

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

BAREND LEVIE and MARY LEVIE,	)	
	)	
Plaintiffs,	)	TC-MD 140317C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>FINAL DECISION OF DISMISSAL</b>

This Final Decision of Dismissal incorporates without change the court’s Decision of Dismissal entered August 13, 2014. The court did not receive a request for an award of costs and disbursements within 14 days after its Decision of Dismissal was entered. *See* TCR-MD 19.

This matter is before the court on Plaintiffs’ motion to dismiss, filed July 16, 2014, requesting that the Complaint be dismissed because Defendant had provided the requested relief.

Plaintiffs filed their Complaint on July 10, 2014, appealing Defendant’s Notice of Proposed Adjustment and/or Distribution for tax year 2013. On July 16, 2014, Plaintiffs filed a motion to dismiss seeking to “rescind the petition before the Court” and requesting reimbursement for the filing fee and other costs associated with their appeal. (Ptf’s Ltr at 1, Jul 16, 2014.) Defendant filed an Answer and Response to Plaintiffs’ Motion to Dismiss and Motion for Costs and Disbursements (Answer and Response) on May 14, 2014, in which Defendant stated that it agreed to provide Plaintiffs’ requested relief. (Def’s Answer Resp at 2.) Specifically, Defendant reviewed Plaintiffs’ written objections to its Notice of Proposed Adjustment and/or Distribution and, on July 9, 2014, “sent Plaintiffs a written decision indicating that Defendant had reversed its adjustments to Plaintiffs’ return.” (*Id.*) As a result, Defendant joined Plaintiffs’ request to dismiss the appeal; however, Defendant asked the court to deny

Plaintiffs' request for costs and disbursements. (*Id.* at 1-2.) As of the date of this Decision of Dismissal, Plaintiffs have not submitted a written reply to Defendant's Answer and Response.

Tax Court Rule-Magistrate Division (TCR-MD) 19 C(1) states that "[a] party seeking costs and disbursements shall, not later than 14 days after the entry of a magistrate's decision, file with the court and provide a copy to the other parties a signed and detailed statement of costs and disbursements." According to the rule, the triggering event to submit a request for costs and disbursements is the court's entry of a decision. Therefore, Plaintiffs' request for costs and disbursements is premature and must be denied. The parties are encouraged to consult the court's rules and follow the correct procedure as set out there.

Under such circumstances, and pursuant to the requests of the parties, the court finds that Plaintiffs' appeal should be dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' Complaint is dismissed.

IT IS FURTHER DECIDED that Plaintiffs' request for costs and disbursements is premature and must be denied.

Dated this \_\_\_\_ day of September 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 September 2, 2014. The court filed and entered this document on September 2, 2014.***