

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

GLENN A. NELSON and HILDA S. NELSON,	)	
	)	
Plaintiffs,	)	TC-MD 050119A
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant's denial of their claim for a refund of personal income taxes asserted to have been overpaid for the 2000 tax year. Glenn Nelson presented Plaintiffs' case. Defendant was represented by Laurie Fery.

**I. STATEMENT OF FACTS**

The issue in this case is whether Plaintiffs made a timely claim for refund. According to Defendant, Plaintiffs' 2000 tax return, which was due on April 16, 2001, was not filed until August 16, 2004.

Plaintiffs testified that a combination of physical and family problems lead them to fall behind in filing returns. On March 15, 2004, the Internal Revenue Service informed Plaintiffs that they might be able to receive a refund of federal taxes overpaid for the 2000 tax year. On Sunday, August 15, 2004, Plaintiffs mailed both their federal Form 1040 and Oregon Form 40. Plaintiffs received a federal refund, while Oregon denied Plaintiffs their requested refund.

**II. ANALYSIS**

The federal government, and the state of Oregon, both choose to permit taxpayers to assert a claim for refund as late as three years after the due date of the return. However, a critical difference exists. The federal government will allow this three-year limit to be extended by

extensions of time requested by the taxpayer. Oregon does not follow this practice. Extensions of time for filing a return do not extend the limit for claiming a refund. Oregon's limit for filing a claim for refund is three years from the date the return was due, *excluding* extensions.

ORS 314.415.<sup>1</sup>

Plaintiffs make the point that the Internal Revenue Service gives notice that a refund might soon be lost due to the passage of time. The instructions for filing an Oregon return, Plaintiffs note, do not inform taxpayers of the possibility that refunds might be lost. That being said, the philosophy of the state of Oregon is that taxpayers ought to file their returns timely in the first place; and, when circumstances prevent their compliance, three years is a sufficient period in which to claim a refund. Oregon certainly might have chosen to make a different choice. However, the court cannot say that the choice the legislature made must be set aside.

Plaintiffs were very convincing when they told of how they need this money. It is hard for the court to say that Plaintiffs can not have the money to which they would otherwise be entitled because too much time has slipped by. However, the court simply cannot rewrite the law in an area that is so obviously the legislature's prerogative. The appeal is denied.

### III. CONCLUSION

Oregon has chosen to follow a different course than the federal government. Plaintiffs have not filed a timely claim for refund under ORS 314.415. Now, therefore,

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

IT IS THE DECISION OF THIS COURT that this appeal is denied. However, the component of Plaintiffs' refund attributable to any state surplus, under the reasoning of *Parr v. Dept. of Rev.*, 18 OTR 1 (2004) shall be paid to Plaintiffs when this appeal becomes final.

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

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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 August 30, 2005. The Court filed this document on August 30, 2005.*