

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

PATRICIA M. MCKINLEY	)	
and LAWRENCE M. MCKINLEY,	)	
	)	
Plaintiffs,	)	TC-MD 050754E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION and JUDGMENT</b>

Plaintiffs appeal Defendant’s denial of their refund claims for tax years 1999 and 2001. A telephone conference in the matter was held October 18, 2005. The parties provided the court with sworn statements and submitted the matter to the court for ruling. Patricia M. McKinley (Ms. McKinley) appeared and testified on behalf of Plaintiffs. Nancy Grigorieff (Grigorieff) appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

In the summer of 2000, Lawrence McKinley (Mr. McKinley) became seriously ill. Up until that time, he had been the main income producer for the family. Because of his illness, he was no longer able to earn an income. Ms. McKinley, who was just starting a career in the realty business, did not have an established income to contribute to the household. Mr. McKinley’s illness progressed until he was finally diagnosed with cancer in 2003. During those years, Ms. McKinley testified that they were in “survival mode.” Their income dropped dramatically and their expenses soared. Plaintiffs lost their home and were, on occasion, unable to pay their basic utility bills. Because of their limited income, Plaintiffs were unable to pay an

///

accountant to prepare their income tax returns. As a result, Plaintiffs failed to timely file returns during those years.<sup>1</sup>

Ms. McKinley testified that, eventually, she was able to pay their accountant to complete returns for tax years 1999, 2000, and 2001.<sup>2</sup> On June 2, 2005, Plaintiffs filed a return for 1999. The return for 1999 reported a refund due of \$500, which they requested be applied to their 2000 tax liability. Their 2000 return showed a self-assessed tax due of \$789. After applying the \$500 refund payment, Plaintiffs reported tax due of only \$289. On July 11, 2005, Plaintiffs filed their 2001 return reporting a refund due of \$42, which they requested be applied forward as an estimated tax payment. Defendant subsequently denied Plaintiffs' refund claims for 1999 and 2001 because the returns were filed more than three years after their due dates. Plaintiffs appeal Defendant's determinations, claiming the court should consider their difficult circumstances and order the refunds granted.

## II. ANALYSIS

ORS 314.415(1)<sup>3</sup> sets forth the time within which a taxpayer must submit a claim for refund. The statute states, in pertinent part:

“(b)(A) \* \* \* 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 \* \* \* of the return in respect of which the tax might have been credited. If a refund is disallowed for the tax year during which excess tax was paid for any reason set forth in this paragraph, the excess shall not be allowed as a credit against any tax occurring on a return filed for a subsequent year.”

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

---

<sup>1</sup> Ms. McKinley testified she did not know how to prepare and file returns.

<sup>2</sup> The accountant also prepared returns for years subsequent to 2001, but those years are not before the court.

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

The statute is clear that, to claim a refund on an original return, or to have the refund applied as a credit to a subsequent year, the taxpayer must file the return within three years of its due date. Plaintiffs failed to file their returns within three years of their due dates. Pursuant to the clear language of the statute, therefore, Plaintiffs' refund claims must be denied.

ORS 314.415(1)(b)(B) provides an exception to the limitations period. It states:

“If a taxpayer would qualify under section 6511(h) of the Internal Revenue Code for a suspension of the running of the periods specified for filing a claim for refund of federal income tax, the period specified in subparagraph (A) of this paragraph shall also be suspended.”

Section 6511(h) of the Internal Revenue Code (IRC)<sup>4</sup> provides that, when a taxpayer is “financially disabled,” the limitations period for refund claims is suspended. An individual is financially disabled when:

“(A) \* \* \* such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”

IRC § 6511(h)(2)(A).

Ms. McKinley argues that her husband was financially disabled pursuant to the above definition. However, section 6511(h)(2)(B) provides that “[a]n individual shall not be treated as financially disabled during any period that such individual’s spouse \* \* \* is authorized to act on behalf of such individual in financial matters.” Because Ms. McKinley was able to act on behalf of Mr. McKinley during the relevant periods, the financially disabled exception to the refund limitations period does not apply.

Ms. McKinley argues that Plaintiffs are barely getting by and that they do not have enough money to pay the liability for tax year 2000. During trial, Grigorieff testified that, based

---

<sup>4</sup> All references to the Internal Revenue Code (IRC) are to the 2004 provisions.

on Ms. McKinley's statements, Defendant would cancel the penalty assessed for tax year 2000 of \$197.25. Although grateful, Ms. McKinley noted that Plaintiffs could not afford the balance of the liability. The court sympathizes with Plaintiffs in their difficult circumstance and acknowledges that they have been through an incredibly difficult time. However, the court's task is limited to determining whether a refund is permitted pursuant to the statutes. Under the clear language of the law, Plaintiffs are not entitled to the refunds. The court is not permitted to consider a taxpayer's ability to pay when determining their liability for a tax.

Grigorieff discussed Defendant's settlement and compromise program with Ms. McKinley and offered to provide her with an application form for that program. Ms. McKinley may submit that form to Defendant in an attempt to cancel a portion of the tax due for tax year 2000. The court further observes that Defendant typically establishes payment plans for taxpayers not able to pay their tax liability in a single payment.

### III. CONCLUSION

It is the conclusion of the court that, because Plaintiffs failed to file their 1999 and 2001 returns within three years of their due dates, Plaintiffs are not entitled to the refunds claimed on those returns. Now, therefore,

IT IS ADJUDGED that Plaintiffs' refund claims for tax years 1999 and 2001 are denied.

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

---

COYREEN R. WEIDNER  
MAGISTRATE

***This document is final and may not be appealed. ORS 305.514.***

***This document was signed by Magistrate Coyreen R. Weidner October 26, 2005.  
The Court filed this document October 26, 2005.***