

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

| | | |
|------------------------|---|-----------------|
| TAMMY SLACK, |) | |
| |) | |
| Plaintiff, |) | TC-MD 030861D |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| STATE OF OREGON, |) | |
| |) | |
| Defendant. |) | DECISION |

This matter is before the court on Defendant's Motion to Dismiss, filed October 9, 2003. Oral argument via telephone was held on Wednesday, January 14, 2004. Tammy S. Slack (Slack)¹ appeared on her own behalf. Marilyn Paulsen (Paulsen) appeared on behalf of Defendant

I. STATEMENT OF FACTS

The parties agree that Defendant sent a Notice of Liability (Notice), dated February 14, 2003, to Tammy Slack at the following address: 5594 N.W. 165th Place, Portland, Oregon 97229. Paulsen testified that the Notice was sent to Slack's last known address stated on her 2001 individual income tax return. She testified that Slack's address was changed on April 1, 2003, when the Oregon Department of Revenue (Department) processed Slack's 2002 individual income tax return.

On April 17, 2003, Slack spoke with Paulsen and informed her that Defendant's Notice was forwarded to her at her current address: 4302 N.E. 55th Place, Vancouver, Washington 98661. Both parties agree that during the telephone conversation Paulsen informed Slack that the time to exercise her right to a conference with the Department

///

¹ Tammy S. Slack now uses the name Tammy S. Durmaz.

had passed. Paulsen advised Slack that she had “sufficient time to request a Magistrate hearing.” (Def’s Mot to Dismiss)

Slack stated that she “would have submitted” her “appeal to the magistrate sooner than June 9, 2003 however” her “maternal grandfather was admitted into the hospital and then a hospice in early May 2003.” (Ptf’s letter dated Dec 2, 2003.) She stated that from the middle of May until June 5, 2003, she was in Ohio with her mother and family. In addition, Slack testified that she wanted to consult an attorney and it took time to find and meet with her attorney.

Slack testified that on June 3, 2003, she wrote to the Oregon Tax Court, stating that she was “appealing the proposed assessment against me by the Oregon Department of Revenue for unpaid withholding taxes.” (Ptf’s letter dated June 3, 2003.) The court stamped the letter “received June 9, 2003.” (*Id.*) Because she did not include the filing fee with her letter, the court returned Slack’s letter and requested that she complete the court’s complaint form and submit the required filing fee. On June 18, 2003, Slack mailed her Complaint and filing fee to the court. Slack’s Complaint was received by the court on June 23, 2003.

Paulsen alleges that Slack failed to appeal the Notice to the Oregon Tax Court “WITHIN 90 DAYS AFTER THE NOTICE” became “FINAL.” (Def’s Ex A-3.) The Notice stated as follows:

“IF A CONFERENCE REQUEST IS NOT RECEIVED BY THE
DEPARTMENT OF REVENUE WITHIN 30 DAYS [from the date of this notice],
THE NOTICE OF LIABILITY BECOMES FINAL”

(Def’s Notice dated Feb 14, 2003.) Slack did not request a conference within 30 days from the date of the notice. The Notice was final 30 days from the date of the Notice, or

March 17, 2003.² Paulsen testified that Slack's right to appeal to the Oregon Tax Court expired on June 13 or June 14, 2003. Slack testified that the court should consider her appeal filed as of the date (June 3, 2003) she wrote the letter because she did not know that she needed to pay a filing fee. Further, Slack testified that as soon as she received the court's request she promptly responded by filing a complaint form and paying the filing fee.

Slack testified that the Department continues to address notices to her at her old address: 5594 N.W. 165th Place, Portland, Oregon 97229-8909. Slack submitted copies of two envelopes, stamped July 25, 2003 and July 28, 2003. (Ptf's Exs 2 and 3.) The July 28, 2003, envelope was forwarded to 2121 E. Warm Springs Road, Apt 2052, Las Vegas, Nevada 89119-0468. Paulsen offered no explanation for why the Department continues to send mail to Slack's old address.

Paulsen testified that on or about August 22, 2003, she sent two letters to Slack at her Vancouver, Washington address. On September 4, 2003, Paulsen testified that she was informed by the U.S. Postmaster that Slack authorized the post office to forward her mail to 2180 E. Warm Springs Road, Las Vegas, Nevada. Slack had no explanation for the information Paulsen received from the U.S. Postmaster.

II. ANALYSIS

The issue before the court is whether Plaintiff filed a timely appeal.

ORS 305.280(2)³ provides that an appeal must be filed within 90 days:

"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

² In computing 30 days from the date of the Notice, the date would be Sunday, March 16, 2003. When the last day falls on Sunday, the Notice is final on the next day. ORS 174.120, 193.606 (computation of time.).

³ All references to the Oregon Revised Statutes (ORS) are to 2001.

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.”

Defendant’s Notice was final on March 17, 2003. In conformity with the statutory requirements, Plaintiff’s appeal should have been filed no later than Monday, June 16, 2004.⁴

According to the court’s rule, “[t]o begin an appeal to the Magistrate Division, a party **must** deliver or mail to the court *all* of the following:

“(1) A written complaint on the form provided by the court, or in similar format;
and

“(2) the correct filing fee * * * .

TCR-MD 1 A(1) and (2) (Emphasis added.) (Italics in original); see also ORS 305.490(1), requiring plaintiffs or petitioners to pay a filing fee for each complaint filed in the tax court.

In early June 2003, Plaintiff submitted a letter to the court, stating that she was appealing Defendant’s assessments. Plaintiff failed to include a filing fee. The court returned her letter and requested that she comply with the court’s rules by completing the court’s complaint form and submitting the appropriate filing fee.

On June 18, 2003, two days past the statutory deadline, Plaintiff’s complaint and filing fee were mailed to the court. Plaintiff’s decision to delay acting on advice she received in mid-April resulted in her appeal not being properly filed “within 90 days after the date the notice of adjustment is final.” ORS 305.280(2). Plaintiff alleges that there were extenuating circumstances preventing her from following Defendant’s advice,

///

⁴ Once again, the applicable time period ended on Sunday.

including no knowledge that a filing fee was required, the time it took to consult with an attorney and the death of her maternal grandfather. Although the court is not unsympathetic, especially with respect to the death of a family member, there are no statutory exceptions for failing to meet the time limit set by the legislature and the court cannot make its own exceptions. See *Arnold v. Dept. of Rev.*, 12 OTR 69, 72 (1991), holding that the court “has no authority to make exceptions to statutory laws.” Further, the court has established rules and these rules “must be complied with * * * both for the efficiency of the court and fairness to the parties.” *Dept. of Rev. v. Ritchie Chevron, Inc.*, 14 OTR 406, 408 (1998).

Plaintiff alleged that Defendant’s mailing of the Notice to an incorrect address unduly prejudiced her ability to file a timely appeal. Defendant testified that it mailed the Notice to Plaintiff’s last known address as required by ORS 305.265(11). “‘Last-known address’ ordinarily refers to the address provided on the last Oregon income tax return filed by the taxpayer” and “is determined at the time when the notice * * * is sent.” *Morris v. Dept. of Rev.*, 320 Or 579, 583-584, 585, 889 P2d 1294 (1995). Defendant testified that at the time it sent the Notice the address it used was the same address Plaintiff reported on her 2001 Oregon state income tax return. Plaintiff received the Notice dated February 14, 2003, in April.

The Supreme Court held that “the ‘last-known address’ changes if the department has actual notice that the taxpayer’s address has changed.” *Id.* at 584. In this case, when Plaintiff filed her 2002 income tax return, Defendant testified that it changed Plaintiff’s address in April 2003, when it processed the return. Based on the testimony, it does not appear as though Defendant has successfully changed the

///

address for all correspondence coming from its office to Plaintiff. However, current mailings are not the concern of the court.

At the time Defendant sent the Notice at issue in this case, Defendant correctly used Plaintiff's last known address. Defendant has no information that Plaintiff changed her address until she filed her tax return. Plaintiff filed her return on February 26, 2003, which was after Defendant issued its Notice dated February 14, 2003. Without evidence to the contrary, and none was offered by Plaintiff, Defendant complied with the statutory requirements. At the time Plaintiff received the Notice in April 2003, there was ample time to file a timely appeal in the tax court. The court does not agree that Plaintiff was unduly prejudiced.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion to Dismiss is granted.

Dated this _____ day of February, 2004.

JILL A. TANNER
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 JILL A. TANNER ON FEBRUARY 20, 2004. THE COURT FILED THIS DOCUMENT ON FEBRUARY 20, 2004.