

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

GUILLERMO DE LA CRUZ,)	
)	
Plaintiff,)	TC-MD 040130C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter came before the court on Defendant's motion to dismiss, included in its Answer filed March 18, 2004. Defendant asks that the case be dismissed because Plaintiff's appeal was filed after the legal deadline. The request for dismissal was discussed with the parties during the April 28, 2004, scheduled court proceeding. Plaintiff appeared on his own behalf and was assisted by a certified interpreter. Laurie Fery (Fery), an auditor with the Department of Revenue, appeared for Defendant.

According to the evidence, Defendant issued notices of assessment for tax years 1997, 1998, and 1999 on November 25, 2003. Plaintiff's appeal was filed with the court March 8, 2004. Pursuant to ORS 305.280(2),¹ Plaintiff had 90 days from the date of the notices to file an appeal. That deadline was February 23, 2004. Plaintiff missed that deadline by two weeks.

Although the law does not require receipt of the notice as a prerequisite to the commencement of the appeal period, the evidence shows Plaintiff did receive the assessments. According to Fery, Defendant's records show that Plaintiff telephoned Defendant on January 15, 2004, less than two months after the assessments were issued and before the expiration of the 90-day appeal period. Defendant's records

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

show that Plaintiff was advised of the importance of filing an appeal and was given the court's address. Plaintiff subsequently appealed but missed the deadline.

Having considered the matter, the court concludes that Plaintiff's appeal must be dismissed as untimely. Now, therefore,

IT IS ADJUDGED that the above-entitled matter is dismissed.

Dated this _____ day of May 2004.

DAN ROBINSON
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 DAN ROBINSON MAY 10, 2004. THE COURT FILED THIS DOCUMENT MAY 10, 2004.