

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

KATHLEEN LANGSTON,)	
)	
Plaintiff,)	TC-MD 140066C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION

The court entered its Decision in the above-entitled matter on May 6, 2014. The court did not receive a request for an award of costs and disbursements (TCR-MD 19) within 14 days after its Decision was entered. The court’s Final Decision incorporates its Decision without change.

This matter is before the court on Defendant’s April 8, 2014, Motion to Dismiss (Motion) Plaintiff’s Complaint. Plaintiff’s appeal challenges Defendant’s Notice of Liability for unpaid employer withholding taxes for the first through fourth quarters of 2008 tax year.¹ (Ptf’s Compl at 1, 8.) Defendant’s Notice of Liability is dated April 6, 2010. (*Id.* at 8; Def’s Mot at 4.) Plaintiff’s Complaint was filed with this court on March 12, 2014.

The court addressed the Motion with the parties during a telephone hearing held April 23, 2014. Plaintiff appeared at that proceeding and testified on her own behalf. Tracy Grover and Joil Southwell (Southwell), both of whom are employees of the Oregon Department of Revenue (Department), appeared for Defendant; each spoke to Defendant’s Motion.

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¹ Defendant’s April 6, 2010, Notice of Liability indicates that the unpaid tax liabilities pertain to Eagle Ventures International, Inc. The total amount appearing as owed on that liability notice is \$8,263.11. (Def’s Mot at 4.)

Defendant notes in its Motion that under ORS 316.207(3), appeals from a Notice of Liability must be filed within 90 days after the notice becomes final. (Def's Mot at 1-2.)

Defendant then states that "Plaintiff's appeal was filed beyond the allowable 90-day period that ended on or about August 4, 2010." (*Id.* at 2)

Defendant determined that Plaintiff was a responsible officer, employee, or member of a corporation or other business entity that was personally liable for taxes not paid to the Department by Eagle Ventures International, Inc. (Def's Mot at 4.) Defendant therefore issued Plaintiff a Notice of Liability on April 6, 2010, for the first, second, third, and fourth quarters of 2008. Defendant cites in its Notice of Liability that its legal authority lies in ORS 316.162, ORS 316.207, and OAR 150-316.162(3). (*Id.*)

ORS 316.162(3), defines "employer[s]" as "officer[s] and employee[s] of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the acts required of employers by ORS 316.167, 316.182, 316.197, 316.202, and 316.207."² One of the "acts required of employers" under ORS 316.162(3) is to deduct and retain from wages amounts specified in ORS 316.167 and remit those monies to the Department in accordance with the provisions of ORS 316.197 (which generally require remittance on a quarterly basis). ORS 316.207(1) establishes a duty on the part of the employer to hold such moneys "in trust for the State of Oregon* * * for the payment thereof to the Department of Revenue * * *."

ORS 316.207(3)(a) provides in relevant part that "the department may issue a notice of liability" to responsible officers and employers and that individuals to whom such notice is issued have "30 days from the date the notice of liability is mailed * * * [to] pay the assessment,

² The court's references to the Oregon Revised Statutes (ORS) are to 2013 because there are no material differences between it and the 2007 edition.

plus penalties and interest, or advise the Department in writing of objections to the liability and, if desired, request a conference.” That statute specifies that “[a]ny conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.” *Id.*

The key provision of the statutory framework applicable to Defendant’s Motion is paragraph (c) of subsection (3) of ORS 316.207. That statute provides:

“If neither payment nor written objection to the notice of liability is received by the department within 30 days after the notice of liability has been mailed, the notice of liability becomes final. In such event, the officer, employee or member may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.”

Appeals from a notice of assessment are governed by ORS 305.280(2). That statute requires that such appeals “shall be filed within 90 days after the date of the notice.”

ORS 305.280(2).

Thus, Plaintiff had 30 days from the date the Notice of Liability to file a written objection or pay the tax. The applicable 30-day deadline was May 6, 2010. Plaintiff neither paid the tax nor filed a written objection by May 6, 2010. Defendant’s liability notice therefore became final on May 6, 2010, and Plaintiff then had 90 days from that date to appeal to this court. The 90-day appeal deadline was August 4, 2010.

Plaintiff did not file her complaint with this court until March 12, 2014, more than three and one-half years after the appeal deadline. Plaintiff’s appeal is therefore untimely and Defendant’s Motion is granted. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is granted because Plaintiff did not timely appeal Defendant's Notice of Liability. Plaintiff's appeal is therefore dismissed.

Dated this ____ day of May 2014.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Final 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 Final Decision or this Final Decision cannot be changed.

This document was signed by Magistrate Dan Robinson on May 29, 2014. The court filed and entered this document on May 29, 2014.