

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JAMES HILARY and MAE HILARY,)	
)	
Plaintiffs,)	TC-MD 070796B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

Plaintiffs have appealed concerning certain personal income tax matters for the 2006 tax year. Case management conferences were set in January and February of this year; two were rescheduled at Plaintiffs' request.

Another case management conference was set for March 12, 2008, at 9:00 am. The scheduling notice, mailed February 11, 2008, specifically noted "THIS HEARING WILL NOT BE RESET." Plaintiffs did not appear nor notify the court of any inability to participate.

This matter is now before the court on Defendant's motion to dismiss¹ on the ground that Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2).

A review of Plaintiffs' materials shows the Notice of Deficiency Assessment was mailed to Plaintiffs on July 24, 2007. The Complaint was filed on October 24, 2007. This interval is longer than the 90 days required by ORS 305.280(2) (2005), which provides:

"An appeal under ORS 323.416 * * * 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

¹ Defendant included a request for the court to dismiss the case in its Answer filed November 20, 2007.

filed within 90 days after the date the notice of adjustment is final.”

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

Defendant's motion 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 March 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 March 12, 2008. The Court filed and entered this document on March 12, 2008.