

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

WALT L. McCUNE,)	
)	
Plaintiff,)	TC-MD 170217G
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION OF DISMISSAL¹

This matter came before the court on Defendant’s motion to dismiss for untimeliness. Plaintiff filed his Complaint in an envelope postmarked on May 10, 2017. Plaintiff’s Complaint appealed Defendant’s Notice of Deficiency Assessment for the 2008 tax year, dated October 1, 2013. Defendant’s motion to dismiss alleged that Plaintiff had paid his 2008 tax assessment in full on May 8, 2015, which was over two years before the date he filed his Complaint.

At the case management conference, Plaintiff orally responded to Defendant’s motion to dismiss by arguing that his appeal period extended until two years after the date he had received a refund of an overpayment on his 2008 tax assessment—June 9, 2015. The parties agreed to brief the issue, but Plaintiff did not file a written response by the agreed time. Defendant filed a brief replying to the argument raised by Plaintiff at the case management conference.

The right to appeal a notice of assessment to this court is provided by ORS 305.265(15).² Where the tax is unpaid, the period of limitations for such appeals is 90 days after the date of the notice. *See* ORS 305.280(2). However, an extended period of limitations applies after

¹ This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal, entered July 10, 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 The court’s references to the Oregon Revised Statutes (ORS) are to 2015.

the tax is paid:

“Notwithstanding subsection (2) of this section, an appeal from a notice of assessment of taxes imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.”

ORS 305.280(3).

The text of ORS 305.280(3) provides an appeal period beginning with the date the tax, penalties, and interest are paid; it does not provide a right of appeal beginning with the date an overpayment is refunded. Nor does the statute provide such a right where, after an adjustment, a taxpayer is still owed a refund. To the contrary the right of appeal in such cases extends from “the date the notice of adjustment is final”—not from the date the refund check is issued.

ORS 305.280(2).

Where a statute of limitation provides that an act be done within one or more years, the time for performing the act is computed in calendar years. ORS 174.120(5). Excluding February 29, “the act must be done on or before the same date in the calendar year in which the specified period ends as the date in the calendar year in which the specified period began to run.”

Id.

Here, Plaintiff did not dispute Defendant’s allegation that he paid his 2008 tax in full on May 8, 2015. The two-year period of limitations thus began to run on that date, and Plaintiff’s appeal was required to be filed on or before Monday, May 8, 2017. *See* ORS 305.280(3); 174.120(5). Plaintiff’s Complaint was not deemed filed until May 10, 2017,³ and was therefore untimely. Defendant’s motion to dismiss is well taken. Now, therefore,

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³ Complaints required to be filed in the Oregon Tax Court are deemed filed “on the date shown by the post-office cancellation mark stamped upon the envelope.” ORS 305.418.

IT IS THE DECISION OF THIS COURT that Plaintiff's Complaint is dismissed.

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 July 28, 2017.