

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DANIEL MELLIN ARANA)	
and ADRIANA RUIZ-DE LAO,)	
)	
Plaintiffs,)	TC-MD 100239C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s request for dismissal of Plaintiffs’ appeal as untimely, included in its Answer filed May 4, 2010. The court discussed that request with the parties during a hearing held by telephone June 30, 2010. Plaintiffs appeared on their own behalf and were aided by a Spanish interpreter. Defendant was represented by Kevin Cole.

The tax year at issue is 2008. Plaintiffs filed their 2008 Oregon income tax return reporting a tax due of \$215. Defendant subsequently reviewed the return and determined that an additional tax was due in the amount of \$575. Prior to the issuance of a Notice of Deficiency, Defendant sent Plaintiffs a request for additional information. Plaintiffs did not respond to that request. Defendant issued a Notice of Deficiency, followed by the issuance of a Notice of Deficiency Assessment on December 15, 2009. Plaintiffs appealed that assessment to the court on March 23, 2010. The appeal was postmarked March 22, 2010.

ORS 305.280(2) (2007) provides:

*“An appeal under ORS 323.416 * * * 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.”* (Emphasis added.)

The 90-day deadline for appealing in this case was March 15, 2010. Plaintiffs missed that deadline by one week. Accordingly, their appeal is untimely and must be dismissed.

Plaintiffs were advised that they have several options for pursuing a reduction in their taxes which, as of the date of the court hearing, amounted to \$896.29, including interest. One option is to pay the tax liability and file an appeal within 2 years of the date they pay the tax in accordance with ORS 305.280(3). Another option open to Plaintiffs is to pursue the “doubtful liability” provisions of ORS 305.295(1)(d)(A). If the major obstacle to payment of the taxes is in its hardship, Plaintiffs were advised that they could contact the assigned revenue agent and set up a payment plan. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s request for dismissal is granted and Plaintiffs’ appeal of Defendant’s Notice of Deficiency Assessment for tax year 2008 is dismissed.

Dated this ____ day of August 2010.

DAN ROBINSON
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 Magistrate Dan Robinson on August 12, 2010. The court filed and entered the Decision on August 12, 2010.