

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CHRISTOPHER R. MILLUS)	
and TRENA R. MILLUS,)	
)	
Plaintiffs,)	TC-MD 070097B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss (motion)¹ on the grounds that Plaintiffs’ appeal rights had expired.

A case management conference was held on August 20, 2007. Trena R. Millus (Millus) appeared for Plaintiffs. Allen #3938, auditor, represented Defendant.

A review of Plaintiffs’ materials shows that the Notice of Deficiency Assessment was mailed to Plaintiffs on November 21, 2006. The Complaint was filed on February 28, 2007. That interval is longer than the 90 days required by ORS 305.280(2),² which provides:

“An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final.”

At the case management conference, Millus explained that Plaintiffs had moved twice in early 2006. They did not then update their current mailing addresses with Defendant. The

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¹ Defendant’s Answer, filed March 29, 2007, included a request that the court dismiss the case.

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

Complaint states Plaintiffs first became aware of the assessment “in late January 2007.” (Compl at 1.) That was still within the open appeal period.

On October 26, 2007, Plaintiffs filed a written statement. It explained that someone from the Department of Revenue mailed “the information * * * needed to file an appeal with the magistrate division” in late January 2007. The statement goes on to state: “Once I received the information in the mail, I requested a copy of proof of payment from my daycare provider and mailed the forms back promptly.” The delay here was primarily caused by Plaintiffs’ failure to keep addresses current with Defendant.

The court is not aware of any circumstances that extends or excuses the statutory limit of 90 days. Defendant’s motion is granted. As stated in Defendant’s Answer, Plaintiffs “may pay the account in full and then re-appeal to the Magistrate Division within two years of payment. (ORS 305.280(3)).” (Def’s Answer at 1.) Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s motion to dismiss is allowed.

The Complaint is dismissed.

Dated this _____ day of October 2007.

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 October 29, 2007. The Court filed and entered this document on October 29, 2007.