

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

GERALD M. MONTAG II,)	
)	
Plaintiff,)	TC-MD 110979N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss Tax Year 2007 (Motion) on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2). Plaintiff appealed Defendant’s Notice of Deficiency Assessment for the 2007 tax year, dated May 17, 2011. A case management conference was held on January 17, 2012, to discuss Defendant’s Motion. Plaintiff’s authorized representative, Hugh Cunningham (Cunningham), appeared on behalf of Plaintiff. Plaintiff also participated in the conference. Sharon J. Watson (Watson), Tax Auditor, appeared on behalf of Defendant.

Defendant’s Notice of Deficiency Assessment was mailed to Plaintiff on May 17, 2011. (Def’s Answer at 1.) Plaintiff’s Complaint was filed on September 15, 2011. That interval is longer than the 90 days required by ORS 305.280(2), which states:

“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.”

During the conference on January 17, 2012, Cunningham stated that Plaintiff has not paid the deficiency assessment. Cunningham stated that he only recently took on Plaintiff’s case; his

predecessor was late in responding to Defendant's notices. Watson stated that Plaintiff's appeal was not timely filed with the Magistrate Division of the Tax Court and must be dismissed. She stated that Defendant received Plaintiff's "request for relief under the doubtful liability statute ORS 305.295" on November 7, 2011, and would consider that request if the Motion is granted.

Plaintiff's appeal was not timely filed under ORS 305.280(2). The court is not aware of any circumstances that extend the statutory limit of 90 days. Defendant's Motion to Dismiss must, therefore, be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss Tax Year 2007 is granted. Plaintiff's Complaint is dismissed.

Dated this ____ day of January 2012.

ALLISON R. BOOMER
MAGISTRATE PRO TEMPORE

If you want to appeal this 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 Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Pro Tempore Allison R. Boomer on January 20, 2012. The Court filed and entered this document on January 20, 2012.