

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DAVID VERN NEWTON,)	
)	
Plaintiff,)	TC-MD 091620D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss (motion),¹ on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).

A case management conference was held February 3, 2010. Plaintiff appeared on his own behalf. Faith Derickson, Tax Auditor, appeared on behalf of Defendant.

The parties and the court reviewed Defendant’s Answer. Defendant’s Answer states that the Notices of Deficiency Assessments were issued to Plaintiff on August 18, 2009. The Complaint was postmarked December 18, 2009. That interval is longer than the 90 days required by ORS 305.280(2) (2007), 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 circumstances that extend the statutory limit of 90 days. Defendant’s motion is granted.

///

¹ Filed in its Answer on January 6, 2010.

Plaintiff will contact Defendant to discuss the appeal alternatives outlined in Defendant's Answer. 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 February 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 February 8, 2010. The Court filed and entered this document on February 8, 2010.