

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ANDREW ORTWEIN	)	
and ILKA C. VILLEGAS,	)	
	)	
Plaintiffs,	)	TC-MD 091346B
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant’s motion to dismiss (motion), filed September 11, 2009, as part of its Answer, requesting that the Complaint be dismissed.

A case management conference was held on November 17, 2009, to discuss Defendant’s motion. Andrew Ortwein (Ortwein) appeared on Plaintiffs’ behalf. Debbie Smith, Tax Auditor, appeared for Defendant. Subsequently, written materials were filed; the record closed December 10, 2009.

Defendant contends that Plaintiffs filed their appeal several months after the date of the Notice of Deficiency Assessment (Notice), dated March 24, 2009. It was due within 90 days. Ortwein stated he was unaware of the filing deadline. During the conference, Ortwein acknowledged that he postmarked the Complaint to the court August 6, 2009, which is more than 90 days after the date the Defendant’s Notice became final. *See* ORS 305.280(2) (2007); *McDowell v. Dept. of Rev.*, TC-MD No 050812C (Nov 28, 2005) (citing ORS 305.280(2) and holding that taxpayer’s appeal filed three days after the statutory deadline must be dismissed).

///  
  
///

No exceptions apply to extend the mandatory filing deadline. Because Plaintiffs acknowledge that the Complaint was filed after the statutory deadline, the court grants Defendant's motion. Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is dismissed.

Dated this \_\_\_\_ day of January 2010.

---

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 7, 2010. The Court filed and entered this document on January 7, 2010.***