

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ROGELIO MORA SILVA and	)	
ROSARIO ROMERO LOPEZ,	)	
	)	
Plaintiffs,	)	TC-MD 100065D
	)	
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 filed March 9, 2010, as part of its Answer, on the ground that Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2).<sup>1</sup>

A review of parties’ materials shows the Notice of Deficiency Assessment was mailed to Plaintiffs on November 2, 2009. (Def’s Answer at 1.) Plaintiffs’ Complaint was filed on February 8, 2010, and postmarked February 5, 2010. This interval is longer 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 circumstances that extend the statutory limit of 90 days. Defendant’s motion is granted. Now, therefore,

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to the 2007 edition.

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is allowed.  
Plaintiffs' Complaint is dismissed.

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

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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 Decision was signed by Presiding Magistrate Jill A. Tanner on April 20, 2010. The court filed and entered this Decision on April 20, 2010.***