

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

PRECISION TUBE, INC.,	)	
	)	
Plaintiff	)	TC-MD 110123C
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant’s motion to dismiss, included in its Answer filed on May 4, 2011, on the ground that Plaintiff failed to appeal within the 90 days required by ORS 311.223(4).

Defendant did not receive a personal property tax return from Plaintiff on or before the time Defendant was required to issue tax statements for the 2009-10 tax year. The return was due on or before March 1, 2009. ORS 308.290(1).<sup>1</sup>

Defendant eventually contacted Plaintiff and Plaintiff sent Defendant a return by facsimile which Plaintiff insists was a copy of a return it had filed timely earlier that year. Defendant received that return November 30, 2009.

By letter dated March 29, 2010, Defendant sent Plaintiff an omitted property assessment notice adding value for the 2009-10 tax year. That notice included a penalty equal to 50 percent of the tax due because the return was not filed on or before August 1, 2009. *See generally* ORS 308.296(4). Defendant’s notice added \$1,626.35 in tax and \$813.18 for the penalty. (Def’s Answer at 5.) Defendant’s notice advised Plaintiff of its appeal rights with the following language:

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2007.

“ORS 311.223(4) requires that the taxpayer be given 90 days to appeal this correction to the Oregon Tax Court Magistrate Division. Your 90 day appeal period will begin as of the date of this notice.”

Plaintiff appealed from that part of the Notice pertaining to the penalty to the county Board of Property Tax Appeals (BOPTA) in November 2010. (Ptf’s Compl at 5.) BOPTA dismissed the appeal. (*Id.* at 4.)

Because the penalty was imposed as part of an omitted property assessment, Plaintiff should have appealed to the magistrate division of the Oregon Tax Court as provided in ORS 311.223(4). Plaintiff was so instructed in Defendant’s omitted property assessment notice. Plaintiff filed its appeal with this court in March 2011, more than eight months after the 90-day appeal deadline from Defendant’s March 29, 2010, omitted property assessment notice. Plaintiff’s appeal to this court is untimely and must be dismissed.

Plaintiff contends that its appeal is untimely because of incorrect information it was given in a telephone conversation that Plaintiff had with Defendant’s representative. In that conversation, Defendant’s representative allegedly told Plaintiff that it could not appeal the omitted property assessment notice until November 2010. (*Id.* at 2.) Regardless of any such oral statement made by Defendant’s representative, Plaintiff received actual and correct information on its appeal rights in Defendant’s March 29, 2010, omitted property notice. (Def’s Compl at 5.) Plaintiff filed its appeal more than 90 days after that date.

Plaintiff has not presented any fact or argument which prevents the application of ORS 311.223(4). Defendant’s motion to dismiss is granted. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

The Complaint is dismissed.

Dated this \_\_\_\_ day of July 2011.

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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 21, 2011. The Court filed and entered this document on July 21, 2011.***