

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Withholding Tax

SHERRY ZAMANI,	)	
	)	
Plaintiff,	)	TC-MD 060515B
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

Plaintiff first filed an appeal on May 9, 2006, seeking review of certain withholding tax matters for tax years 2001, 2002, 2003, and 2004. It was in the names of Joseph Zamani and Sherry Zamani.

Plaintiff then filed an Amended Complaint on May 23, 2006, which mentioned those same tax years but included only her name.

A case management conference was held on August 24, 2006. Subsequently, written submissions were received from the parties. The record closed November 22, 2006.

This matter is now before the court on Defendant's Motion for Summary Judgment, filed October 13, 2006. Defendant requests the case be dismissed because Plaintiff failed to appeal within the 90 days required by ORS 316.207(3)(c).

This appeal concerns ORS 316.167<sup>1</sup> and its requirement that employers withhold taxes from an employee's wages and remit those withheld amounts to Defendant. Defendant made its determination that Plaintiff was a responsible party as an officer, employee or other member. A Notice of Liability (Notice) was mailed to Plaintiff on December 12, 2005.

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

That Notice started the running of the limited appeal timeline. ORS 316.207(3)(c) states that:

“(c) If neither payment nor written objection to the notice of liability is received by the department within 30 days after the notice of liability has been mailed, the notice of liability becomes final. In such an event, the officer, employee or member may *appeal the notice of liability to the tax court within 90 days after it became final* in the manner provided for an appeal from a notice of assessment.” (Emphasis added.)

Plaintiff did not request a conference with Defendant nor otherwise timely respond to the Notice.

The underlying withholding liability became final on January 11, 2006. From that date, Plaintiff had a maximum of 90 days to appeal to this court. The first Complaint was not filed until May 9, 2006. That interval is longer than the maximum 90 days.

There are no circumstances in this case that would extend the statutory limit of 90 days. See *Fackler v. Dept. of Rev.*, 18 OTR 67 (2004). Defendant’s motion is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s Motion for Summary Judgment is granted. The Complaint is dismissed.

Dated this \_\_\_\_\_ day of December 2006.

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JEFFREY S. MATTSON  
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 Jeffrey S. Mattson on December 12, 2006. The Court filed and entered this document on December 12, 2006.***

