

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

GEORGE N. KOUS,)	
)	
Plaintiff,)	TC-MD 041107E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s denial of the refund claimed on his 2000 tax return. A trial in the matter was held in the conference room of the Oregon Tax Court January 13, 2005.¹

George N. Kous appeared on his own behalf. Laurie Fery (Fery), Auditor, appeared on behalf of Defendant. At the conclusion of the proceeding, Fery requested time to respond in writing to the court’s questions related to Defendant’s denial of Plaintiff’s surplus (kicker) refund. The court granted her request and allowed Plaintiff time to file a written response. On March 28, 2005, Fery filed her comments. On May 6, 2005, Plaintiff filed a request for another “face on, case management conference[.]” (Ptf’s Ltr, May 6, 2005.) The court denied Plaintiff’s request, but permitted him until June 13, 2005, to file written comments on the matter. The case is ready for ruling.

I. STATEMENT OF FACTS

For tax year 2000, instead of filing his return by the original April 15, 2001, deadline, Plaintiff filed an extension and paid \$4,000. On August 5, 2004, Plaintiff filed his 2000 return requesting a refund of \$1,909. He computed his refund as follows:

¹ The proceeding was originally scheduled as a case management conference. After it became apparent both parties were prepared to present their positions, the court swore the parties in and converted the proceeding into a trial.

Net Income Tax Due:	\$ 6,004.15
Less Payments:	
1999 refund applied to 2000 liability	\$ 617.55
Payment with extension	\$ 4,000.00
Withholdings	<u>\$ 3,295.87</u>
Total Payments:	\$ 7,913.42
Claimed Refund Due:	\$ 1,909.27

On October 20, 2004, Defendant issued a Notice of Proposed Refund Adjustment. In that notice, Defendant advised Plaintiff that it was denying his 2000 refund of \$2,269.55. Confused as to why the figure did not match the refund claimed on his return, Plaintiff contacted Defendant. He was advised that 2000 was a surplus year and that, in addition to the refund claimed on his return, he also would have been entitled to a surplus refund of \$361. Defendant, in its notice, was denying both the refund claimed on his return and the surplus refund. Defendant further advised him that the refund was denied because his return was filed more than three years after its due date. Subsequently, on November 1, 2004, Defendant refunded to Plaintiff the 1999 refund of \$617.55 that had originally been applied to the 2000 liability.

Plaintiff appeals Defendant's Notice of Proposed Refund Adjustment, claiming he is entitled to both the surplus refund and the refund claimed on his return. In the course of the appeal, Defendant agreed to allow Plaintiff the surplus refund of \$361. At issue is the \$1,291 remaining of the refund claimed on Plaintiff's return.

II. ANALYSIS

Plaintiff filed his return for 2000 on August 5, 2004. Because his return was filed more than three years after the April 15, 2001, due date, Defendant denied his refund. Plaintiff notes that he filed an extension for his 2000 return. Because he filed his 2000 return within three years of the extended due date, Plaintiff contends he is entitled to the claimed refund.

ORS 314.415² sets forth the time limits for when a refund claim must be submitted. The statute states, in pertinent part:

“* * * 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.”

ORS 314.415(1)(b)(A) (emphasis added).

Plaintiff claims the three-year period begins on the extended due date. The statute, however, is quite clear that the three-year period begins on the original due date, not the extended due date. Plaintiff argues that the Internal Revenue Service considers the extended due date in its calculation of the limitations period. The court, however, is not addressing federal time lines. Instead, it must interpret and apply the Oregon statutes and ORS 314.415(1)(b)(A) sets the time line by specifically excluding extensions.

Plaintiff finally argues that the 2000 instructions are misleading as to when a return is due. Page six of the instruction booklet addresses when a taxpayer needs more time to file. It states: “Generally, Oregon allows you the same extension you have for your federal return.” (Ptf’s Ex 1.) The court observes initially that Plaintiff is relying on an instruction booklet, whereas the court is enforcing the statutory law. In any case, the language relied upon by Plaintiff relates only to the time to *file a return*. In that case, Oregon does generally allow a taxpayer the same extension as allowed for his federal return. The booklet language does not address time lines for *requesting refunds*.

Although the court understands Plaintiff’s confusion as to the instructions, the court does not believe the instructions are, in fact, misleading. As a result, the court finds that the statutory provisions apply to deny Plaintiff’s claimed refund.

² All references to the Oregon Revised Statutes (ORS) are to 2003.

III. CONCLUSION

The court finds that the three-year period during which a taxpayer must request a refund on his original return runs by the original due date of the return, not the extended due date. Because Plaintiff failed to file his original return within three years of the original due date, he is not entitled to the refund claimed on his return. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant shall refund to Plaintiff \$361 representing the surplus refund due for 2000; and

IT IS FURTHER DECIDED that the remainder of Plaintiff's claimed refund for 2000 (\$1,291) is denied.

Dated this _____ day of June 2005.

COYREEN R. WEIDNER
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 Coyreen R. Weidner June 23, 2005. The Court filed and entered this document June 23, 2005.