

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JENNIFER M. WILLIAMSON,)	
)	
Plaintiff,)	TC-MD 080147B
)	
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 17, 2008, as part of its Answer, requesting that the Complaint be dismissed. The 2006 tax year is at issue.

A case management conference was held on April 16, 2008. Jennifer Williamson appeared on her own behalf. Leah R. Hinton, Tax Auditor, appeared for Defendant. Subsequently, written materials were submitted; the record closed June 5, 2008.

Defendant mailed its Notice of Proposed Adjustment and/or Distribution to Plaintiff on October 25, 2007. It became final 30 days later on November 24, 2007. ORS 305.270(5)(b).¹ From that date, Plaintiff had 90 days to appeal to this court. ORS 305.280. Those appeal rights expired February 22, 2008. Plaintiff’s Complaint was mailed to this court on February 23, 2008.

During the conference, Plaintiff acknowledged that she postmarked her 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 (November 28, 2005) (citing

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¹ Unless otherwise noted, references to the Oregon Revised Statutes (ORS) are to 2005.

ORS 305.280(2) and holding that taxpayer's appeal filed three days after the statutory deadline must be dismissed).

The Regular Division of this court has issued an Opinion on this issue. In *Webb v. Dept. of Rev.*, 19 OTR 20, 21 (2006) it was held that: “* * * state statutes of limitation leave[] taxpayer no state remedy unless the department is estopped from asserting the bar of ORS 314.415(1)(b)(A).” Here, Plaintiff makes no claim of misleading advice by Defendant prior to filing.

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 (August 9, 2004) and *Stubbs v. Dept. of Rev.*, TC-MD No 041047D (March 2, 2005).

This court has no equitable authority to waive or modify the statutory deadlines, even under the compelling facts of this case.

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 July 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 July 31, 2008. The Court filed and entered this document on July 31, 2008.