

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

LILLA WALLACE,)	
)	
Plaintiff,)	TC-MD 130043N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

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).

Plaintiff filed her Complaint on February 8, 2013,¹ challenging Defendant’s Notice of Proposed Adjustment and/or Distribution for the 2011 tax year. The Notice of Proposed Adjustment and/or Distribution was dated June 1, 2012. (Ptf’s Compl at 16.) Plaintiff sent a Written Objection to Defendant on June 27, 2012. (*Id.* at 11.) Defendant stated that it denied Plaintiff’s Written Objection and issued a Notice of Refund Denial on September 11, 2012. (Def’s Mot to Dismiss at 1; Def’s Written Reply at 1.) Defendant stated that “[t]he Notice of Proposed Adjustment and/or Distribution became final on September 11, 2012.” (Def’s Mot to Dismiss at 1) (emphasis omitted.) Plaintiff stated that she did not receive Defendant’s Notice of Refund Denial until after this appeal was filed.² (Ptf’s Ltr, Mar 26, 2013.) Defendant replied that it:

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¹ Under ORS 305.418(1)(2011), a complaint filed with this court “shall be deemed filed (a) on the date shown by the post-office cancellation mark stamped upon the envelope containing it * * *.”

² During the case management conference held in this matter on March 13, 2013, Plaintiff stated that she never received a copy of Defendant’s Notice of Refund Denial. Defendant agreed to send another copy to Plaintiff, which she reportedly received on March 21, 2013. (Ptf’s Ltr, Mar 26, 2013.)

“sent the Notice of Refund Denial denying the written objection to the Notice of Proposed Refund Adjustment and/or Distribution to the last known address on 09/11/2012. Under Oregon Revised Statute (ORS) 305.265(11) ‘Mailing of notice to the person at the person’s last-known address shall constitute the giving of notice as prescribed in this section.’ ”

(Def’s Written Reply at 1.) Plaintiff did not present any evidence in rebuttal of Defendant’s assertion that it sent the Notice of Refund Denial to Plaintiff’s last known address.

ORS 305.270(3)³ states in part: “Upon receipt of a claim for refund, or original report or return claiming a refund, the department shall either refund the amount requested or send to the claimant a notice of any proposed adjustment to the refund claim, stating the basis upon which the adjustment is made.” A taxpayer claiming a refund “may, within 30 days of the date of the notice of proposed adjustment, advise the department in writing of objections to the refund adjustment and may request a conference with the department * * *.” ORS 305.270(4)(b).

“If no conference is requested, and the adjustments have not resulted in the finding of a deficiency, the following shall apply:

“(a) If written objections have been made by the claimant, the department shall consider the objections, determine any issues raised and send the claimant a notice of refund denial or payment of any amount found to be refundable, together with any applicable interest provided by this section.”

ORS 305.270(5)(a). “The claimant may appeal any notice of proposed adjustment, refund denial or notice of assessment in the manner provided in ORS 305.404 to 305.560.” ORS 305.270(10).

ORS 305.280(2) provides the applicable filing deadline for Plaintiff’s appeal:

“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.”

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³ All references to the Oregon Revised Statutes (ORS) are to 2011.

Defendant issued a Notice of Refund Denial pursuant to ORS 305.270 on September 11, 2012. Plaintiff's Complaint was filed February 8, 2013. That interval is longer than the 90 days allowed under ORS 305.280(2). The court is not aware of any circumstances that extend the statutory limit of 90 days. Defendant's Motion to Dismiss must be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is granted and Plaintiff's Complaint is dismissed.

Dated this ____ day of April 2013.

ALLISON R. BOOMER
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.

This document was signed by Magistrate Allison R. Boomer on April 24, 2013. The Court filed and entered this document on April 24, 2013.