

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Western Oregon Privilege Tax
Forest Products Harvest Tax

LOWELL E. PATTON,)
)
 Plaintiff,) TC-MD 011119E
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on Defendant's motion to dismiss, which was filed as part of its Answer on November 27, 2001. Plaintiff's appeal challenges Defendant's assessment of a Forest Products Harvest Tax (FPHT) and a Western Oregon Privilege Tax (WOPT) for the 1998 tax year. Plaintiff filed a separate appeal challenging similar assessments for the 1999 tax year. *See Patton v. Dept. of Rev.*, OTC-MD No 011185E. Both cases present identical issues as to the merits. As a consequence, the court tried the cases simultaneously on August 21, 2002. Lowell E. Patton appeared on his own behalf. Susan J. Hicks, Auditor, appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the department."

STATEMENT OF FACTS

In 1998, taxpayer harvested timber on land he owned. He filed a WOPT return with the department wherein he noted that no harvest had occurred on the property. The department later determined through information obtained from lumber mills that taxpayer had harvested timber in 1998. Based on that information, the department issued a Notice of Deficiency for the WOPT and a Notice of Deficiency for the FPHT on December 11, 2000. Receiving no response to its notices, the department assessed the taxes on

February 27, 2001. Taxpayer appealed the assessments to this court on October 22, 2001. Because taxpayer filed his appeal more than 90 days after the assessments, the department requests that the appeal be dismissed.

COURT'S ANALYSIS

ORS 305.280(2)¹ provides that an appeal from an assessment notice issued by the department “**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.) In this case, the department issued the assessment notices on February 27, 2001. Taxpayer did not mail his appeal to this court until October 22, 2001, several months beyond the 90-day appeal period.

Taxpayer acknowledges he likely received the notices. He did not immediately act on them, however, because he did not believe he owed the taxes. The law provides that, once the department mails an assessment notice to a taxpayer's last-known address, the appeal period begins to run. Taxpayer failed to submit his appeal to this court within the 90-day appeal period. As a consequence, the court finds the appeal must be dismissed.² Now, therefore,

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¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

² ORS 305.280(3) provides an exception to the general appeal requirements. It states:

“Notwithstanding subsection (2) of [ORS 305.280], an appeal from a notice of assessment of taxes imposed under ORS chapter 314, 316, 317 or 318 may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.”

Id. The subject taxes were imposed under the provisions of ORS chapter 321. As a result, taxpayer's appeal does not fall within the exception provided by ORS 305.280(3).

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

Dated this _____ day of March, 2003.

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 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 COYREEN R. WEIDNER ON MARCH 18, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 18, 2003.