

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

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|------------------------|---|------------------------------------|
| WILLIAM L. HOWELL |) | |
| and RACQUEL D. HOWELL, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 160057C |
| |) | |
| 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 May 25, 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).¹

This matter is before the court on Defendant’s Motion to Dismiss (Motion), received and filed by the court on April 14, 2016. Plaintiffs appeal Defendant’s Notice of Deficiency Assessments (Assessment) for tax years 2012 and 2013. A hearing was held by telephone on May 4, 2016.² Bobbie L. Winters (Winters), CPA, appeared on behalf of Plaintiffs. Steve Tillotson, Auditor, Oregon Department of Revenue, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The parties agree to the following facts: Defendant mailed Plaintiffs an Assessment for the 2012 tax year on July 21, 2015. Defendant mailed Plaintiffs an Assessment for the 2013 tax year on October 20, 2015. On March 7, 2016, Plaintiffs filed an appeal with this court seeking

¹ Tax Court Rules–Magistrate Division (TCR–MD)

² The proceeding was the initial case management hearing.

an abatement of tax on certain Alaska-earned income. (Compl at 1.) Defendant subsequently filed its Motion on April 14, 2016, requesting that the court dismiss Plaintiffs' appeal as untimely under ORS 305.280(2).³

II. ANALYSIS

ORS 305.280(2) provides in relevant part:

“An appeal * * * from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter * * * 314, 316, * * * shall be filed within 90 days after the date of the notice.”

Plaintiffs' personal income tax liability for the two years at issue is governed by ORS chapter 316. They therefore had 90 days from the date of Defendant's Assessment notices to file their appeal. The notices were issued on July 21, 2015, (2012 tax year) and October 20, 2015, (2013 tax year). Plaintiffs' appeal deadlines were October 19, 2015 for the 2012 tax year and a January 18, 2016, for the 2013 tax year. Plaintiffs' appeal was filed on March 7, 2016. Plaintiffs' appeal is clearly untimely.

After a lengthy discussion of the process for responding to Defendant's Motion, Plaintiffs' representative Winters stated that she did not object to Defendant's Motion. Given the fact that the appeal is untimely, that Plaintiffs have conceded that fact, and have chosen not to challenge Defendant's Motion, the Motion is granted and the appeal is hereby dismissed.

III. CONCLUSION

The court concludes that Defendant's unopposed Motion to Dismiss Plaintiffs' appeal as untimely regarding assessments for 2012 and 2013, discussed above, is granted and Plaintiffs' appeal is dismissed. Now, therefore,

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³ The court's references to the Oregon Revised Statutes (ORS) are to 2013, the edition of the statutes in effect in 2015 when Defendant issued its assessment notices.

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss Plaintiffs' appeal for tax years 2012 and 2013 is granted.

Dated this ____ day of June 2016.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Final Decision of Dismissal, 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 of Dismissal or this Final Decision of Dismissal cannot be changed.
TCR-MD 19 B.***

This document was filed and entered on June 14, 2016.