

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

HEATHER DUNCAN, )  
 )  
 Plaintiff, ) TC-MD 101134D  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 State of Oregon, )  
 )  
 Defendant. ) **DECISION OF DISMISSAL**

This matter is before the court on Defendant’s Motion to Dismiss on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).<sup>1</sup>

A review of Plaintiff’s materials shows the Notice of Deficiency Assessment was mailed to Plaintiff on April 21, 2010. The Complaint was filed on September 15, 2010. This interval is longer than the 90 days required by ORS 305.280(2), which provides:

“An appeal under ORS 323.416 or ORS 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.

In her response, Plaintiff wrote that she “mailed all of the requested documentation to the Magistrate Division on July 19, 2010, which met the on-time deadline per the established date.” According to the court’s records, Plaintiff’s Complaint was received on July 22, 2010, without the required fee. Plaintiff’s Complaint was not filed because she failed to include the required fee. On July 23, 2010, the court wrote to Plaintiff, stating:

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2009.

“In order to have a valid appeal filed with the Magistrate Division, you must submit a fee of \$75.00 with the Complaint.

If paying the filing fee would cause you undue hardship, you may submit an Application for Waiver of Fee. The enclosed form must be completed and returned to the court with your Complaint for review. If you submit the affidavit portion of the waiver application, you must **sign it in the presence of a notary public.**”<sup>2</sup>

(Emphasis in original.)

Plaintiff did not respond to the court’s letter until September 15, 2010. Plaintiff’s Complaint was filed as of that postmark date because she paid the required fee. Unfortunately, that date (September 15, 2010) is more than 90 days after the date of the Notice of Deficiency Assessment. Plaintiff’s appeal was not filed within the statutory time set forth in ORS 305.280(2). Defendant’s Motion to Dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s Motion to Dismiss is granted. The Complaint is dismissed.

Dated this \_\_\_\_ day of December 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 document was signed by Presiding Magistrate Jill A. Tanner on December 22, 2010. The Court filed and entered this document on December 22, 2010.***

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<sup>2</sup> ORS 305.490(1) provides in pertinent part that: “Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay a filing fee at the time of filing for each complaint or petition \* \* \*.”