

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

MONTE D. SALMI and JULIA K. SALMI,)	
)	
Plaintiffs,)	TC-MD 050880B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiffs appeal from Defendant Department of Revenue’s Notices of Proposed Refund Adjustment that denied Plaintiffs’ refunds for tax years 1998, 1999, and 2001. Defendant alleges that the returns were received more than three years after the due date.

A case management conference was held on January 5, 2006. Monica Hall Scroup participated for Plaintiffs, and Laurie Fery represented Defendant. At the conference, the parties agreed that Plaintiffs would submit written arguments by February 5, 2006, and Defendant would have an option to reply by March 5, 2006. It was also agreed that Defendant would submit the dates on which Plaintiffs’ returns were filed. Defendant submitted those dates on March 13, 2006.

I. STATEMENT OF FACTS

Plaintiffs failed to timely file their Oregon income tax returns for tax years 1998, 1999, and 2001, which were due on April 15, 1999, April 15, 2000, and April 15, 2002, respectively. Plaintiffs filed original returns for those years, which Defendant received on June 15, 2005.¹ According to Plaintiffs, their untimely returns were a result of various extenuating circumstances.

¹ As stated in Defendant’s letter, filed on March 13, 2006.

They stated there was a family dispute in 1995 over a business venture that led to difficult financial problems for Plaintiffs until 1997. During that time and until 2003, Plaintiffs encountered other hardships, including the deaths of two parents, a niece, and family friends. By 2004, Plaintiffs were emotionally and financially recovered such as to file their income tax returns. Finally, Plaintiffs stated that they believed they could apply the refunds from previous years to offset the tax due for 2004.

II. ANALYSIS

Generally, if the Department of Revenue determines that the amount of tax due is less than the amount paid, the excess must be refunded. *See* ORS 314.415(1)(a).² That rule is subject to several exceptions in ORS 314.415(1)(b)(A). Under the statute, no refund is allowed after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid,³ unless a claim for a refund is filed by the taxpayer in compliance with ORS 305.270. *See* ORS 314.415(1)(b)(A). Plaintiffs filed original returns on June 15, 2005, for tax years 1998, 1999, and 2001. Plaintiffs did not file any claims for refunds before the expiration of the specified periods.

In addition, no refund claimed on an original return is allowed “in any case unless the return is filed within three years of the due date.” ORS 314.415(1)(b)(A). For Plaintiffs to successfully claim a refund for tax years 1998, 1999, and 2001, Defendant needed to have received Plaintiffs’ returns by April 15, 2002, April 15, 2003, and April 15, 2005, respectively, (due dates, plus three years). Defendant did not receive those returns until June 15, 2005. Accordingly, any refunds for tax years 1998, 1999, and 2001 must be disallowed.

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

³ Amounts withheld by an employer from an employee’s wages are considered partial payment of an employee’s tax for the year withheld. *See* ORS 316.187.

Plaintiffs maintain that the due date for their returns should be extended because of their extenuating circumstances and hardships, namely their difficult financial situation and the deaths of people very close to them. Though the legislature extended the period in which a refund claim may be filed in certain situations, such as federal audits (ORS 314.415(5)), net operating loss carryback (ORS 314.415(4)(a)), or worthless stock (ORS 314.415(3)), it has not done so for hardship or other extenuating circumstances. “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). *See also Brenning v. Dept. of Rev.*, TC-MD No 031118B, WL 755955 (Apr 7, 2004) (disallowing extension even though taxpayers had severe health problems, struggled in their business, and suffered the deaths of a family member and friends); *Kacalek v. Dept. of Rev.*, TC-MD No 030794E, WL 22120732 (Sept 4, 2003) (disallowing an extension even though taxpayer’s husband had been diagnosed with prostate cancer).

Finally, Plaintiffs believe the refunds from tax years 1998, 1999, and 2001 could be applied towards taxes owed for tax year 2004. ORS 314.415(1)(b)(A) states “[i]f 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.” Plaintiffs cannot extend the time for filing for a refund by asking the court to offset taxes due subsequently. *See Bello v. Dept. of Rev.*, TC-MD No 990603C, WL 1567168 (Nov 4, 1999). Accordingly, Plaintiffs’ failure to file their 1998, 1999 and 2001 returns on time precludes any application of the refunds as credit towards tax due for tax year 2004.

III. CONCLUSION

Under ORS 314.415(1)(b)(A), no refund is “allowed or made after three years from the time the return was filed, or two years from the time the tax or portion thereof was paid” unless a claim for a refund has been filed under ORS 305.270. Further, no refund is allowed on an original return filed more than three years after the due date. *See* ORS 314.415(1)(b)(A). The legislature has not created any exceptions extending the time period for hardships or extenuating circumstances. Accordingly, Plaintiffs’ refunds must be denied because they did not timely file their returns for tax years 1998, 1999, and 2001. Now, therefore,

IT IS ADJUDGED that Defendant’s Motion to Dismiss is granted with respect to tax years 1998, 1999, 2001; and

IT IS FURTHER ADJUDGED that, pursuant to Defendant’s Answer, Defendant shall issue to Plaintiffs the 1998 surplus under ORS 291.349.⁴

Dated this _____ day of April 2006.

JEFFREY S. MATTSON
MAGISTRATE

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

***This document was signed by Magistrate Jeffrey S. Mattson on April 26, 2006.
The Court filed this document on April 26, 2006.***

⁴ That surplus under ORS 291.349 is popularly called “the kicker.”