

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TIMOTHY BRIAN JACKSON)	
and AMY JOANN JACKSON,)	
)	
Plaintiffs,)	TC-MD 091307D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
)	
Defendant.)	DECISION

This matter is before the court on a partial agreement of the parties set out in Defendant’s Status Report filed December 22, 2009. Defendant states that its Notice of Deficiency Assessment for tax year 2006 “will be cancelled when judgment is received from the court.”

Defendant requests that Plaintiffs’ appeal for tax year 2005 be dismissed because “plaintiff’s appeal period has expired.” (Def’s Status Report at 1.) Defendant’s motion to dismiss alleges that Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2) (2007).

A review of the evidence shows that Defendant’s Notice of Deficiency Assessment was mailed to Plaintiffs on April 21, 2009. Plaintiffs’ Complaint was postmarked on July 21, 2009. That interval is longer (by one day) 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.”

The court is not aware of any statutory authority that allows it to extend 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 Plaintiffs' appeal for tax year 2005 is allowed; and

IT IS FURTHER DECIDED that Defendant's Notice of Deficiency Assessment for tax year 2006 is cancelled.

Dated this ____ day of January 2010.

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 document was signed by Presiding Magistrate Jill A. Tanner on January 22, 2010. The Court filed and entered this document on January 22, 2010.