

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

| | | |
|-----------------------------|---|------------------------------|
| SSC PROPERTY HOLDINGS INC., |) | |
| |) | |
| Plaintiff, |) | TC-MD 130184N |
| |) | |
| v. |) | |
| |) | |
| MULTNOMAH COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION OF DISMISSAL |

This matter is before the court on Defendant’s Motion to Dismiss (Motion) on the ground that Plaintiff failed to appeal within the 30 days required by ORS 305.280(4).

A review of Plaintiff’s materials shows that the Board of Property Tax Appeals (BOPTA) Order was mailed to Plaintiff on March 7, 2013. (Ptf’s Compl at 2.) Plaintiff’s Complaint was postmarked on April 9, 2013. A case management conference was held in this matter on May 6, 2013, during which the parties discussed Defendant’s Motion. The parties declined to submit additional written arguments on Defendant’s Motion.

ORS 305.280(4)¹ states, in pertinent part:

“* * * [A]n appeal to the tax court * * * from an order of a county board of property tax appeals shall be filed within 30 days after the * * * date of mailing of the order * * *.”

As Defendant stated during the May 6, 2013, case management conference, Plaintiff’s deadline to file its Complaint was April 8, 2013.² Plaintiff’s authorized representative stated during the case management conference on May 6, 2013, that he went to the Tualatin, Oregon post office

¹ All references to the Oregon Revised Statutes (ORS) are to the 2011 version.

² The 30th day after March 7, 2013, was April 6, 2013. Because April 6, 2013, was a Saturday, Plaintiff’s Complaint must have been postmarked no later than Monday, April 8, 2013. *See* Tax Court Rule (TCR) 10 A(1) (when the last day of a period of time prescribed “by any applicable statute” falls on a Saturday, “the period runs until the end of the next day the court is open”).

on the afternoon of April 8, 2013. He stated that the line at the post office on April 8, 2013, was very long and he was concerned that he would not arrive at the post office counter before 5:00 p.m. on April 8, 2013. Plaintiff's authorized representative reported that he purchased postage and deposited the Complaint in the post office drop box prior to 5:00 p.m. on April 8, 2013. He stated that a sign at the post office guaranteed that mail deposited before 5:00 p.m. would be mailed on the day it was deposited. For unknown reasons, Plaintiff's Complaint was not postmarked until the following day, April 9, 2013.

"Generally, a complaint is filed when the court receives it." *Hedeen v. Dept. of Rev.*, TC-MD No 040973E, 2004 LEXIS 209 at 3 (Dec 9, 2004). However, ORS 305.418(1) provides an exception for complaints "transmitted through the United States Mail." ORS 305.418 states:

"Any complaint required by law to be filed with the Oregon Tax Court that is:

"(1) Transmitted through the United States mail, shall be deemed filed (a) on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or (b) on the date it was mailed if there is also mailed to the tax court a declaration of mailing, signed by the appealing party or the attorney of the appealing party and verified by oath or affirmation, subject to penalties for false swearing * * *."

ORS 305.418(1)(b) provides the form of the declaration of mailing.

Plaintiff's Complaint was postmarked April 9, 2013, one day after the deadline required by ORS 305.280(4). ORS 305.418(1)(b) provides an alternative to the post-office cancellation mark, allowing a declaration of mailing. Plaintiff's representative stated that he mailed the Complaint on April 8, 2013. However, there is no evidence that Plaintiff "mailed to the tax court a declaration of mailing," as described in ORS 305.418(1)(b).

The court finds that Plaintiff's Complaint was not timely filed under ORS 305.280(4). Plaintiff has not presented any fact or argument that prevents the application of that statute. As a result, 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.

Plaintiff's Complaint is dismissed.

Dated this ____ day of May 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 Decision was signed by Magistrate Allison R. Boomer on May 16, 2013. The court filed and entered this Decision on May 16, 2013.