IN THE OREGON TAX COURT MAGISTRATE DIVISION Income Tax

ALEXIS C. McKEE,)
Plaintiff,)) TC-MD 160023R
v.)
DEPARTMENT OF REVENUE,)
State of Oregon,)
Defendant.) FINAL DECISION OF DISMISSAL

This Final Decision of Dismissal incorporates without change the court's Decision of Dismissal, entered April 4, 2016. The court did not receive a statement of costs and disbursements within 14 days after its Decision of Dismissal was entered. *See* TCR-MD 16 C(1).

This matter is before the court on Defendant's Motion to Dismiss (Motion), filed February 22, 2016.

Plaintiff filed her Complaint on January 20, 2016, appealing Defendant's decision to disallow Plaintiff's claimed Working Family Credit for the 2013 tax year. Plaintiff filed her Amended Complaint on February 3, 2016. On February 22, 2016, Defendant filed its Motion to Dismiss, arguing that Plaintiff's appeal should be dismissed because the Complaint was not timely filed, as required by ORS 305.280(2). Plaintiff submitted a written response to Defendant's Motion on March 21, 2016. Defendant filed its Reply to Plaintiff's Response to Motion to Dismiss on March 31, 2016. This matter is now ready for the courts determination.

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¹ The court's references to the Oregon Revised Statutes (ORS) are to 2015.

² Plaintiff's response did not indicate that a copy had been provided to Defendant, as required by Tax Court Rule-Magistrate Division 5. However, because Defendant referenced Plaintiff's response in its Reply, the court assumes that Defendant did receive a copy.

The grounds for dismissal stated in Defendant's Motion is that Plaintiff failed to appeal a Notice of Deficiency Assessment dated November 18, 2014, within 90 days.

ORS 305.280(2) states, in relevant part:

"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."

(Emphasis added.)

Neither party has provided the court with a copy of the Notice of Deficiency Assessment; however, a review of Plaintiff's Complaint reveals a letter from Defendant dated December 15, 2014, stating that a "Notice of Assessment" was issued to Plaintiff on November 18, 2014. (Compl at 1.) Moreover, Plaintiff acknowledges in her written response that her appeal to this court was not timely. (*See* Ptf's Resp at 1 (stating that Plaintiff "has not timely filed").) Ninety days from November 18, 2014, fell on February 16, 2015. Plaintiff's Complaint was filed on January 20, 2016, well beyond the statutory deadline. Accordingly, the court finds that Defendant's Motion must be granted. Plaintiff's appeal is dismissed. Now, therefore,

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IT IS THE DECISION OF THIS	S COURT that Defendant's Motion is	granted and

Plaintiff's appeal is dismissed.	
Dated this day of April 2016.	
	RICHARD DAVIS
	MAGISTRATE

If you want to appeal this Final Decision of Dismissal, file a complaint in the Regular Division of the Oregon Tax Court, by <u>mailing</u> to: 1163 State Street, Salem, OR 97301-2563; or by <u>hand delivery</u> to: Fourth Floor, 1241 State Street, Salem, OR.

Your complaint must be submitted within <u>60</u> days after the date of the Final Decision of Dismissal or this Final Decision of Dismissal cannot be changed. TCR-MD 19 B.

This document was filed and entered on April 22, 2016.