

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MARK E. HICKS,)	
)	
Plaintiff,)	TC-MD 080141B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss (motion), filed March 31, 2008, as part of its Answer, requesting that the Complaint be dismissed. At issue are certain childcare expense matters for the 2006 tax year.

A case management conference was held on April 22, 2008. Mark E. Hicks appeared on his own behalf. James Carter, Tax Auditor, appeared for Defendant. Subsequently, written materials were submitted; the record closed July 23, 2008.

Defendant mailed its Notice of Proposed Adjustment and/or Distribution to Plaintiff on July 31, 2007. It became final 30 days later on August 30, 2007. ORS 305.270.¹ From that date, Plaintiff had 90 days to appeal to this court. ORS 305.280. Those appeal rights expired November 28, 2007. Plaintiff’s Complaint was mailed to this court on February 22, 2008. Plaintiff stated the delay was due, in part, on his reliance on a tax preparation service for assistance with proof of his expense claim.

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¹ All references to the Oregon Revised Statutes (ORS) are to 2005.

At all times, Plaintiff has acknowledged that he postmarked the Complaint to the court more than 90 days after the date the Defendant's Notice became final. *See* ORS 305.280(2) (2007); *McDowell v. Dept. of Rev.*, TC-MD No 050812C (Nov 28, 2005) (citing ORS 305.280(2) and holding that taxpayer's appeal filed three days after the statutory deadline must be dismissed).

While this finding may appear unfair, it is consistent with other similar cases decided by this court. *Tirrill v. Dept. of Rev.*, TC-MD No 040694A (Aug 9, 2004); *Stubbs v. Dept. of Rev.*, TC-MD No 041047D (Mar 2, 2005).

This court has no equitable authority to waive or modify the statutory deadlines. Because the Complaint was filed after the statutory deadline, the court must grant Defendant's motion. Now, therefore,

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

Dated this _____ day of August 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 August 6, 2008. The Court filed and entered this document on August 6, 2008.