

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

PETR V. BELOUSOV,)	
)	
Plaintiff,)	TC-MD 170015N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION OF DISMISSAL¹

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).

A review of Plaintiff’s materials shows the Notice of Assessment was mailed to Plaintiff on July 22, 2016. (Compl at 4.) The Complaint was deemed filed on January 3, 2017.² This interval is longer than the 90 days required by ORS 305.280(2), which provides:

“An appeal * * * 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. * * *”

(Emphasis added.)

A case management conference was held on April 11, 2017. After that conference, the court issued a Journal Entry setting a schedule that gave Plaintiff an opportunity to present

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¹ This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal, entered June 8, 2017. The court did not receive a statement of costs and disbursements within 14 days after its Decision of Dismissal was entered. See Tax Court Rule–Magistrate Division (TCR–MD) 16 C(1).

² Plaintiff’s Complaint was received by the court on January 5, 2017, however, under ORS 305.418 a complaint is “deemed filed * * * on the date shown by the post-office cancellation mark stamped upon the envelope containing it[.]” The envelope containing Plaintiff’s Complaint was stamped with a post-office cancellation mark showing January 3, 2017. (Compl at 11.)

factual evidence or legal arguments in response to Defendant's Motion to Dismiss. (Journal Entry at 1.) The court did not receive any response from Plaintiff. Defendant filed a Status Report on May 23, 2017, stating that it did not receive any evidence that Plaintiff's appeal was timely. (Report at 1.) The court is not aware of any circumstances that extend the statutory limit of 90 days.³ 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 June 2017.

ALLISON R. BOOMER
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 June 27, 2017.

³ ORS 305.280(3) provides that a taxpayer has two years to file an appeal after the payment of tax due, including penalties and interest, under a notice of assessment. There is no evidence before the court showing that Plaintiff has paid the amount due, thus Plaintiff is limited to the 90 day appeal period provided by ORS 305.280(2).