

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

ELIZABETH L. PLUMMER, )  
 )  
 Plaintiff, ) TC-MD 021186B  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION AND JUDGMENT**

This matter is before the court on Defendant's motion to dismiss because Plaintiff failed to appeal within 90 days as required by ORS 305.280(2).<sup>1</sup>

Defendant mailed a Notice of Refund Allocation to Plaintiff on May 3, 2002. Plaintiff then had 30 days to advise Defendant in writing of any objections to that refund allocation.

ORS 305.270(4)(b) reads:

"The claimant may, within 30 days of the date of the notice of proposed adjustment, advise the department in writing of objections to the refund adjustment and may request a conference with the department, which shall be held within one year of the date of the notice."

Plaintiff later gave notice of her objection; it was received on June 19, 2002. To be timely, the objection was due by June 3. Because timely objections were not raised to Defendant, the Notice of Refund Allocation became final on June 3, pursuant to

ORS 305.270(5)(b), which reads:

"If no written objections are made, the notice of any proposed adjustment shall be final after the period for requesting a conference or filing written objections has expired."

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

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Defendant then mailed a letter to Plaintiff on July 11, 2002, stating that the objection was not timely and any further appeal must be filed with the Oregon Tax Court within 120 days from the Notice of Refund Allocation, or 90 days after that notice became final.

The Complaint was filed with this court on October 18, 2002. That interval is beyond 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."

Plaintiff's representative states he erroneously believed he had another 120 days from July 11 to file his appeal with the Oregon Tax Court.

In a similar case where the taxpayers were confused with the appeal requirement and filed late, this court held "[i]t is unfortunate that taxpayers misunderstood the required appeal process, but that does not give this court a basis to ignore the statutory requirement." *Callahan v. Dept. of Rev.*, OTC-RD No 4303, WL 103416, at \*2 (Feb 24, 1999). In another instance where an appeal was late, the Regular Division of this court held that "it has no authority to make exceptions to statutory laws. To the contrary, it must uphold the law and preserve the integrity of the system." *Arnold v. Dept. of Rev.*, 12 OTR 69, 72 (1991).

There are no exceptions to the statutory limit of 90 days. Defendant's motion is granted. Now, therefore,

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IT IS ADJUDGED AND DECREED that Defendant's motion to dismiss is allowed.

The Complaint is dismissed.

Dated this \_\_\_\_\_ day of June, 2003.

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JEFF MATTSON  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON ON JUNE 23, 2003. THE COURT FILED THIS DOCUMENT ON JUNE 23, 2003.**