

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

CAROL J. SARGENT,	)	
	)	
Plaintiff,	)	TC-MD 140332D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>FINAL DECISION OF DISMISSAL</b>

This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal entered September 10, 2014. The court did not receive a request for an award of costs and disbursements within 14 days after its Decision of Dismissal was entered. *See* TCR-MD 19.

This matter is before the court on Defendant’s Motion to Dismiss on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).

A review of Plaintiff’s materials shows the Notice of Refund Denial was mailed to Plaintiff on April 30, 2014. The Complaint was filed on July 30, 2014. The parties do not dispute the date of the Notice of Refund Denial and the postmark date of Plaintiff’s Complaint. This interval is one day longer than the 90 days required by ORS 305.280(2) (2013), which provides:

“An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final.”

The court is not aware of any circumstances that extend the statutory limit of 90 days.

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The parties discussed Defendant's Motion to Dismiss. Plaintiff requested consideration of the "extraordinary circumstances" stated in her letter dated July 29, 2014. Defendant responded, stating that Defendant did not agree that "extraordinary circumstances" prevented Plaintiff from filing a timely appeal. Defendant's Motion to Dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is allowed. The Complaint is dismissed.

Dated this \_\_\_\_ day of September 2014.

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JILL A. TANNER  
PRESIDING MAGISTRATE

***If you want to appeal this Final 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 Final Decision or this Final Decision cannot be changed.***

***This document was signed by Presiding Magistrate Jill A. Tanner on September 29, 2014. The court filed and entered this document on September 29, 2014.***