

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CARI FREEMAN,)	
)	
Plaintiff,)	TC-MD 130100D
)	
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).

A review of Plaintiff’s materials shows the Notices of Liability were mailed to Plaintiff on May 21, 2012. (Ptf’s Compl at 4, 6.) The Notices of Liability were sent to the address stated on Plaintiff’s Complaint form and Plaintiff’s current mailing address: P.O. Box 5690, Brookings, Oregon 97415. (*Id.* at 1, 4, 6.)

In her written response to Defendant’s Motion to Dismiss, filed May 31, 2013, Plaintiff wrote:

“On December 17, 2012 I responded to a letter I received from the ODOR stating I owed a past employers payroll tax. I called Suzie (the revenue officer on the letter dated 12/13/12) to ask what this was all about. She told me to write a letter to the State of Oregon to her attention so they could review. I then faxed her a letter stating why I wasn’t the responsible party on this.

“I then filed the appeal documentation with the \$240 fee requesting a hearing. When I requested that, I was surprised to see that they said I was too late in filing because I didn’t respond to the letter that Susan sent me which I didn’t originally receive. She included that to me on March 8th 2013. That was the first time I saw the letter dated 5/21/12 from the ODOR.”

(Ptf’s Ltr, May 31, 2013, at 1.) Plaintiff offered no explanation why the Notices of Liability addressed to her current mailing address were not received by her.

The Complaint was filed on March 20, 2013. 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.”

In its Motion to Dismiss, Defendant stated that “Plaintiff’s appeal was filed beyond the allowable 90-day period that ended on or about September 18, 2012.” (Def’s Mot to Dismiss at 1-2.)

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 allowed.

The Complaint is dismissed.

Dated this ____ day of June 2013.

JILL A. TANNER
PRESIDING 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 Decision of Dismissal was signed by Presiding Magistrate Jill A. Tanner on June 18, 2013. The Court filed and entered this Decision of Dismissal on June 18, 2013.