

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Income Tax

STEVE M. MOBLEY,)	
)	
Plaintiff,)	
)	No. 000126F
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	DECISION AND JUDGMENT OF
Defendant.)	DISMISSAL

This matter came before the court on defendant's Motion to Dismiss, received March 16, 2000, in its Answer, requesting that the Complaint be dismissed because plaintiff failed to appeal from a Notice of Refund Denial within 120 days. The Motion to Dismiss was discussed with the parties during the case management conference held June 6, 2000. Louis Zettel, CPA, appeared for plaintiff. Laurie Fery, Auditor, appeared for defendant.

Plaintiff filed an amended 1996 personal income tax return. In the return he claimed head of household filing status and asked for a refund of \$360. Defendant asked for additional information relating to dependants that qualified plaintiff as head of household. All of the information requested was not forthcoming. On October 8, 1999, defendant issued its Notice of Refund Denial. Plaintiff filed his appeal with this court on February 10, 2000.

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In the case of a proposed refund denial or refund adjustment, a person has 30 days to file written objections or request a conference. ORS 305.270(4). A person also may file an appeal to the Magistrate Division. See 305.270(10). The appeal period from an act of defendant is 90 days. ORS 305.275 and ORS 305.280. The court does not need to decide if the time periods mentioned above run concurrently or consecutively. Plaintiff filed his appeal 125 days after defendant issued its Notice of Refund Denial. Even under the more generous interpretation, plaintiff's appeal was untimely. The court finds that plaintiff's appeal must be dismissed.

IT IS HEREBY ADJUDGED AND DECREED that the above-entitled matter be dismissed.

Dated this ____ day of June, 2000.

SALLY L. KIMSEY
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON
JUNE 9, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 9, 2000.**