

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

STEPHEN L. ALTMAN,)	
)	
Plaintiff,)	TC-MD 081043D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss filed November 13, 2008, in its Answer, alleging that Plaintiff failed to file his appeal within the 90 days required by ORS 305.280(2).¹

A case management conference was held Wednesday, December 3, 2008. Plaintiff appeared on his own behalf. Jaclyn Humphrey, tax auditor, appeared on behalf of Defendant.

The parties agree that Defendant’s Notice of Deficiency Assessment was dated June 24, 2008. Plaintiff’s Complaint was postmarked on October 7, 2008. That interval is longer than the 90 days allowed by ORS 305.280(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.”

The court is not aware of any circumstance that extends the statutory limit of 90 days. Plaintiff stated that he received a letter from Defendant in July 2008, denying his conference request which had been made more than 30 days after Defendant’s Notice of Deficiency. In its July 18, 2008, letter, Defendant reminded Plaintiff that he had 90 days to appeal the Notice of

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

Deficiency Assessment dated June 24, 2008. Plaintiff stated that he overlooked Defendant's reminder and thought he had 90 days from July 18, 2008, to file his appeal. Unfortunately, the statutory limit cannot be extended for any individual's oversight. Defendant's motion is granted. Now, therefore,

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

Dated this _____ day of December 2008.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Tanner on December 17, 2008. The court filed and entered this document on December 17, 2008.