

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

ROCIO H. SANTOS-HERNANDEZ,)	
)	
Plaintiff,)	TC-MD 050781B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiff appeals from the Defendant’s Notice of Refund Denial dated May 9, 2005.

Defendant asks the court to affirm the Refund Denial based on Plaintiff’s failure to file within 90 days of the Notice of Refund Denial as required by ORS 305.280(2).¹

I. STATEMENT OF FACTS

Plaintiff filed a timely 2004 personal income return on February 12, 2005. That return claimed a working family child care credit of \$2,880 pursuant to ORS 315.262. Defendant reviewed the return and issued a Notice of Proposed Adjustment dated April 8, 2005, noting that Plaintiff failed to provide adequate documentation.

Plaintiff sent written objection to the Defendant within 30 days, as required under ORS 305.280(2), but did not request a conference. Subsequently, on May 9, 2005, Defendant issued a Notice of Refund Denial. That notice stated that Plaintiff had 90 days to appeal to the Magistrate Division of the Oregon Tax Court.

Plaintiff mailed her first complaint to the court on July 27, 2005. That document was returned to Plaintiff with a letter stating that the complaint could not be filed without the

¹All references to the Oregon Revised Statutes (ORS) are to 2003.

statutory filing fee. On August 16, 2005, Plaintiff mailed her second complaint to the court with the statutory filing fee. The appeal was date stamped and filed with the court on August 17, 2005.

II. ANALYSIS

The court's authority to hear appeals is governed by ORS 305.280(2). That statute requires that an appeal from a Notice of Refund Denial issued by Defendant be filed with the court within 90 days after the date the Notice of Proposed Adjustment is final. To file an appeal with the court a taxpayer must deliver or mail a written complaint, with the necessary filing fee, to the court. *See* ORS 305.418; TCR-MD 1(A).² Under ORS 305.427 Plaintiff bears the burden of proof in tax court proceedings.

ORS 305.280(2) explicitly states that there is a 90 day period in which to appeal. The legislature did not provide for an exception to this rule and neither does existing case law. This court has held that “[t]here are no exceptions to the statutory limits of 90 days.” *McDowell v. Dept. of Rev.*, TC-MD No 050812C, WL 3159232 at *1 (Nov 28, 2005) (quoting *Plummer v. Dept. of Rev.*, TC-MD No 021186B, WL 21467210 at *1 (June 23, 2003) (quotation marks omitted)). In addition, the court has held that “it has no authority to make exceptions to statutory laws.” *Plummer*, TC-MD No 021186B (quoting *Arnold v. Dept. of Rev.*, 12 OTR 69, 72 (1991) (quotation marks omitted)).

Plaintiff does not contend that the statutory filing fee was included with the document that she mailed to the court July 27, 2005. Submission of the filing fee would have caused that document to be filed as her complaint on the date it was received. Instead, the actual filing date was August 17, 2005, when Plaintiff included the statutory \$10.00 filing fee.

² Tax Court Rules-Magistrate Division.

The Notice of Refund Denial was mailed on May 9, 2005, giving Plaintiff until August 7, 2005 to file an appeal within the statutory period. The appeal was filed on August 17, 2005, ten days after the statutory period expired. Accordingly, the court must dismiss Plaintiff's appeal.

III. CONCLUSION

Plaintiff did not file her appeal with the court within the 90 days specified under ORS 305.280(2), therefore, the case must be dismissed. Now, therefore,

IT IS ADJUDGED that Defendant's Notice of Refund Denial is affirmed.

Dated this _____ day of February 2006.

JEFFREY S. MATTSON
MAGISTRATE

This document is final and may not be appealed. ORS 305.514.

***This document was signed by Magistrate Jeffrey S. Mattson February 23, 2006.
The Court filed this document February 23, 2006.***