

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

PATRICIA CASTILLON, )  
 )  
 Plaintiff, ) TC-MD 030957A  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION AND JUDGMENT**

This matter is before the court on Defendant's Motion to Dismiss on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).<sup>1</sup>

A review of Plaintiff's materials shows the Notice of Assessment was mailed to Plaintiff on December 24, 2002. The Complaint was filed on August 28, 2003. 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.

Defendant's motion is granted.

As an additional point, the court notes that the merits of this case concern whether Plaintiff may properly claim a child care credit of \$720. The basis of the assessment was Defendant's conclusion that the correct amount was \$144. Oregon's credit is based on a fraction of the expenses allowed for federal purposes. In its review of the materials, the

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

court finds that Defendant's adjustment is consistent with ORS 316.078. The court, on the basis of the record in this proceeding, would not have been able to grant Plaintiff the relief she requested even if the appeal had been timely filed.

Now, therefore,

IT IS ADJUDGED AND DECREED that Defendant's Motion to Dismiss is allowed.

The Complaint is dismissed.

Dated this \_\_\_\_\_ day of January, 2004.

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SCOT A. SIDERAS  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON  
JANUARY 15, 2004. THE COURT FILED THIS DOCUMENT ON JANUARY 15, 2004.**