

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JOHN DAVID MURDOCK)	
and MICHELLE MURDOCK,)	
)	
Plaintiffs,)	TC-MD 100069B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss (motion), filed June 9, 2010, requesting that the Complaint be dismissed. Plaintiffs’ response was filed June 14, 2010.

A case management conference was held on April 13, 2010. John David Murdock appeared on Plaintiffs’ behalf. Glenda Wesley, Tax Auditor, appeared for Defendant.

There are two main issues involved in Plaintiffs’ Complaint filed February 10, 2010. Both concern the 2004 tax year. Liability One concerns a claim for refund. Liability Two concerns an alleged increase in income due to a prior court judgment.

As to Liability Two, Defendant subsequently cancelled the original Notice of Deficiency and abated the associated increase in tax, penalties and interest. (Declaration of Glenda Wesley at 2.) Therefore, that issue is moot and this claim shall be dismissed.

As to Liability One, Defendant contends that Plaintiffs filed their appeal several months after the date of the Notice of Proposed Refund Adjustment (Notice), dated July 1, 2008. Defendant’s Notice became final 30 days later. ORS 305.270(4)(b), (5)(b). (Motion at 1, 2.) No exceptions apply here to the mandatory filing deadline for Liability One. *See* ORS 305.280(2) (2007); *McDowell v. Dept. of Rev.*, TC-MD No 050812C (November 28, 2005)

(citing ORS 305.280(2) and holding that taxpayer's appeal filed three days after the statutory deadline must be dismissed).

Because 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 August 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 August 13, 2010. The Court filed and entered this document on August 13, 2010.