

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

RYAN LEE CASTLE,	)	
	)	
Plaintiff,	)	TC-MD 080012C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant’s request for dismissal, included in its Answer filed January 17, 2008, requesting that the Complaint be dismissed as premature. That request was heard by the court at a case management hearing on February 12, 2008. Plaintiff appeared on his own behalf. Defendant was represented by Beth Buck (Buck).

Plaintiff’s Complaint requests a separate refund for his share of a 2006 “kicker” refund, after that refund was used to pay a debt to Clackamas Community College owed by Plaintiff’s wife for her outstanding student loan obligations. Defendant contends that under OAR 150-314.415(7)(3), Plaintiff was required to make a request to the Department of Revenue within 30 days of the date of the Department’s notice. The court agrees.

Plaintiff is not challenging Defendant’s statutory authority to apply the refund to an outstanding obligation to another state agency. Rather, Plaintiff seeks a separate refund, which is authorized under ORS 314.415(7).<sup>1</sup> That statute provides, in relevant part that the Department of Revenue (department) is authorized to “make separate refunds at the request of either spouse,” where the refund is based on a joint return. However, the department has promulgated an

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2007.

administrative rule which governs the process for requesting a separate refund. That rule provides:

“If the refund is being held for application against an amount owed to an agency of the state of Oregon, the request for separate refunds must be mailed to the Department of Revenue within 30 days of the date of the Notice of Proposed Adjustment and/or Distribution. Separate refunds will not be made if the request does not receive timely.”

OAR 150-314.415(7)(3).<sup>2</sup>

Defendant’s representative, Buck, indicated in her Answer that “[t]he defendant will forward plaintiff’s request to appropriate staff who will proceed with the review of the request.” Buck advised the court at the February 12, 2008, proceeding that Plaintiff’s request was being processed, and that additional information is needed, which Plaintiff agreed to provide that week. Although Plaintiff’s request for a separate refund will be processed administratively by the department, his appeal to the tax court is premature and must be dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this \_\_\_\_\_ day of February 2008.

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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.***

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<sup>2</sup> All references to the Oregon Administrative Rules (OAR) are to the rules in effect in 2007.

*This document was signed by Magistrate Dan Robinson on February 21, 2008.  
The Court filed and entered this document on February 21, 2008.*