

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DIANNA UPTHAGROVE,	)	
	)	
Plaintiff,	)	TC-MD 120690D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

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 that Defendant’s Notice of Refund Denial was mailed to Plaintiff on April 19, 2012. Plaintiff’s Complaint was filed on July 19, 2012. Plaintiff submitted her Complaint and accompanying documents using a private carrier, not the United States Postal Service. The file date for Plaintiff’s Complaint is the date the private carrier delivered her Complaint to the court. This 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.”

Plaintiff’s Complaint was filed 91 days after Defendant’s Notice of Refund Denial. 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,

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IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is allowed.  
Plaintiff's appeal is dismissed.

Dated this \_\_\_\_ day of September 2012.

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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 September 19, 2012. The Court filed and entered this document on September 19, 2012.***