

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

STEVEN A. MOYLAN,)	
)	
Plaintiff,)	TC-MD 130025C
)	
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 with its Answer on February 11, 2013.

Plaintiff filed his Complaint on January 15, 2013, appealing Defendant’s Notice of Deficiency Assessment for tax year 2011. In his Complaint, Plaintiff requested relief of \$5,081 (refund) plus \$124.01 (interest), and \$240 for the court filing fee. (*Id.* at 1.)

On February 11, 2013, Defendant filed its Answer and motion, stating “[b]ased on the letter Plaintiff provided from [his employer,] Defendant agrees Plaintiff’s original return was filed correctly.” (Answer at 1.) Additionally, Defendant asserted the Magistrate Division does not have “the authority to award costs and disbursements.” (*Id.*) As a result of Defendant’s conclusions, Defendant moved for dismissal, stating that “[a]djustments will be made when judgment is received from the court and the refund (plus statutory interest) will be issued.” (*Id.* at 2.)

Defendant agrees Plaintiff is entitled to all relief requested except a refund of the \$240 filing fee. As to the filing fee issue, this court has recently denied a taxpayer’s request for refund of that fee, ruling that “[t]here is no statute that provides for an award of costs and disbursements in the Magistrate Division of the Oregon Tax Court.” *Wihtol v. Multnomah County Assessor*

(*Wihtol*), TC-MD 120762N at 2 (Jan 30, 2013). Furthermore, in passing the statute extending to the “tax court judge” the ability to do so (ORS 305.490), the “legislature implicitly did not grant authority to magistrates to award costs and disbursements.” *Id.* Instead, this court has concluded that “there is no statutory authority for an award of costs and disbursement[s] in the Magistrate Division.” *Id.* at 3; citing *Johnson v. Department of Revenue*, TC-MD No 111148C at 2 (Aug 16, 2012); *Ellibee v. Dept. of Rev.*, TC-MD No 020026D at 5-6 (May 8, 2003). The court in *Wihtol* also denied such relief under the taxpayer’s alternative theories relying on court rules applicable to the Regular Division of the Tax Court. *Id.*, TC-MD 120762N at 3.

After careful consideration, and because the parties are in agreement as to the refund and statutory interest requested in Plaintiff’s Complaint, the court concludes that all matters appropriate for resolution in this appeal have been resolved. Plaintiff’s request for costs must be denied. Defendant’s motion to dismiss is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal be dismissed, with appropriate relief coming from Defendant as agreed to in its Answer and explained above.

Dated this ____ day of February 2013.

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 Decision of Dismissal was signed by Magistrate Dan Robinson on February 14, 2013. The Court filed and entered this Decision of Dismissal on February 14, 2013.