

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Income Tax

CHRISTOPHER D. ECKARDT,	)	
	)	
Plaintiff,	)	No. 000716E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter came before the court on defendant's request that the case be dismissed because plaintiff failed to appeal from the assessment notices within 90 days. The court discussed the matter with the parties during the case management conference held July 12, 2000. Richard K. Davey, along with Christopher D. Eckardt, appeared on behalf of plaintiff (taxpayer). Mike Halter, Auditor, appeared on behalf of defendant (the department).

**STATEMENT OF FACTS**

On January 14, 2000, the department mailed taxpayer Notices of Determination and Assessment for tax years 1993, 1994, 1995, and 1996. After receiving these notices, an attorney for taxpayer contacted the department to discuss the assessments. On February 16, 2000, the department sent taxpayer's attorney a copy of the applicable laws and advised he should appeal to the Tax Court. Taxpayer filed his appeal with the court May 8, 2000.

The department claims the appeal should be dismissed because taxpayer failed to appeal within 90 days from the date of the assessment notices. Taxpayer

maintains that, due to the correspondence that occurred with the department, the appeal period should be extended.

### COURT'S ANALYSIS

ORS 305.280(2) sets forth the time for appealing from a notice of assessment. It provides:

“An appeal \* \* \* from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under [the income tax statutes] **shall** be filed within 90 days after the **date of the notice.**”  
(Emphasis added).

ORS 305.265(14) states that assessments “**shall be final** after the expiration of the appeal period specified in ORS 305.280.” (Emphasis added).

Taxpayer explains that it was his perception the correspondence between the attorney and the department were part of the appeal process. He further believed the 90-day appeal period did not begin until after his attorney's discussions with the department came to a conclusion. The court has reviewed the letter sent by the department to taxpayer's attorney and can find no statements to suggest the appeal period had been extended. Taxpayer admits no such statements were made. Taxpayer's failure to file his appeal within the statutory time period was the result of his mistaken assumptions. A mistaken assumption by a taxpayer does not excuse his failure to submit an appeal within the statutory time period.

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## CONCLUSION

ORS 305.280(2) is clear that an assessment becomes final once the 90-day appeal period passes. Because taxpayer failed to file his appeal within this time period, the court has no authority to review the assessments.<sup>1</sup> Now, therefore;

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this \_\_\_\_\_ day of July, 2000.

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COYREEN R. WEIDNER  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 COYREEN R. WEIDNER ON JULY 21, 2000. THE COURT FILED THIS DOCUMENT ON JULY 21, 2000.**

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<sup>1</sup> As discussed at the case management conference, under its expanded powers, the department will review the returns filed by taxpayer in April 2000 and notify taxpayer of any adjustments.