

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

THOMAS A. HARRINGTON)	
and HEATHER J. HARRINGTON,)	
)	
Plaintiffs,)	TC-MD 120037D
)	
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 Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2).¹

Plaintiffs’ written response to Defendant’s Motion to Dismiss was filed April 4, 2012. In their response, Plaintiffs stated:

“We are disputing the motion to dismiss in Case #120037D. Original court hearing 3/13/12 Telephone conference: Magistrate Tanner[;] Kyle Quiring DOR.”

Defendant’s Reply to Motion to Dismiss (Reply) was filed April 6, 2012. In its Reply, Defendant’s representative, Kyle Quiring, stated:

“The Plaintiff did not provide any proof that the Complaint was timely filed in their response to my Motion to Dismiss. Under ORS 305.280, a Notice of Proposed Refund Adjustment must be appealed to Magistrate Within 120 days from the date of the notice. Because the appeal was not filed within 120 days the notice date, it is final and no appeal options are available to the Plaintiff.”

A review of Plaintiffs’ materials shows the Notice of Proposed Adjustment and/or Distribution was mailed to Plaintiffs on August 18, 2011. The Complaint was filed on January 12, 2012. This interval is longer than the 90 days required by ORS 305.280(2), which

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

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.

Defendant’s Motion to Dismiss is granted. 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 April 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 April 9, 2012. The Court filed and entered this document on April 9, 2012.