

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TUYEN THI MONG DO,)	
)	
Plaintiff,)	TC-MD 180147N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION OF DISMISSAL¹

This matter came before the court on Defendant’s motion to dismiss (motion) on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2). (Answer at 1.) Defendant asserts that Plaintiff did not pay the account (*i.e.*, tax, penalties, and interest), which would allow her two years to appeal under ORS 305.280(3). (*Id.*)

A. *Procedural History*

A case management conference was held on May 24, 2018, during which the parties discussed Defendant’s motion. The parties agreed to a schedule for filing written arguments on Defendant’s motion and discussed other remedies that might be available to Plaintiff through the Department of Revenue.

Plaintiff filed her response on June 8, 2018, stating that the auditor did not “give [her] enough time to send all [of her] paper work and bank statements.” (Ptf’s Resp at 1.) Plaintiff stated that she did not receive the auditor’s letter giving her 10 days to submit the documents, nor did she receive the Notice of Assessment. (*Id.*) She reported that it took time for her to gather

¹ This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal, entered July 11, 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).

the requested bank statements because they were sent to an old business address.² (*Id.*) Plaintiff experienced additional delays because her tax preparer was sick and unable to help with her audit. (*Id.*) She asks that the court consider her appeal because she tried to find all of the requested documents for the 2014 tax year.³ (*Id.* at 2.)

Defendant sent Plaintiff a letter dated June 12, 2018, describing the other potential remedies discussed by the parties during the case management conference on May 24, 2018.

B. *Analysis*

A Notice of Assessment for the 2014 tax year was issued to Plaintiff on December 19, 2017. (Def's Status Report at 3, May 29, 2018). Plaintiff's Complaint was filed on April 10, 2018. This interval is longer than the 90 days required by ORS 305.280(2),⁴ which provides:

“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. 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.”

Plaintiff wrote that she did not receive the Notice of Assessment, but provided no evidence that the Notice was sent to an incorrect address. Indeed, Plaintiff's address listed on the Notice of Assessment is the same as the address listed on her Complaint. The court is sympathetic to the delays Plaintiff experienced gathering documents in response to Defendant's audit. However, those circumstances do not extend the statutory limit of 90 days to file an appeal with this court under ORS 305.280(2). Defendant's motion to dismiss is granted. Now, therefore,

² Defendant sent to Plaintiff a letter dated August 8, 2017, opening an audit of Plaintiff's 2014 Oregon personal income tax return and requesting numerous documents. (Ptf's Compl at 3-6.) Defendant sent Plaintiff a Notice of Deficiency dated October 31, 2017. (*Id.* at 7-12.)

³ Indeed, Plaintiff's Complaint totals 188 pages.

⁴ The court's references to the Oregon Revised Statutes (ORS) are to 2015.

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

Plaintiff's Complaint is dismissed.

Dated this ____ day of July 2018.

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 July 31, 2018.