

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TIMINDRA PETERSON,)
)
 Plaintiffs,) TC-MD 101333C
)
 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 January 21, 2011, asserting Plaintiffs’ Complaint in this court for the 2009 tax year was filed after the statutory deadline and that the court should therefore grant Defendant’s Motion and dismiss the Complaint. Defendant cites ORS 305.280 and ORS 305.265.

The court discussed the Motion with the parties at a telephone case management hearing March 28, 2011. Plaintiff appeared on her own behalf. Defendant was represented by Faith Derickson, an auditor with the Oregon Department of Revenue.

Plaintiff acknowledges that the Notice of Deficiency Assessment was issued (mailed) on September 14, 2010. Plaintiff hand-delivered her Complaint to the court December 17, 2010.

ORS 305.280(2)¹ provides in relevant part that “[a]n appeal * * * from any notice of assessment * * * shall be filed within 90 days after the date of the notice.” Plaintiffs’ 90-day appeal deadline under that statute was December 13, 2010. Plaintiffs missed the deadline by four days.

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¹ All references to the Oregon Revised Statutes (ORS) are to 2009.

ORS 305.265(14) provides in relevant part that “[a]ssessments and billings of taxes are final after the expiration of the appeal period specified in ORS 305.280, except to the extent that an appeal is allowed under ORS 305.280(3) following payment of the tax.”

There was discussion about certain options available to Plaintiff that are explained in Defendant’s Motion. Plaintiff can pursue relief under the “doubtful liability” provisions of ORS 305.295 and/or proceed under ORS 305.280(3), the latter of which requires payment of the tax and then gives Plaintiff two years to file an appeal with this court. Doubtful liability is pursued by filing a request with the Oregon Department of Revenue (Department) on a form the Department has designed for such matters. Ms. Derickson offered to contact Plaintiff after the March 28, 2011, telephone hearing with the court and discuss the various options. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s Motion to Dismiss is granted. The Complaint is dismissed.

Dated this ____ day of March 2011.

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 March 31, 2011. The Court filed and entered this document on March 31, 2011.