

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Withholding Tax

CHANGSYCK JUN,)	
)	
Plaintiff,)	TC-MD 070680B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This appeal concerns certain withholding tax matters for the fourth quarter of 2005. Plaintiff’s liability arose pursuant to ORS 316.167.¹ The matter is now before the court on Defendant’s request to dismiss² on the grounds that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).

A case management conference was held on October 9, 2007. Plaintiff admits the Complaint was submitted late, but asked for an opportunity to explain the underlying reasons. A Journal Entry was filed by the court on October 11, 2007; it stated any such statements were due by November 13. Nothing was received.

A review of the written materials shows that the “Notice of Liability” was mailed to Plaintiff on March 2, 2006. The Complaint was mailed on August 3, 2007. That interval is longer than the 90 days required by ORS 305.280(2), which reads in part:

“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.”

¹ All references to the Oregon Revised Statutes are to 2005.

² Defendant included its request in its Answer filed August 17, 2007.

The court is not aware of any circumstances that extend the statutory limit of 90 days.³

Defendant's request is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's request to dismiss is allowed.

The Complaint is dismissed.

Dated this _____ day of January 2008.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on January 10, 2008. The Court filed and entered this document on January 10, 2008.

³ The notice provides the taxpayer 30 days in which to first request a conference with Defendant, at which time the notice becomes final. At this point, the taxpayer has 90 days to appeal to the Tax Court.