

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DALE R. CLARK and CATHY M. CLARK,)	
)	
Plaintiffs,)	TC-MD 120157N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
)	
Defendant.)	DECISION OF DISMISSAL

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

A case management conference was held in this matter on May 8, 2012, during which Dale Clark (Clark) appeared on behalf of Plaintiffs and Kyle Quiring (Quiring) appeared on behalf of Defendant. Clark stated that Plaintiffs timely filed a complaint form with the court in October 2011, but the complaint was returned because Plaintiffs did not include the correct filing fee of \$240. Clark agreed that Plaintiffs’ Complaint, including the correct filing fee, was not filed within 90 days of Defendant’s Notice of NSF Check Penalty, dated July 13, 2011. Quiring stated that Plaintiffs could appeal to the Magistrate Division within two years “after the penalty has been paid in full” pursuant to ORS 305.280(3). (Def’s Mot at 2.)

A review of court records reveals that the court received from Plaintiffs a complaint form with a \$75.00 check on October 12, 2011. On October 17, 2011, the court sent a letter to Plaintiffs stating that Plaintiffs’ “Complaint was received with a check for \$75.00, which is an insufficient filing fee.” The court’s letter further stated that, “[t]o file a valid appeal with the Magistrate Division, a Complaint form must be completed and returned with the document being

appealed *and the required fee of \$240.00.*” See also ORS 305.490(1); Or Laws 2011, Ch 595, §§ 8, 62. It appears that Plaintiffs attempted to file their complaint on October 12, 2011, but did not include the correct filing fee. A complaint is not filed until the appropriate fee or a complete fee waiver application is received. Plaintiffs’ Complaint was not filed until March 27, 2012.

That interval is longer than the 90 days required by ORS 305.280(2) (2011), 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.

Defendant’s Motion to Dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s Motion to Dismiss is granted and Plaintiffs’ Complaint is dismissed.

Dated this ____ day of May 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 May 9, 2012. The Court filed and entered this document on May 9, 2012.