

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ELIZABETH A. MILLER,)	
)	
Plaintiff,)	TC-MD 120775C
)	
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 October 31, 2012, requesting that Plaintiff’s appeal be dismissed as untimely. A case management hearing was held with Magistrate Dan Robinson on November 15, 2012.

Defendant issued Notices of Liability on September 7, 2011, and May 2, 2012, noting unpaid withholding tax debts for tax years 2010 and 2011. (Def’s Mot at 4-7.) In the absence of a written objection or request for conference, ORS 316.207(3)(c) provides that a Notice of Liability becomes final 30 days after mailing.¹ “In such event, [Plaintiff] may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.” *Id.* ORS 305.280(2) states, in part, “[a]n appeal * * * from any notice of assessment * * * shall be filed within 90 days after the date of the notice.” Plaintiff filed her Complaint on October 9, 2012. (Ptf’s Compl at 1.) That interval is longer than the 90 days required by either ORS 316.207(3) or ORS 305.280(2).

The court is not aware of any circumstances that extend the statutory limit of 90 days. Defendant’s Motion is granted. Now, therefore,

¹ All references to the Oregon Revised Statutes (ORS) are to the 2011 edition. The 2009 ORS are applicable to the Notice of Liability issued September 7, 2011, but do not differ materially from the 2011 ORS provisions cited in this Decision of Dismissal.

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is granted.

The Complaint is dismissed.

Dated this ____ day of November 2012.

ALLISON R. BOOMER
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 Magistrate Allison R. Boomer on November 16, 2012. The Court filed and entered this document on November 16, 2012.