

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CLYDE F. JUSSILA)	
and LIISA JUSSILA,)	
)	
Plaintiffs,)	TC-MD 111051D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss, filed as part of Defendant’s Answer, on the ground that Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2).

A case management conference was held January 25, 2012. Plaintiffs’ authorized representative, Jackie S. Coulter, enrolled agent, appeared on Plaintiffs’ behalf. Kyle Quiring, Tax Auditor, appeared on behalf of Defendant.

Defendant’s motion to dismiss for failure to file a timely appeal was discussed. Plaintiffs were given until February 8, 2012, to submit a written response to Defendant’s motion to dismiss. As of this date, Plaintiffs have not filed a written response.

Defendant’s Answer states that a Proposed Refund Adjustment Notice was mailed to Plaintiffs on April 25, 2011. Plaintiffs’ Complaint was filed on September 27, 2011. This interval is longer than the 90 days required by ORS 305.280(2), 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.”

The court is not aware of any circumstances that extend the statutory limit of 90 days. Plaintiffs' lack of response provides the court with no evidence contrary to that presented by Defendant. Defendant's motion to dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is allowed. Plaintiffs' Complaint is dismissed.

Dated this ____ day of February 2012.

JILL A. TANNER
PRESIDING MAGISTRATE

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 Presiding Magistrate Jill A. Tanner on February 14, 2012. The Court filed and entered this document on February 14, 2012.