cigarettes and tobacco products (ORS 305.280(2)), notices of assessment or refund denial (ORS 305.280(2)), the collection and distribution of local taxes (ORS 305.280(2)), and timber and forestland taxation (ORS 305.280(4)).

The legislature has not removed ORS 316.369 from the general rule that the 90 days are counted from actual knowledge of Defendant's act. If anything, the legislature's generous provision that claims might be filed under ORS 316.369 at any time argues the legislature might have intended to be just as considerate when it thought about that statute's appeal rights. While ORS 316.369(2) certainly gives Defendant broad rulemaking authority, the court believes that a grant to make rules as to how spouses might be relieved of joint liabilities does not run to defining when appeals must be filed with this court. *See, e.g. Fisher Broadcasting, Inc. v. Dept. of Rev.*, 321 Or 341, 898 P2d 1333 (1995) (Defendant's rule making cannot exceed its grant of authority under the statute).

The decision of this court is that OAR 150-316.369(7), and only OAR 150-316.369(7), is invalid. A person's appeal right from Defendant's decision under ORS 316.369 runs, not from the date of the conference decision letter, as in the manner of assessments and refund denials, but instead from a person's actual knowledge of Defendant's decision, as is the more general rule set out in ORS 305.280. The court is satisfied that Plaintiff gained actual knowledge of Defendant's decision upon her receipt of the conference decision letter. Looking to the date of Defendant's

letter, and allowing time for its transmittal through the mails, produces the conclusion that Plaintiff's appeal was timely under ORS 305.280(1).

With it now decided that Plaintiff's appeal is before the court on its merits, what is to be done with this case? Defendant's reasoning is that Plaintiff's request under ORS 316.369 must be denied because Defendant did not believe Plaintiff "will suffer economic hardship if relief is not granted." After Defendant issued its conference decision letter, Plaintiff contacted Defendant to speak of how Defendant's conclusions were in error, and that her health, earnings, and assets were not equal to Defendant's estimations. At this court Plaintiff told of how close she and her family came to eviction, and how they are in danger of having their utilities disconnected. This appeal is remanded to Defendant for a comprehensive review of Plaintiff's economic hardship.

While the preceding discussion decides the points at issue in this appeal, more remains to be said. First, it is worth reiterating that the court is only declining to follow the dictates of OAR 150-316.369 insofar as OAR 150-316.369(7) uses the date of the conference decision letter as the trigger for the running of the appeal period. Instead, this court is using Plaintiff's actual knowledge of the decision, as inferred from the receipt of the conference letter, as the starting point. Next, although this matter is being remanded to Defendant, that is not, in any way, shape, or form, to be taken as a criticism of the conference process.

In this magistrate's opinion, the decision of the conference officer, LouAnne Shuyler, demonstrates her thorough knowledge of the law and her painstaking examination of the facts as presented by Plaintiff. Her subsequent letter to Plaintiff proves her conscientious responses and intelligent advice. Although this appeal is being remanded to Defendant for further action, the court's perception is that Plaintiff will be presenting information she has heretofore not shared

///

with Defendant, as to which Defendant, had it been previously made aware, might well have reached a different result.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is remanded to Defendant for further proceedings consistent with this decision.

Dated this _____ day of February 2005.

SCOT A. SIDERAS
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON FEBRUARY 18, 2005 . THE COURT FILED THIS DOCUMENT ON FEBRUARY 18, 2005.

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.