

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

LESLY R. THOMAS-MELVIN,)	
)	
Plaintiff,)	TC-MD 050065D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant's motion to dismiss, filed March 3, 2005, as part of its Answer, requesting that the Complaint be dismissed.

A case management conference was held on Wednesday, March 23, 2005. Plaintiff appeared on her own behalf. Kimberly Lougee, Auditor, appeared on behalf of Defendant.

During the conference, the parties discussed Defendant's motion to dismiss. In its Answer, Defendant stated that a Notice of Assessment (Notice), dated April 27, 2004, was issued to Plaintiff. Plaintiff stated that she did not receive the Notice. She explained that she has lived in different places and for a period of time during 2004 she was homeless.

The court explained that the law requires Defendant to mail notices to the taxpayer's last-known address. "'Last-known address' usually 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 P.2d 1294 (1995). 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. Unfortunately, in this case, Plaintiff failed to notify Defendant of her change in address. As a result, the notice was sent to Plaintiff's last-known address.

The law provides that an appeal must be filed within the statutory period. ORS 305.280.¹ Plaintiff's failure to notify Defendant of her change in address resulted in her loss of an opportunity to timely appeal Defendant's Notice.

The court advised Plaintiff that it would grant Defendant's motion. Defendant discussed other appeal options with Plaintiff including payment of the income tax liability and Defendant's doubtful liabilities program. Defendant encouraged Plaintiff to contact the Revenue Agent (Amanda, 503-945-8081) assigned to her account and work with her. Now, therefore,

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

Dated this _____ day of March 2005.

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 Presiding Magistrate Jill A. Tanner on March 30, 2005 .
The Court Filed this Document on March 30, 2005.**

¹ All references to the Oregon Revised Statutes (ORS) are to year 2003.
DECISION OF DISMISSAL TC-MD 050065D