

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

BRIANNA BAUM,	)	
	)	
Plaintiff,	)	TC-MD 180059N
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>FINAL DECISION OF DISMISSAL<sup>1</sup></b>

This matter came before the court on Defendant’s Motion to Dismiss (Motion), filed March 14, 2018, requesting that the Complaint be dismissed. A case management conference was held on March 29, 2018, during which the parties discussed Defendant’s Motion. Plaintiff chose not to file a written response to the motion, but gave an oral response during the case management conference. This matter is now ready for the court’s determination.

A. *Factual Background and Defendant’s Motion*

Plaintiff filed her Complaint on February 20, 2018. She attached two notices to her Complaint: a Notice of Proposed Refund Adjustment, dated May 16, 2017, reducing Plaintiff’s claimed refund for the 2016 tax year from \$3,299 to \$632 based on disallowance of her Working Family Household and Dependent Care (WFHDC) credit in the amount of \$2,667; and a letter dated January 22, 2018, denying Plaintiff’s “request for a change to [her] Oregon income tax return” for the 2016 tax year. (Compl at 2-6.) The letter referenced Plaintiff’s response to the Notice of Proposed Refund Adjustment and explained the applicable deadlines for appealing that notice. (*Id.* at 6.)

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<sup>1</sup> This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal, entered April 4, 2018. The court did not receive a statement of costs and disbursements within 14 days after its Decision of Dismissal was entered. *See* Tax Court Rule–Magistrate Division (TCR–MD) 16 C(1).

Defendant moves for dismissal of Plaintiff's Complaint because it was not filed within 90 days of Defendant's Written Objection Determination, which upheld Defendant's denial of Plaintiff's WFHDC credit for the 2016 tax year. (Def's Mot at 1, 8.) The Written Objection Determination was dated September 15, 2017. (*Id.* at 8.) Defendant maintains that Plaintiff's Complaint must have been filed by December 14, 2017, to have been timely under ORS 305.280(2). (*Id.* at 1.) Plaintiff explained at the case management conference that she filed her appeal late because her tax preparer did not have time to submit an appeal of Defendant's denial of her WFHDC credit. As a result, Plaintiff gathered the documents requested by Defendant and prepared her own appeal, but that took additional time.

B. *Analysis*

Pursuant to ORS 305.280(2),<sup>2</sup> an appeal "from any \* \* \* 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, \* \* \* *shall be filed within 90 days after the date of the notice.*" (Emphasis added.) "Shall" is a command used in laws to express what is mandatory. *Preble v. Dept. of Rev.*, 331 Or 320, 324, 14 P3d 613 (2000). In this case, Defendant issued a Written Objection Determination denying Plaintiff's refund on September 15, 2017. Defendant is correct that Plaintiff's appeal must have been filed by December 14, 2017, to have been timely under ORS 305.280(2). The court is not aware of any statute extending that deadline or otherwise providing relief in this case.<sup>3</sup>

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<sup>2</sup> The court's references to the Oregon Revised Statutes (ORS) are to 2017.

<sup>3</sup> Where a taxpayer fails to timely appeal "a notice of *assessment* of taxes imposed under ORS chapter 314, 316, 317, or 318[.]" the taxpayer may file an appeal within two years from the date the amount of tax, including penalties and interest, is paid. ORS 305.280(3). This case concerns a *refund* denial, so the additional time to appeal under ORS 305.280(3) is not applicable.

C. *Conclusion*

Because Plaintiff's appeal was not timely filed under ORS 305.280(2), the court must grant Defendant's Motion and may not consider the merits of Plaintiff's appeal. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is granted. Plaintiff's appeal is dismissed.

Dated this \_\_\_\_ day of April 2018.

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ALLISON R. BOOMER  
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 signed by Magistrate Boomer and entered on April 24, 2018.***