

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

MARGARET L. GRUGEL,	)	
	)	
Plaintiff,	)	No. 020733E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION AND JUDGMENT OF DISMISSAL</b>

This matter is before the court on Defendant’s motion to dismiss, filed as part of its Answer on June 5, 2002. The court discussed Defendant’s motion with the parties during the case management conference held September 17, 2002. Louis P. Roner, Licensed Tax Consultant, appeared on behalf of Plaintiff. Mike Halter, Auditor, appeared on behalf of Defendant.

Plaintiff appeals Defendant’s Notice of Tax Assessment, dated December 26, 2001, for the 2000 tax year. Defendant denied Plaintiff’s claim to an earned income credit. Plaintiff mailed her Complaint to this court on April 29, 2002. Defendant claims Plaintiff’s appeal should be dismissed because she failed to file her appeal within the statutorily required 90-day period.

ORS 305.280(2)<sup>1</sup> provides that an appeal from a notice of assessment “*shall* be filed within 90 days after the date of the notice.” (Emphasis added.) Plaintiff admittedly

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failed to file her appeal within the required time period. As a consequence, the court

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

finds Defendant's motion to dismiss must be granted.<sup>2</sup> Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that this matter be dismissed.

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

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COYREEN R. WEIDNER  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON  
SEPTEMBER 30, 2002. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 30,  
2002.**

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<sup>2</sup> The court notes that, at the case management conference, Defendant acknowledged it erred in its assessment and agreed to cancel the assessment under the provisions of ORS 305.295. Mr. Halter advised that, once he receives the court's decision dismissing this appeal, he will make the necessary adjustments to Plaintiff's account.