

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

PAUL ZWEIGART,)	
)	
Plaintiff,)	TC-MD 050762E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s 1998 Notice of Proposed Refund Adjustment, dated July 6, 2005, and its 1999 Notice of Proposed Refund Adjustment, dated June 27, 2005. Defendant denied Plaintiff’s refund claims for both the 1998 and 1999 tax years. A telephone trial in the matter was held October 4, 2005. Paul Zweigart appeared and testified on his own behalf. Laurie Fery, Auditor, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff failed to timely file returns for the 1998 and 1999 tax years. As a result, Defendant contacted Plaintiff to inquire whether Plaintiff owed the state income tax for those years. Based on Defendant’s inquiry, Plaintiff prepared returns for both years and filed the returns with Defendant on April 25, 2005. The returns showed refunds owing each year.¹ Defendant accepted the returns as filed but denied the refunds because Plaintiff failed to file the

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¹ For 1998, Plaintiff claimed a refund due of \$397. For 1999, it is unclear whether Plaintiff claimed a refund due of \$589 or \$151.04. On the Notice of Proposed Refund Adjustment for 1999, the amount denied does not appear on the first page of the form, which is the only page submitted by Plaintiff. On that page, however, Plaintiff wrote in the amount \$589. In its Answer, Defendant claimed the amount denied was \$151.04. Neither party could explain the discrepancy. However, the court finds that the confusion need not be resolved because the amount of the refund does not impact the court’s ruling in this appeal.

returns within three years of their due dates. Defendant cites ORS 314.415² to support its claim that taxpayers must file a return within three years of the return's due date to receive a refund.

II. ANALYSIS

ORS 314.415(1) 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.”

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

Plaintiff acknowledges that he did not file the returns within three years of their due date. Therefore, based on the clear language of the statute, Plaintiff's refund claims must be denied. Plaintiff complains that it is unfair to impose time limits on his attempts to recover refunds due when Defendant faces no time limits on its attempts to collect taxes. As discussed at trial, however, ORS 314.410(1) imposes a three-year time limit on Defendant's ability to give notice of a deficiency once a taxpayer has filed a return.³ It is only when a taxpayer fails to file a return that Defendant faces no limits on its ability to give notice of a deficiency.

See ORS 314.410(3)(a).⁴

In its Answer, Defendant observes that 1998 was a surplus year and that a surplus refund of \$161.32 is due Plaintiff. Defendant agrees to issue that refund to Plaintiff once this case is concluded.

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² All references to the Oregon Revised Statutes (ORS) are to 2003.

³ ORS 314.410(1) states: “At any time within three years after the return was filed, the Department of Revenue may give notice of deficiency as prescribed in ORS 305.265.”

⁴ ORS 314.410(3)(a) states: “The limitations to the giving of notice of a deficiency provided in this section shall not apply to a deficiency resulting * * * in cases where no return has been filed.”

III. CONCLUSION

It is the conclusion of the court that Plaintiff failed to file his 1998 and 1999 returns within three years of their due dates. As a result, the refunds claimed by Plaintiff on those returns must be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's denial of Plaintiff's refund claims for 1998 and 1999 is affirmed; and

IT IS FURTHER DECIDED that Defendant shall issue to Plaintiff a surplus refund of \$161.32 for 1998.

Dated this _____ day of October 2005.

COYREEN R. WEIDNER
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 Coyreen R. Weidner October 24, 2005. The Court filed and entered this document October 24, 2005.