

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ALICE A. MYERS,	)	
	)	
Plaintiff,	)	TC-MD 070670C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff timely appealed Defendant’s Notice of Proposed Refund Adjustment, requesting that she be allowed the \$1,954 refund reported on her 2003 state income tax return. Defendant denied the refund because Plaintiff’s return was received April 24, 2007, eight days past the three-year refund filing deadline set forth in ORS 314.415(2)(a). Defendant has asked the court to uphold the denial.

Plaintiff acknowledges that the return was late under the three-year rule. Plaintiff mistakenly assumed that her federally approved extension, giving her until December 15, 2004, to file her 2003 return, would extend the three-year refund the deadline.

ORS 314.415(2)(a)<sup>1</sup> provides in relevant part:

“ \* \* \* if the original return is not filed within three years of the due date, *excluding extensions*, of the return, the department may allow or make a refund only of amounts paid within two years from the date of the filing of the [return].”

(Emphasis added.)

Plaintiff’s return sought a refund of amounts withheld in 2003 from Plaintiff’s wages. The tax, therefore, was paid in 2003, which is more than two years from the date Plaintiff filed her return. Accordingly, because the Plaintiff’s return was “not filed within three years of the

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

due date, excluding extensions,” Defendant was legally precluded from issuing the refund. The court lacks authority to overturn Defendant’s statutorily mandated refund denial.

CONCLUSION

The court concludes that Plaintiff’s request for a refund of Oregon taxes paid in 2003 is denied because Plaintiff did not file her 2003 tax return within three years of the due date of that return, and did not seek the refund of taxes paid within two years of the date the return was filed. Now, therefore,

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

Dated this \_\_\_\_\_ day of September 2007.

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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 September 19, 2007. The Court filed and entered this document on September 19, 2007.***