

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DANIEL B. HALL	)	
and SANDRA J. HALL,	)	
	)	
Plaintiffs,	)	TC-MD 050107B
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

This matter is before the court on Plaintiffs’ appeal of Defendant’s denial of a personal income tax refund for the 2000 tax year. The amount at issue is \$1,041.00. (Ptf’s Response at 1.)

A case management conference was held on April 13, 2005; the parties subsequently submitted additional written arguments. Plaintiffs represented themselves. Laurie Fery, Auditor, represented Defendant. For ease of reference, the parties will be referred to as “taxpayers” and “the department.”

**I. STATEMENT OF FACTS**

The parties do not disagree on the underlying facts. Taxpayers claim their return for the 2000 tax year was filed within the statutory deadline to allow for a refund. The department received the form on August 12, 2004. (Def’s Answer at 1.) Taxpayers assert that a federal extension for the filing date likewise extends the three-year deadline for filing for a refund. Alternatively, taxpayers contest that the department should be estopped from denying the refund. The department disagrees.

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Taxpayers have dealt with a difficult family situation for many years now. Taxpayers are heavily involved with the care of three of their parents, who have serious health problems. The husband's mother, who lives with taxpayers, has Alzheimer's dementia.<sup>1</sup> (Ptfs' Compl at 4.) The wife's parents do not live with taxpayers, but they require a great deal of taxpayers' time due to recent ailments and surgeries. (Ptfs' Compl at 7.)

By 2000, taxpayers were under much pressure and thus fell behind in filing their personal income tax returns (returns). Taxpayers filed for an extension on their 2000 federal return, which moved their federal due date from April 15, 2001 to August 15, 2001. (Ptfs' Compl at 4.) In 2004, taxpayers prepared their 2000 returns, state and federal, with hopes of finally recovering their refunds. (Ptfs' Compl at 7.) In March 2004, while preparing those returns, taxpayers perused the department's publication *2000 Oregon Personal Income Tax Forms 40S & 40 Instructions* (the instruction publication). Plaintiffs quote the following: "Do you need more time to file? Generally, Oregon allows you the same extension you have for your federal return." (Emphasis omitted.) (Ptfs' Resp at 2.)

About that time, taxpayers also telephoned the department. Taxpayers came away from the telephone conversation with the understanding that Oregon's deadline system for returns was identical to the federal government's system. Taxpayers did not note the date or time of that call, nor did they record the name of the individual with whom they had spoken. (Ptfs' Resp at 2.) The department has no record of that telephone call, though it has established policies for responding to questions such as those. The manager of the department's Tax Services Department stated that, if phone operators were asked whether Oregon allowed the

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<sup>1</sup> On August 10, 2004, at the time the returns were filled, the husband's mother lived 6.5 hours away by car. (Ptfs' Compl at 7.) Traveling that distance was a major time burden for taxpayers. By October, the husband's mother had moved in with taxpayers. While that freed taxpayers from regularly driving such a long distance, a different set of stresses developed. (Ptfs' Compl at 4.)

same extension period as the Internal Revenue Service (IRS), the operators would answer affirmatively. The operators would add that extensions gave additional time to file, but not additional time to pay. (Def's Resp at 1.) That manager admitted being unaware that the refund statutes of Oregon and the federal government are different. (Def's Resp at 2.)

On August 12, 2004, the federal government and the department each received a 2000 tax return from taxpayers. (Ptf's' Compl at 4.) On September 17, 2004, taxpayers received their federal refund. (Ptf's' Compl at 4.) However, taxpayers received a Notice of Proposed Refund Adjustment dated October 29, 2004, from the department, informing them that their refund claim for the 2000 tax year was denied.<sup>2</sup> (Ptf's' Compl at 3.)

On February 25, 2005, taxpayers filed this appeal requesting that the court approve and authorize the payment of a refund for their 2000 return. The department responded by requesting that the court uphold the Notice of Proposed Refund Adjustment. The court asked both parties to submit additional documents and arguments to support their positions. Both parties submitted additional information.

## II. ANALYSIS

Taxpayers present two basic arguments. They assert that their 2000 return was submitted within the permitted statutory time period. Alternatively, taxpayers assert that the department should be estopped from denying a refund on the return because of information that taxpayers received from the department via the instruction publication and the telephone conversation. Each argument will be addressed in turn.

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<sup>2</sup> Due to her Alzheimer's dementia, the husband's mother placed the Notice of Proposed Refund Adjustment from the department in her room and did not notify taxpayers of its arrival. Taxpayers did not discover it until February 19, 2005. (Ptf's' Compl at 4.)

A. *The Deadline for the 2000 Return*

The first issue is whether an extension of the on-time filing date also extends the three-year deadline to file and receive a refund. ORS 314.415(1)(b)(A)<sup>3</sup> states that no refund will be allowed “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.” (Emphasis added.) Thus, the latest possible date on which a taxpayer can file an Oregon return for the 2000 year and receive a refund is April 15, 2004, regardless of whether the return was due on April 15, 2001, or whether the original due date was extended to August 15, 2001.

Two separate deadlines in this situation must be carefully distinguished. The first deadline is that for an on-time filing of a return. Taxpayers’ federal extension moved the deadline for an on-time filing of their federal return to August 15, 2001. That automatically moved the deadline for an on-time filing of their Oregon return as well. ORS 314.385(1)(a) provides that Oregon returns “shall be filed with the Department of Revenue on or before the due date of the corresponding federal return for the tax year \* \* \*.”

Failing to meet the deadline for an on-time filing is not a bar to obtaining a refund, but that deadline is not meaningless. If a taxpayer does not file a return by that deadline, the taxpayer shall be subject to late filing penalties (except for two narrow exceptions that do not apply here). OAR 150-314.385(1)-(A). The second deadline, three years from the original deadline for an on-time filing, serves as an absolute bar to receiving a refund. ORS 314.415(1)(b)(A).

Taxpayers assert that a return must be filed within three years of the original deadline, *including extensions*, in order for taxpayers to collect a refund. (Ptf’s Compl at 4.) That is incorrect. Taxpayers emphasize a two-sentence statement from the instruction publication,

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<sup>3</sup> All references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2003.

stating, “Do you need more time to file? Generally, Oregon allows you the same extension you have for your federal return.” Those two sentences, however, apply to the first deadline, the deadline for an on-time filing of a return. The two sentences do not refer to the final deadline for receiving a refund. *See generally Kous v. Dept. of Rev.*, TC-MD No 041107E (June 23, 2005).

Taxpayers also address another section of the instruction publication, “Page 6/When to File ~ Penalties .” (Ptf’s Resp at 2.) (Emphasis in original.) According to taxpayers, that section lists additional penalties levied against a taxpayer who owes the department taxes “if [the taxpayer does not] file a return for three consecutive years by the due date of the third year *including extensions*.” (Ptf’s Resp at 2.) (Emphasis in original.) Although the word “extensions” is used, that section of the instruction publication does not address receiving a refund. As such, that section has no bearing on this case.

Taxpayers are in a sympathetic situation. However, ORS 314.415(1)(b)(A) does not include any hardship exceptions. “Until changed by the legislature, the law limits refunds without regard to why refund claims are filed more than three years after the return was due.” *DeArmond v. Dept. of Rev.*, 14 OTR 112, 117 (1997). Even in extraordinary circumstances, ORS 314.415(1)(b)(A) does not offer any leeway.

B. *Estoppel*

Taxpayers do not explicitly use the legal term “estoppel,” but their arguments raise the possibility of such a claim. In order for taxpayers to estop the department from denying this refund, three elements must be met: (1) there must have been misleading conduct on the part of the department; (2) there must have been good faith reliance on the part of taxpayers; and (3) there must be clear injury to taxpayers. *Portland Adventist Hospital v. Dept. of Rev.*, 8 OTR 381, 388 (1980).

The first element of estoppel is misleading conduct. A taxpayer claiming to have been misled by the department must show “proof positive” of misleading information. *Johnson v. Tax Commission*, 248 Or 460, 463, 435 P2d 302 (1967).

The language of the instruction publication, “[g]enerally, Oregon allows you the same extension you have for your federal return,” relates only to the deadline to file a return, not the deadline to request a refund, and is thus not misleading. *Kous* at 3. The instruction publication never mentions the time line for requesting refunds, so it cannot be misleading regarding the precise time period for requesting refunds.

Even if the instruction publication had made a brief discussion of the time line for requesting refunds, omission of a statutory deadline from an official instruction is not misleading and does not estop the department from denying a refund for a return filed after the omitted deadline. *Stineff v. Dept. of Rev.*, 8 OTR 456, 459-60 (1980). In *Stineff*, the packet contained a disclaimer that not every statute was summarized in the packet. Here, the instruction publication prominently qualified its summary of Oregon’s extension system with the word “generally.” “Generally” is defined as “in a reasonably inclusive manner: *in disregard of specific instances* and with regard to an overall picture.” *Webster’s Third New Int’l Dictionary* 945 (unabridged ed 2002) (emphasis added). Most individuals file on time or soon thereafter. Individuals applying for a tax refund three years after the original filing deadline must be aware that they are in a different situation and need to make further inquiries into statutory requirements.

The telephone conversation by itself is not misleading either. A taxpayer’s recollection of an oral conversation with an unnamed department employee is insufficient to show “proof positive” of misleading information. *Schellin v. Dept. of Rev.*, 15 OTR 126, 135 (2000). The only information available regarding that telephone conversation is taxpayer’s memory of the

conversation and the manager of the Tax Services Department's statement about how employees typically answer phone questions. The court recognizes that taxpayers did not realize at the time of the conversation that they would need to record more information. However, the evidence taxpayers have presented simply is insufficient for establishing a claim of estoppel.

In summary, the threshold requirements for establishing misleading conduct have not been met. Without a demonstration of misleading conduct, this estoppel claim cannot succeed.

### III. CONCLUSION

Taxpayers insist they have acted "honorably and in good faith." (Ptf's Resp at 2.) The court agrees and does not question their sincerity, particularly given their difficult situation of caring for multiple elderly parents in ailing health. However, ORS 314.415 is inflexible and does not allow an extension to the filing date to also apply to the three-year deadline for receiving a refund. Furthermore, taxpayers have failed to establish grounds for estoppel. Now, therefore,

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

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

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JEFF MATTSON  
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 Jeff Mattson July 28, 2005. The Court filed and entered this document July 28, 2005.***