

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

NICOLAS BAZAN-CALDERON,)	
)	
Plaintiff,)	TC-MD 110099D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss on the ground that Plaintiff failed to appeal within the 90 days required by ORS 305.280(2).

A review of Plaintiff’s materials shows the Notice of Deficiency Assessment was mailed to Plaintiff on September 14, 2010. The Complaint was filed on March 1, 2011. This interval is longer than the 90 days required by ORS 305.280(2) (2009), which provides:

“An appeal under ORS 323.416 or ORS 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 circumstances that extend the statutory limit of 90 days. Defendant’s Motion to Dismiss is granted.

At the case management conference held August 1, 2011, Plaintiff stated that Defendant’s Notice of Deficiency Assessment was sent to the wrong address. Plaintiff explained that, when he filed his 2009 Oregon state income tax return, his preparer incorrectly stated Plaintiff’s mailing address and Defendant sent its Notice of Deficiency Assessment to the address stated on the 2009 tax return. Plaintiff admitted that he signed the return without

reviewing the address. Plaintiff acknowledged that it “was his mistake,” and that he has been paying the assessed deficiency. Plaintiff stated that he would pay the remaining tax-to-pay of \$9.97 and then file a complaint to appeal tax year 2009. Now, therefore,

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

Dated this ____ day of August 2011.

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 Jill A. Tanner on August 4, 2011. The Court filed and entered this document on August 4, 2011.