

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

JESSE J. PERSHIN	)	
and SAMANTHA S. DARNELL-PERSHIN,	)	
	)	
Plaintiffs,	)	TC-MD 140033C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>FINAL DECISION OF DISMISSAL</b>

The court entered its Decision of Dismissal in the above-entitled matter on March 17, 2014. The court did not receive a request for an award of costs and disbursements (TCR-MD 19) within 14 days after its Decision of Dismissal was entered. The court’s Final Decision of Dismissal incorporates its Decision of Dismissal without change.

This matter is before the court on Defendant’s Motion to Dismiss (Motion), filed February 18, 2014, on the ground that Plaintiffs failed to appeal within the 90 days required by ORS 305.280(2). Plaintiffs appealed from a Notice of Deficiency Assessment for the 2010 tax year, issued by Defendant October 29, 2013. Plaintiffs’ appeal to this court was postmarked February 3, 2014. This interval is longer than the 90 days required by ORS 305.280(2),<sup>1</sup> 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 discussed the Motion with the parties during the March 10, 2014, proceeding.

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<sup>1</sup> The court’s references to the Oregon Revised Statutes (ORS) are to 2011.

Plaintiffs' were represented by an enrolled agent, John W. Howell (Howell), who appeared on their behalf pursuant to a valid Authorization to Represent and Power of Attorney. Howell initially stated he believed there was an administrative rule written by Defendant that extended the appeal period in certain situations, including this case. Howell read from a document that described an appeal extension he believed applied to this case. Howell was, however, unable to identify a particular administrative rule, Department of Revenue information circular, or other official document pertaining to that appeal extension. After some discussion it was determined that the regulation Howell referenced concerned deficiencies issued by the state based on adjustments by Defendant made as result of an adjustment to a taxpayer's return by the Internal Revenue Service (IRS). That is not the circumstance in this case. This case concerns an *assessment* by Defendant, and not a deficiency. The exception Howell referred to is therefore inapplicable. Plaintiffs' deadline for appealing Defendant's assessment was January 27, 2014. Plaintiffs missed that deadline.

The court is not aware of any circumstances that extend the statutory limit of 90 days. Defendant's Motion to Dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is untimely and Defendant's Motion to Dismiss is allowed. The Complaint is dismissed.

Dated this \_\_\_\_ day of April 2014.

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DAN ROBINSON  
MAGISTRATE

***If you want to appeal this Final 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 Final Decision or this Final Decision cannot be changed.***

*This document was signed by Magistrate Dan Robinson on April 3, 2014. The court filed and entered this document on April 3, 2014.*