

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

HAROLD A. TREINEN,	)	
	)	
Plaintiff,	)	TC-MD 060044C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s Notice of Proposed Refund Adjustment for tax year 2000, pursuant to which Defendant denied Plaintiff’s refund of approximately \$600. Defendant requests that the court uphold its refund denial because Plaintiff did not file his return within three years of the due date. Trial was held October 4, 2006. Plaintiff appeared on his own behalf. Defendant Department of Revenue (department) was represented by Amy Stalnaker, a department auditor.

I. STATEMENT OF FACTS

Plaintiff filed his tax year 2000 state income tax return on April 14, 2005, well beyond the applicable due date. The return reported a refund, which Defendant denied because the return was filed more than three years after the due date.

Plaintiff has obsessive compulsive disorder (OCD). Plaintiff is receiving individual and group therapy for his condition, which was diagnosed in 1990. Plaintiff is also taking medication for his OCD.

At the time of trial, Plaintiff was unemployed and collecting social security disability payments. However, Plaintiff does have a lengthy work history. Plaintiff was employed full-time by a transportation company for 18 years, until the job ended in June 2002. Plaintiff’s

duties at that job involved accounting work. Among his duties, Plaintiff reconciled bank accounts and accounts receivable and managed the amortization of prepaid assets. Plaintiff did not reveal his psychiatric condition to his employer. After June 2002, Plaintiff was unemployed for approximately 11 months before he was hired by Oregon Health Sciences University (OHSU) as an accounting specialist for the School of Medicine. The job at OHSU began in June 2003 and ended in May 2005.

According to the sworn testimony, Plaintiff is able to pay his bills, although he does have a habit of making his payments on or after the due date. Additionally, Plaintiff's OCD led to the dissolution of his marriage in 1995.

## II. ANALYSIS

Under Oregon law, a refund otherwise due a taxpayer will generally be disallowed if the return is not filed within three years of the due date. The applicable statute is ORS 314.415(1)(b)(A),<sup>1</sup> which provides in relevant part:

“No refund shall be allowed or made after three years from the time the return was filed \* \* \* , 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, excluding extensions, of the return in respect of which the tax might have been credited.”

Plaintiff's return was filed beyond the three-year refund limitation period set out in the statute, and the requested refund was appropriately denied by Defendant in processing.

ORS 314.415(1)(b)(B) does provide an exception to the three-year rule “[i]f 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 [.]” Internal

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

Revenue Code (IRC) section 6511 suspends the federal periods of limitation for individuals found to be “financially disabled.” The term “financially disabled” is defined in the code as:

“an individual \* \* \* [who] 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).

The last sentence of IRC section 6511(h)(2)(A) states that “[a]n individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.” The Secretary has established such form and manner in Revenue Procedure 99-21, 1999-1 CB 960. Pursuant to that procedure, the taxpayer must submit a written physician’s statement that sets forth:

“(a) the name and a description of the taxpayer’s physical or mental impairment;

“(b) the physician’s medical opinion that the physical or mental impairment prevented the taxpayer from managing the taxpayer’s financial affairs;

“(c) the physician’s medical opinion that the physical or mental impairment was or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months;

“(d) to the best of the physician’s knowledge, the specific time period during which the taxpayer was prevented by such physical or mental impairment from managing the taxpayer’s financial affairs; and

“(e) [a certification that the above representations are true and complete].”

*Id.* at § 4(1).

Plaintiff submitted a letter<sup>2</sup> written by David A. Turner, M.D., which states in relevant part as follows:

“Mr. Treinen has asked me to write on behalf of his appeal of his 2000 taxes and his filing them late. Mr. Treinen has been a patient of mine for many years. He suffers from moderately severe obsessive-compulsive disorder. This disorder has

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<sup>2</sup> Dated September 4, 2006, and filed September 28, 2006.

rendered him completely unable to work for extended periods of time. He becomes frozen with anxiety when he considers doing his taxes for fear of making a mistake. This leads to excessive procrastination and it is only with great difficulty that he eventually accomplishes the task.”

Plaintiff testified that he also suffers from anxiety disorder.

It is not clear from Dr. Turner’s letter that Plaintiff was “unable to manage his financial affairs” because of his obsessive-compulsive disorder, as is required by section 6511(h)(2)(A). The revenue procedure requires that the physician express an opinion that Plaintiff’s “mental impairment prevented [him] from managing [his] financial affairs.” Rev. Proc. 99-21, 1999-1 CB 960, § 4(1)(b). According to Dr. Turner’s letter, Plaintiff “becomes frozen with anxiety when he considers doing his taxes” and that “leads to excessive procrastination.” Those statements speak specifically to taxes, whereas the Code and revenue procedure address “financial affairs,” which is a broader concept. Additionally, the letter goes on to state that Plaintiff eventually accomplishes the task, albeit with “great difficulty.” Dr. Turner’s letter does not mention whether Plaintiff, indeed, suffers from anxiety disorder.

It is the court’s experience that the preparation of income tax returns provokes anxiety in many people, which leads to procrastination and untimely filing. Moreover, according to his own testimony, Plaintiff had a fairly strong employment history in the field of accounting for approximately 20 years, including the time period in which Plaintiff’s 2000 return was due. Plaintiff did accounting work for a transportation company from 1984 through June 2002 and, after an 11-month period of unemployment, Plaintiff went to work for a Portland-area hospital for two years as an accounting specialist.

This court was presented with the same issue in *Lieberman v. Department of Revenue*, TC-MD No 040902A, WL 1432441 (May 19, 2005). Plaintiff in *Lieberman* also suffered from obsessive-compulsive disorder, as well as bipolar disorder and depression. Lieberman

succeeded in her appeal because the physician's letter satisfied the requirements of Revenue Procedure 99-21, 1999-1 CB 960. Plaintiff's physician's letter in this case falls short of the requirements of that procedure.

The court sympathizes with Plaintiff's position. He clearly suffers from mental impairments necessitating treatment. However, the law requires adequate substantiation in the form of a physician's letter, as discussed above, and the evidence in this case falls short of that requirement.

### III. CONCLUSION

The court concludes that Plaintiff's evidence does not adequately demonstrate that he qualifies for the statutory exception to the prohibition against issuing refunds on an original return filed more than three years after the applicable due date. Under ORS 314.415(1)(b)(B), Plaintiff must qualify under IRC section 6511(h) as financially disabled. Plaintiff's evidence fails to meet the requirements of Revenue Procedure 99-21, 1999-1 CB 960. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this \_\_\_\_\_ day of October 2006.

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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 on October 19, 2006. the Court filed and entered this document on October 19, 2006.***