

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ANDREW WILLIAMSON)	
and PAULA WILLIAMSON,)	
)	
Plaintiffs,)	TC-MD 111237N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss (motion) filed with its Answer on January 17, 2012, requesting that Plaintiffs’ appeal be dismissed because it was not timely filed within 90 days of the date of Defendant’s Notice of Deficiency Assessment.

Plaintiffs’ Complaint was postmarked on December 2, 2011. Plaintiffs appeal Defendant’s Notice of Deficiency Assessment, dated June 14, 2011, for the 2010 tax year. (See Def’s Ans at 1.) A case management conference was held in this matter on February 14, 2012, during which the parties discussed Plaintiffs’ appeal. The parties agreed to submit additional written arguments and the parties’ agreed-upon deadlines were memorialized in a Journal Entry filed February 16, 2012. The parties filed written arguments and this matter is now ready for the court’s determination.

A. *Contentions of the parties*

On February 29, 2012, Plaintiffs’ authorized representative Kathleen R. Franklin (Franklin) filed a letter stating that Plaintiffs “sent in a written objection to Oregon’s findings on May 9, [2]011. In June [Plaintiffs] received a notice of deficiency so we called and were told they had not had time to process and we would receive a letter with the decision.” Franklin

further states that, “[o]n Sept. 14, 2011[,] we called Oregon for the status of the written objection and were told they had never received it so I resent it to Oregon. In November we still had not heard anything so I again called Oregon and was told they had denied the request so I requested the letter telling us they had denied the objection. We were sent another notice of deficiency and no denial letter.” (Ptf’s Ltr at 1, Feb 29, 2012.) With her letter, Franklin provided a “Fax Cover Sheet” to “OR Dept of Revenue” at “(503) 945-8009” that is dated “5-9-11 5:17 PM” and states “following is the written objection and back up documents from our clients.” (*Id.* at 3.) Franklin also provided a “Transmission Verification Report” stating a time of “05/08[2011] 21:16” to fax number “15039458009” with a “result” of “OK.” (*Id.* at 5.)

Defendant’s authorized representative Kevin Cole (Cole), filed his written reply on March 14, 2012. Cole stated that Defendant has no record of receipt of Plaintiffs’ written objection or of any phone calls from Franklin until September 7, 2011. (Def’s Ltr at 1-2, Mar 14, 2012.) Cole stated that “[t]here is a comment at the end of [Franklin’s September 7, 2011, phone] conversation record indicating ‘didn’t want to tell her (Franklin) no appeal was received till I get POA.’ ” (*Id.* at 2.) Cole argues that, based on the appeal rights provided on the Notice of Deficiency and OAR 150-305.265(5)(2)(b),¹ Plaintiffs were required to mail, not fax, the written objection. (*Id.* at 2-3.) Cole stated that “[t]he appeal rights for the Notice of Deficiency Assessment expired on September 12, 2011. Plaintiff did not appeal to the Magistrate Division * * * within 90 days from the date [of] the Notice of Deficiency Assessment of June 14, 2011.” (*Id.* at 5.) Cole noted that Plaintiffs have “two choices”:

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¹ OAR 150-305.265(5)(2)(b) (2009) states: “To file a written objection, the taxpayer shall write to the department within 30 days of the date on the deficiency notice. This protest shall be addressed to the Oregon Department of Revenue, 955 Center Street NE, Salem, OR 97310, and shall explain the reason for the disagreement.”

“First, they can pay the account in full, and then appeal to the Magistrate within two years from the date paid (ORS 305.280(3)). Second, they can request relief through the doubtful liability process. The form ‘A Request for Doubtful Liability Release’ can be found on [Defendant’s] web site * * * Plaintiff will need to fill out the form and return it to [Defendant] (ORS 305.295).”

(*Id.* at 5.)

B. *Analysis*

“*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.*”

ORS 305.280(2) (emphasis added).² However, “an appeal from a notice of assessment of taxes imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.”

ORS 305.280(3). Plaintiffs have not paid the deficiency, thus, Plaintiffs had 90 days to appeal from the Notice of Deficiency Assessment under ORS 305.280(2).

Defendant’s Notice of Deficiency Assessment was mailed to Plaintiffs June 14, 2011.

(*See* Def’s Ans at 1.) In her letter of February 29, 2012, Franklin acknowledges that, “[i]n June,” Plaintiffs “received a notice of deficiency.”³ Plaintiffs’ appeal was not postmarked to this court until December 2, 2011, well after the 90 day time period from the Notice of Deficiency Assessment had passed. Defendant’s motion must, therefore, be granted. Now, therefore,

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² All references to the Oregon Revised Statutes (ORS) are to 2009.

³ Franklin acknowledges that Plaintiffs received a Notice of Deficiency for the 2010 tax year on April 19, 2010. Presumably, she meant to state that Plaintiffs received the Notice of Deficiency Assessment in June.

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is dismissed.

Dated this ____ day of March 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 March 30, 2012. The Court filed and entered this document on March 30, 2012.