

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

JEROME G. LODICO,	)	
	)	
Plaintiff,	)	TC-MD 050168C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals from Defendant’s Notices of Proposed Refund Adjustment for 1999 and 2000, denying Plaintiff’s claim for elderly rental assistance (ERA). The parties agreed to the relevant and necessary facts and submitted the case to the court for a legal determination on Plaintiff’s eligibility under the program.

I. STATEMENT OF FACTS

Plaintiff’s tax year 1999 ERA program claim was filed with Defendant on July 3, 2003. Plaintiff’s claim for tax year 2000 was received October 31, 2003. Both claims were filed as joint claims, with the names of Plaintiff and his deceased wife Yoko, who died January 7, 2001, appearing on the claim forms. Plaintiff was 56 years of age in 1999 and his wife was 64 years old that year. Yoko’s death came after several months of hospitalization, beginning November 20, 2000. Plaintiff testified that he took the rental assistance claim forms to the hospital for his wife’s signature, but she was too ill to sign them. Plaintiff expected to get his wife’s signature when she returned home from the hospital, but she never made it home.

Defendant reviewed the claim forms for the years at issue and treated them as requests on behalf of Plaintiff alone, because Yoko’s signature was not on either form. Defendant denied the claims because Plaintiff had not attained the statutory minimum age for entitlement to the program on his own behalf, and Defendant determined that Plaintiff could not apply on behalf of his

deceased wife, based on this court's earlier ruling in *Barber v. Dept. of Rev.*, 5 OTR 342, 1973 WL 1058 (1973). The question for the court is whether Plaintiff is entitled to assistance on his own behalf, or on behalf on his deceased wife Yoko.

### III. ANALYSIS

ORS 310.635<sup>1</sup> provides for rental assistance for taxpayers who attain the age of 58 before the close of the calendar year, provided the taxpayer meets the income and other statutory requirements, and files a claim. ORS 310.635(1) provides, in relevant part:

“\* \* \* A taxpayer is eligible for elderly rental assistance under this section if:

“(a) The taxpayer is 58 years of age or older before the close of the calendar year immediately preceding the year in which the rental assistance is claimed;

“\* \* \* \* \*

“(d) The taxpayer files a claim with the Department of Revenue as required by ORS 310.657.”

ORS 310.657(1) addresses the claim requirement and provides, in relevant part: “[o]n or before April 15 following the year for which the claim is filed, a taxpayer claiming the elderly rental assistance provided under ORS 310.635 shall submit a claim to the Department of Revenue, together with a copy of the statement of gross rent.” Under that statute, Plaintiff's tax year 1999 claim was due by April 15, 2000, and the tax year 2000 claim was due by April 15, 2001. Plaintiff's claims for both years, filed in 2003, were untimely, and ordinarily that would end the inquiry.

Plaintiff argues that his claims were timely under ORS 310.706(3), which provides:

“No elderly rental assistance payment shall be made under ORS 310.635 to a taxpayer who fails to file a claim under ORS 310.657 within three years after the due date of the claim.”

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<sup>1</sup> Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 1997. The statutes governing the Elderly Rental Assistance program discussed in this Decision were not amended in 1999.

That statute governs the payment of benefits by Defendant and effectively extends the ordinary filing deadline by three years. Even under the three year “extension,” Plaintiff’s tax year 1999 application was untimely. Plaintiff’s claim for tax year 2000 was filed within the extended deadline. To qualify for assistance for 2000, however, Plaintiff must also meet the statutory minimum age requirement of 58 years.

It could be argued that the age requirement for eligibility (58 years of age or older) is determined based on the year the claim is *filed*, rather than the year *for* which the claim is filed, because ORS 310.635(1)(a) provides that the taxpayer must be 58 in the calendar year before the assistance is *claimed*, and ORS 310.706(3) allows the taxpayer to receive payment provided the claim is filed within three years after the due date of the claim. If that were true, Plaintiff would qualify for one year of assistance because the claim for tax year 2000 was not filed until 2003, and, by that time, Plaintiff was 59 years of age in the prior calendar year. The court, however, rejects that interpretation.

Taken together, the statutes require that the applicant attain the minimum age of 58 before the close of the year *for* which the benefits are sought. This court reached that conclusion in *Peters v. Department of Revenue*, TC-MD No 000086B, 2000 WL 504726 (2000).

ORS 310.635(1)(d) provides that the taxpayer must “file[] a claim \* \* \* as required by ORS 310.657.” ORS 310.657(1) requires the claim to be filed “[o]n or before April 15 following the year for which the claim is filed,” and ORS 310.635(1)(a) requires the taxpayer to be at least 58 years of age “before the close of the calendar year immediately preceding the year in which the rental assistance is claimed.” Under the filing requirements of ORS 310.657(1), a claim for tax year 2000 was due on or before April 15, 2001, and under ORS 310.635(1)(a), Plaintiff was

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required to be at least 58 years of age during the preceding year (2000). Plaintiff was only 57 years old in calendar year 2000. Thus, Plaintiff does not qualify for assistance for tax year 2000 based on his October 2003 claim.

The final question is whether Plaintiff's claim for 2000 was a valid claim on behalf of Plaintiff's deceased wife Yoko. Although ORS 310.657(1) generally requires the claim to be filed by the taxpayer seeking assistance, that statute does allow a claim to be submitted "by a guardian or other person charged with the care of the person or property of such taxpayer." That provision presumes that the person on whose behalf the claim is filed qualifies as an eligible taxpayer. Yoko did apparently qualify in 2000, in terms of minimum age and the other statutory requirements. Assuming, without deciding, that Plaintiff was a "person charged with the care of the person or property of [Yoko]," as provided in ORS 310.657(1), the claim, nonetheless, fails because Yoko passed away nearly three years before the claim was filed, and such a claim cannot be filed on behalf of a deceased person. Additionally, as a practical matter, Plaintiff did not file on Yoko's behalf. The letter attached to Plaintiff's 2000 claim states that he was filing on his own behalf.

#### IV. CONCLUSION

Plaintiff's 1999 ERA claim was not timely filed, even under the extended deadline provided in ORS 310.706(3). The claim for 2000 was filed within the three-year extended deadline, but Plaintiff did not meet the statutory minimum age requirement of 58 years of age that year, and the claim was not, and could not be, filed on behalf of Plaintiff's deceased wife for the reasons set forth above. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's requests for ERA assistance for tax years 1999 and 2000 are denied.

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

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DAN ROBINSON  
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 Dan Robinson November 15, 2005. The Court filed and entered this document November 15, 2005.***