

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

BONNIE OWENBY and NEWELL OWENBY	)	
(Deceased),	)	
	)	
Plaintiffs,	)	No. 010994F
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on the Defendant's motion to dismiss, filed with its Answer on September 10, 2001, requesting that the Complaint be dismissed because the taxpayers failed to appeal within the 90 days required by ORS 305.280(2).<sup>1</sup> This matter is also before the court on its own motion to reactivate this appeal.

The Defendant issued a Notice of Assessment for tax year 1996 on April 25, 2000. This appeal was filed on August 18, 2001. A case management conference was held on October 31, 2001. With the agreement of the parties, the court issued an order placing the matter in abeyance pending the resolution of the taxpayers' request for doubtful liability relief to be filed with the Department of Revenue (department).

On January 30, 2002, the court received a letter from Robert Williamson, Auditor with the department. In the letter he stated that Ms. Owenby had not provided the department with any information, including a request in writing, for doubtful liability relief. The court received a second letter from Mr. Williamson on April 2, 2002. That letter stated that Ms. Owenby had not provided "the necessary information to make a determination under the doubtful liability process. Several extensions of time have not

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<sup>1</sup>All references to the Oregon Revised Statutes are to 2001.

been met." In both letters Mr. Williamson asked the court to rule on his motion to dismiss.

As noted earlier, the department issued its Notice of Assessment on April 25, 2000. This appeal was filed on August 18, 2001. This interval is longer than the 90 days required by ORS 305.280(2), which reads:

"An appeal under ORS 323.416 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 prevent the statutory limit of 90 days. The Department's motion is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter is reactivated.

IT IS FURTHER DECIDED that this matter is dismissed.

Dated this \_\_\_\_\_ day of May, 2002.

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SALLY L. KIMSEY  
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 97301-2563. 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 SALLY L. KIMSEY ON MAY 24, 2002. THE COURT FILED THIS DOCUMENT ON MAY 24, 2002.**