

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

BRIAN CASHMERE)	
and JESSICA CASHMERE,)	
)	
Plaintiffs,)	TC-MD 070697B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

A case management conference was held November 7, 2007. Brian Cashmere (Cashmere) participated for Plaintiffs. Laurie Fery represented Defendant. Two issues were discussed relating to the 2005 tax year: (A) the adjusted gross income (AGI) amount, and (B) the timing of the claim for a Working Family Credit (WFC).

A. *Adjusted Gross Income*

Plaintiffs filed their 2005 income tax return and reported a federal AGI of \$32,357. That was later incorrectly reduced by Defendant to \$20,233. Subsequently, the error was discovered and corrected by Defendant. The Notice of Deficiency issued April 24, 2007, reinstated the original true amount.

During the conference, Cashmere stated he had no objection to the \$32,357 AGI he originally reported. There is no question remaining as to that AGI amount. Dismissal is appropriate for this issue.

///

///

///

B. *Working Family Credit*

Defendant has moved to dismiss this issue on the ground that Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2).¹

Plaintiffs admit the Complaint was submitted late. A review of the written materials shows the conference letter decision² was mailed to Plaintiffs on April 24, 2007; that day the WFC adjustment became final. The Complaint was filed in this court on August 21, 2007. That interval is longer than the 90 days required by ORS 305.280(2),³ 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.”

The court is not aware of any circumstances that extend the statutory limit of 90 days.

Now therefore,

///

///

///

///

///

///

///

///

¹ Defendant’s request was included in its Answer filed September 6, 2007.

² Based on Refund Adjustment Notice issued July 18, 2006.

³ All references to Oregon Revised Statutes (ORS) are to 2003.

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

The Complaint is dismissed.

Dated this _____ day of January 2008.

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 January 25, 2008. The Court filed and entered this document on January 25, 2008.