

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JOSE A REYES R,)	
)	
Plaintiff,)	TC-MD 040788C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s written request to dismiss Plaintiff’s appeal as untimely. Defendant’s request is included in its Answer filed June 2, 2004. The court discussed the dismissal request with the parties during a telephonic case management conference held September 30, 2004.

The undisputed facts are that Defendant issued a notice of assessment on November 25, 2003. Plaintiff appealed that assessment to this court on May 12, 2004. Plaintiff had 90 days to appeal the assessment. ORS 305.280(2).¹ The statute provides that “an appeal * * * from any notice of assessment or refund denial issued by the Department of Revenue * * * shall be filed within 90 days after the date of the notice* * *.” *Id.* Plaintiff missed the deadline.

Plaintiff appealed because Defendant adjusted his return, changing his filing status from married head of household to single, reduced his exemptions from three to one, and disallowed the earned income credit. Defendant explained that the adjustments were based on changes made by the Internal Revenue Service (IRS). Plaintiff believes his return was correct as filed and objects to the adjustments.

Although Plaintiff’s current appeal must be dismissed because it was not filed on time, he can still file another appeal with this court, provided he first pays the tax and interest due for

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

2001, which is the year under appeal. As of the date of the court hearing, the total amount due on the account was \$159.31. Defendant also indicated that interest continues to accrue at 4 cents per day. The applicable statute allowing for such an appeal is ORS 305.280(3). That statute provides:

“Notwithstanding subsection (2) of this section [which requires a taxpayer to file an appeal within 90 days of the date of the assessment], an appeal from a notice of assessment of taxes * * * may be filed within two years after the date the amount of tax, as shown on the notice and including appropriate penalties and interest, is paid.”

Id. Thus, if Plaintiff still wants to challenge the adjustments made by Defendant, he should pay the entire amount owed (including the interest, which continues to be added to the liability on a daily basis²) and then file an appeal with this court within two years of the date he pays the tax and interest.³ Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter is dismissed.

Dated this _____ day of October 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 OCTOBER 12, 2004. THE COURT FILED THIS DOCUMENT OCTOBER 12, 2004.

² There are no penalties.

³ Plaintiff should send payment to:
Oregon Department of Revenue
955 Center Street NE
Salem, OR 97301

Plaintiff must put his name and social security number (SSN) on the check and write that it is payment for “tax year 2001.”