

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

LILIAN LEIVA,)	
)	
Plaintiff,)	TC-MD 060810D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss, filed as part of its Answer on January 19, 2007, requesting that the Complaint be dismissed.

A case management conference was held on Monday, February 5, 2007. Plaintiff appeared on her own behalf. Becky Segovia, Auditor, appeared on behalf of Defendant. Max Christian was the interpreter.

During the conference, it was verified that Defendant’s notice denying Plaintiff the child care claimed on her 2005 state income tax return was dated September 12, 2006. Plaintiff’s appeal was mailed December 16, 2006, more than 90 days after the date of the notice. Defendant verbally renewed the motion to dismiss made in its Answer.

Plaintiff stated that no one told her that her appeal must be filed within 90 days. Defendant stated that its “notice of written objection/written decision denial letter dated 09/12/06” set forth the time period in which to file an appeal. (Def’s Answer.) Plaintiff stated that the notice was in English and that she cannot read English. It was explained to Plaintiff that the law allows all notices to be written in English. Plaintiff also stated that she called the court numerous times in June, asking for appeal forms but she was not sent an appeal form. As of June, Defendant had not issued its final notice denying Plaintiff’s claimed credit. Plaintiff was

unable to recall the June dates of her telephone calls to the court and with whom she spoke. Plaintiff stated she had no evidence to support her statements that the court failed to send her appeal forms. In November Plaintiff called the court again, and she obtained the complaint form, which she filed with the court in December.

After a lengthy discussion of the child care credit, document requirements to support a claimed child care credit, conversations with Defendant, and the appeal process, Plaintiff concluded the conversation.

The law requires that an appeal be filed within the statutory period. The evidence shows that Plaintiff failed to file her appeal within 90 days of the date of Defendant's final notice. Now, therefore,

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

Dated this _____ day of February 2007.

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 February 13, 2007. The Court filed and entered this document on February 13, 2007.