

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

LAURA MAE PLEASANT,)	
)	
Plaintiff,)	TC-MD 080605C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss Plaintiff’s appeal as untimely. That request is included in Defendant’s Answer filed June 4, 2008. The court discussed Defendant’s dismissal request with the parties during the initial case management conference held July 16, 2008.

Plaintiff’s appeal involves the 2006 tax year. Plaintiff was denied the child and dependent care credit and the working family credit, both of which are available to help offset the costs of child care. Plaintiff has custody of her grandchildren because her daughter was put in prison. Defendant reviewed Plaintiff’s return and ultimately denied the credits, issuing a Notice of Refund Denial dated December 10, 2007. The denial was apparently based on a number of factors, including inadequate substantiation, and the familial relationship between Plaintiff and the provider, who is also Plaintiff’s daughter. Plaintiff states she began having her daughter care for the children in July 2006 after the original provider was accused of child neglect and mistreatment. Plaintiff filed her Complaint in the Magistrate Division on May 9, 2008, challenging Defendant’s denial.

Plaintiff explained that she was delayed in appealing to the court because she was awaiting information from the Oregon Department of Human Services, information that Defendant had

previously requested regarding state assistance for day care, food stamps, and other cash assistance. Defendant responded that there are no exceptions to the 90-day appeal period, and that Plaintiff could have filed her Complaint within the 90-day period, and then followed up with the other supporting information.

ORS 305.280(2)¹ requires a taxpayer appealing a refund denial notice to file the appeal “within 90 days after the date of the notice.” Defendant issued its refund denial notice on December 10, 2007, and the statutory deadline for appealing was March 10, 2008 (because the 90th day fell on Sunday, March 9). Plaintiff’s Complaint was postmarked May 8, 2008, roughly two months after the deadline. Defendant correctly argued that there are no exceptions. Accordingly, the appeal must be dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s request for dismissal is granted because Plaintiff did not appeal in a timely manner.

Dated this _____ day of July 2008.

DAN ROBINSON
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 Dan Robinson on July 30, 2008. The Court filed and entered this document on July 30, 2008.

¹ All references to the Oregon Revised Statutes (ORS) are to 2007.