

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

| | | |
|------------------------|---|-----------------|
| ALICE F. FITZPATRICK, |) | |
| |) | |
| Plaintiff, |) | TC-MD 060012A |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| State of Oregon, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiff appealed Defendant's denial of a Working Family Child Care Credit for the 2004 tax year. Plaintiff appeared and made her presentation. Defendant was represented by Laurie Fery, of its staff.

There is no controversy as to the determinative facts of this appeal. Defendant received Plaintiff's 2004 personal income tax return and sent out a request for information. When no response was received, Defendant reduced Plaintiff's refund. The Oregon tax refund subtraction was disallowed because the income was not included on the federal return; the standard deduction was reduced to \$2,770, the correct amount for the head-of-household filing status; and the Childcare Credit and the Working Family Credit were disallowed.

Plaintiff filed a written objection to the reduction of her refund. On September 28, 2005, Defendant sent Plaintiff a Notice of Refund Denial. A copy of the Notice of Refund Denial was attached by Plaintiff to her Complaint. The Notice of Refund Denial explained Plaintiff's ability to appeal to the Magistrate Division of the Oregon Tax Court. It warned that this opportunity needed to be exercised within 90 days. The appeal to this court was filed January 13, 2006. Plaintiff explained that her appeal was late because she did not understand what the Defendant had done, that she had lost her paperwork, and that one of her children had answered the telephone and did not pass on the message.

Under these circumstances, the court cannot reach the merits of Plaintiff's appeal. ORS 305.280(2)¹ limits the appeal period to 90 days. Plaintiff's appeal was filed weeks too late. Defendant's notice clearly states the importance of acting timely. If Plaintiff did not understand the notice, or lost it, this does not extend the 90 day limit. Defendant had no obligation to follow the notice with a telephone call. The legislature, when it enacted the law, chose 90 days as a reasonable period, balancing Plaintiff's situation with the need to bring closure to disputed matters. The court cannot, under the facts as presented here, override that determination.

IT IS THE DECISION OF THIS COURT this appeal is dismissed.

Dated this ____ day of May 2006.

SCOT A. SIDERAS
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 Scot A. Sideras on May 10, 2006 . The Court filed and entered this document on May 10, 2006.

¹All references to the Oregon Revised Statutes (ORS) are to 2005.