

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

KOHL’S DEPARTMENT STORES, INC.,	)	
	)	
Plaintiff,	)	TC-MD 160029R
	)	
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 May 3, 2016. The court did not receive a statement of costs and disbursements within 14 days after its Decision of Dismissal was entered. *See* TCR-MD 16 C(1).

This matter came 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).

Defendant filed its Motion to Dismiss on March 16, 2016. Plaintiff filed its response to Defendant’s Motion to Dismiss on April 20, 2016. This matter is now ready for decision.

A review of Plaintiff’s materials shows that a Conference Decision letter was mailed to Plaintiff on October 7, 2015. (Compl at 4.) On January 5, 2016, the court received Plaintiff’s Complaint without the required filing fee. (*Id.* at 2.) On January 6, 2016, the court mailed Plaintiff a letter returning the complaint and advising, “***The court has not filed your documents.***” (Ptf’s Resp at 9 emphasis in original.) The court rejected Plaintiff’s original attempt to file the complaint pursuant to ORS 305.490(1)(a) and Tax Court Rule-Magistrate Division (TCR–MD) 1 A(1)(c). That procedure has been affirmed by the Supreme Court in *Garrison v. Dept. of Rev.*, 345 Or 544 (2008).

The Complaint was properly filed with the court on January 22, 2016.<sup>1</sup> This interval is longer than the 90 days required by ORS 305.280(2), 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.

Defendant’s Motion to Dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s Motion to Dismiss is granted.

Plaintiff’s appeal is dismissed.

Dated this \_\_\_\_ day of May 2016.

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RICHARD DAVIS  
MAGISTRATE

***If you want to appeal this Final Decision of Dismissal, 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 of Dismissal or this Final Decision of Dismissal cannot be changed. TCR-MD 19 B.***

***This document was filed and entered on May 23, 2016.***

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<sup>1</sup> The Complaint was file stamped on January 29, 2016, however, it was deemed filed on the postmark date of January 22, 2015 pursuant to ORS 305.418(1)(a).