

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

SHANE TOWNSEND,)	
)	
Plaintiff,)	TC-MD 111302D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).

A review of Plaintiff’s materials shows the Notice of Deficiency Assessment was mailed to Plaintiff on September 21, 2011. The Complaint was filed on December 29, 2011. This interval is longer than the 90 days required by ORS 305.280(2),¹ which provides:

“An appeal under ORS 323.416 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.”

At the case management conference held February 27, 2012, Plaintiff stated that he knew he filed his Complaint after the 90 day appeal period. The court is not aware of any circumstances that extend the statutory limit of 90 days. Defendant’s Motion to Dismiss is granted.

In its Motion to Dismiss, Defendant wrote that Plaintiff could pay the tax and then file an appeal within two years, requesting a refund. Defendant cited ORS 305.280(3). In its Motion to

¹ All references to the Oregon Revised Statutes (ORS) are to 2009.

Dismiss, Defendant also described the Defendant's doubtful liability process, citing ORS 305.295. During the conference, Defendant's representative, Sandi Lyon, stated that she would send a copy of the Defendant's doubtful liability request form to Plaintiff. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is allowed. The 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 29, 2012. The Court filed and entered this document on February 29, 2012.