

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MICHAEL J. GARRISON,)	
)	
Plaintiff,)	TC-MD 060721C (Control)
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	
_____)	
)	
THERESA R. GARRISON,)	
)	
Plaintiff,)	TC-MD 060722C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant's request for dismissal, included in its Answer filed December 5, 2006. The basis for Defendant's request is a lack of timeliness.

The parties were given an opportunity to brief the issue and both have submitted a legal memorandum.¹ Plaintiffs executed a power of attorney authorizing Peymon Mottahedeh to act on their behalf. Defendant is represented by Laurie Fery, an auditor with the Department of Revenue (department).

The tax year at issue is 2004. Defendant issued individual assessments against both Plaintiffs on June 23, 2006. The assessments appear to have been sent to the correct address.

¹ The pleading filed March 7, 2007 by Plaintiffs' representative only references Michael Garrison's case. The court is assuming the same arguments are made on behalf of Theresa Garrison because the cases have been consolidated by court Order.

The assessments included a statement of appeal rights informing Plaintiffs that an appeal to the Tax Court must be filed within 90 days from the date of the assessment notice.

Plaintiffs' filed individual Complaints on October 13, 2006. Those Complaints were filed beyond the applicable 90-day appeal period provided in ORS 305.280(2)² (providing that an appeal of a notice of assessment "shall be filed within 90 days after the date of the notice.") Under the statute, the deadline for filing an appeal was September 21, 2006. Plaintiffs were approximately three weeks late in initiating their appeal. ORS 305.265(14) provides in relevant part that "assessments and billings of taxes shall be final after the expiration of the appeal period specified in ORS 305.280[.]" Because the Complaints were not timely filed, Defendant moved to dismiss.

Plaintiffs urge the court to follow federal tax court precedent and deny Defendant's dismissal request because Plaintiffs filed a letter which, although "imperfect" under applicable state law and court rules, was nonetheless a valid appeal, or so Plaintiffs contend. (Ptf's Memo at 1, 2.) The case Plaintiffs rely on is *Stewart v. Commissioner*, 127 TC 109 (2006). The letter referred to in the memorandum was dated and mailed to the Tax Court on September 19, 2006, and received by the court on September 20, 2006. The letter was submitted before the expiration of the 90-day appeal period discussed above.³ A fair reading of the letter, submitted by Mr. Garrison, makes clear that he is unhappy with an assessment for 2004 and that he "would

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² All references to the Oregon Revised Statutes (ORS) are to 2005.

³ No such letter was presented to the court by Plaintiffs on behalf of Mrs. Garrison.

like to know the official processes to file this appeal properly.” (Ptf’s Ex A.)⁴ Mr. Garrison’s letter, however, was not accompanied by the statutorily required filing fee of \$25 provided in ORS 305.490(1)(a).

In response to Mr. Garrison’s letter, the court sent Mr. Garrison a letter dated September 21, 2006, advising Mr. Garrison that “a complaint form must be completed and returned with the document being appealed *and the required filing fee of \$25* in order for a valid appeal to be filed in the Magistrate Division.” (Ptf’s Ex B) (emphasis in original). It appears that it was the court’s September 21, 2006, letter to Mr. Garrison that generated the filing of the Complaint with the \$25 filing fee.

Plaintiffs’ reliance on the *Stewart* decision is misplaced. *Stewart* dealt with a motion to vacate a decision of dismissal under the Federal Rules of Appellate Procedure and various Internal Revenue Code (IRC) provisions, and turned on the question of whether the motion to vacate was deemed filed on the date it was postmarked or the date it was received. Oregon has its own statutory and procedural court rules. Moreover, there is case law in Oregon directly on point which refutes Plaintiffs’ position.

In *Durmaz v. Dept of Rev.*, 18 OTR 94 (2004) the regular division of the Tax Court upheld a magistrate’s decision granting Defendant Department of Revenue’s (department) motion to dismiss the taxpayer’s complaint as untimely. In *Durmaz*, as here, the taxpayer timely submitted a letter to the court seeking to appeal an unfavorable tax determination (a notice of liability), but did not submit a complaint conforming to the tax court’s rules until after the expiration of the applicable appeal period. That appeal was initiated in the magistrate division of the Tax Court as required by ORS 305.501. “The Magistrate Division returned the

⁴ Contrary to the rules of the magistrate division of the tax court, which require the plaintiff to mark exhibits numerically, Plaintiffs’ representative marked his to exhibits alphabetically, denoted as exhibits A and B.

taxpayer's letter because she did not include a proper complaint or a filing fee with her letter.” *Durmaz*, 18 OTR at 95. The court in *Durmaz* noted that Tax Court Rule-Magistrate Division (TCR-MD) 1 A requires “[a] written complaint on the form provided by the court, or in similar form at[,]” and “[t]he correct filing fee.” *Id.* at 97.

Court rules continue to require a proper complaint and the submission of the applicable filing fee. TCR-MD 1 A (2006), the version applicable when Plaintiffs' Complaints were filed, provided in pertinent part as follows:

“To begin an appeal to the Magistrate Division, a party must deliver or mail to the court *all* of the following:

“A.(1) A written complaint on the form provided by the court, or in similar format; and

“A.(2) A filing fee of \$25 for each complaint filed.”

(Emphasis added.)

The letter submitted by Mr. Garrison did not conform to the rule because it was not in a format similar to the court's complaint form, and the \$25 filing fee was not submitted with that letter, as required by TCR-MD 1(A)(1) and (2). Moreover, the letter did not state “facts showing how the plaintiff is aggrieved by the * * * [department's] determination” or “the grounds upon which the plaintiff contends [the department's determination] should be reversed or modified.” TCR-MD 1(B). Finally, Mr. Garrison did not attach a copy of the assessment notice, as required by TCR-MD 1(B). Those deficiencies justify dismissal. *Durmaz* supports that conclusion. The court in *Durmaz* stated that “[a]lthough taxpayer did initially communicate with the court in early June 2003, taxpayer's communication did not satisfy the court's filing requirements necessary to constitute an appeal [.]” *Durmaz*, 18 OTR at 96. The same holds true in this case. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Defendant's request to dismiss Plaintiffs' Complaints is granted because Plaintiffs failed to timely submit a Complaint complying with TCR-MD 1 A.

Dated this _____ day of May 2007.

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 on May 30, 2007. The Court filed and entered this document on May 30, 2007.