

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

LARRY J. WRIGHT)	
and CHERYL L. WRIGHT,)	
)	
Plaintiffs,)	TC-MD 050033A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed the decision of the Department of Revenue to deny a refund claimed for the 1998 tax year. Plaintiffs appeared and made their arguments. The Department of Revenue was represented by Michael Hamilton, of its staff.

I. STATEMENT OF FACTS

The Department of Revenue is certain that it has no record of Plaintiffs filing their 1998 return until September 30, 2004. Plaintiffs are equally certain that they filed a return on August 1, 2001.

Plaintiffs reasoned that they filed their 1998 return with the state at the same time they filed their federal return with the Internal Revenue Service. Plaintiffs' federal return was received by the Internal Revenue Service on August 3, 2001. Plaintiffs explained that it was their practice to request that refunds which would otherwise be paid to them be applied against taxes that will become due during the following year. They speculated that some problem might have been created when they returned a 1997 refund check to the Department of Revenue with

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instructions to apply it against the 1998 liability. Plaintiffs have a history of filing returns, albeit late.

II. ANALYSIS

Two statutes apply. ORS 314.415¹ sets out a three-year window for claiming a refund. The 1998 return was due on or before April 15, 1999. Under that statute, if the Plaintiffs did, in fact, file their 1998 return on August 1, 2001, they might be paid a refund. If they did not, their refund is barred.

ORS 305.820, the second statute, sets out the rule for deciding when a return is deemed to have been filed. In instances when a filing has apparently been lost in the mail, the statute calls upon the sender to show by competent evidence that the writing was deposited in the mail. In this case the Plaintiffs have no evidence they mailed their return. Their collateral proof is limited to demonstrating that the federal return was filed, which is an indirect at best. The administrative rule promulgated under the statute, OAR 150-305.820(2), specifies that an important point is a history of timely filings. Plaintiffs have no such record.

III. CONCLUSION

The essence of this case is that one party asserts one position, while the other maintains exactly the opposite. The legislature has set out who has the burden of proof. That means the case goes against the Plaintiffs. Now, therefore,

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

IT IS THE DECISION OF THIS COURT that this appeal is denied.

Dated this _____ day of June 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 June 13, 2005.
The Court filed this document on June 13, 2005.**