

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

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|------------------------|---|-----------------|
| CHARLES D. SMITH |) | |
| and ERICA L. MITCHELL, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 130233N |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| State of Oregon, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiffs filed their Complaint on April 17, 2013, on an incorrect form. Plaintiffs’ filed their Amended Complaint on May 9, 2013, stating that “all moneys earned were made by Erica not Charles” and requesting that “Erica’s income” not be “garnish[ed].” (Ptf’s Am Compl at 1.) Plaintiffs’ Amended Complaint identifies the tax year appealed as 2012. (*Id.*) Plaintiffs did not attach a notice, order, or other document appealed to either their Complaint or Amended Complaint. On May 9, 2013, the court sent a letter to Plaintiffs requesting a copy of the document appealed. Plaintiffs did not respond to the court’s letter of May 9, 2013.

On June 26, 2013, Defendant filed a letter with the court stating that Plaintiffs’ “apportionment request[] * * * has been processed.” Defendant stated:

“On 02/15/13 [Defendant] issued a Notice of Proposed Adjustment and/or Distribution to [] Plaintiffs for tax year 2012. From the proposed refund of \$1,456, the full amount was used to pay a debt owed by Mr. Smith. Ms. Erica Mitchell’s portion of the 2012 refund is 100%, or \$1,456. [Defendant] will mail the refund check on 06/27/13.”

(Def’s Ltr, Jun 26, 2013.) On June 27, 2013, a member of the court operations team telephoned Plaintiffs and requested that they respond in writing to Defendant’s letter filed June 26, 2013. As of the date of this Decision, the court has received no further communication from Plaintiffs.

Plaintiffs' have twice failed to respond to the court's requests for information. Although Plaintiffs' failed to provide the notice or other document appealed, it appears to the court that Defendant has agreed to provide Plaintiffs with their requested relief. Plaintiffs stated in their Amended Complaint that "all moneys earned were made by Erica not Charles." (Ptf's Am Compl at 1.) Defendant agrees that Plaintiff Erica L. Mitchell is entitled to 100 percent of the 2012 refund, or \$1,456. (Def's Ltr, Jun 26, 2013.) Plaintiffs have not identified any other "act, omission, order or determination" of Defendant that they wish to appeal. ORS 305.275(1)(a) (2011). Under such circumstances, the court concludes that relief should be granted to Plaintiffs as recommended by Defendant. Now, therefore,

IT IS THE DECISION OF THIS COURT that, for the 2012 tax year, Defendant will cancel its Notice of Proposed Adjustment and/or Distribution dated February 15, 2013, and issue or otherwise credit to Plaintiffs a refund of \$1,456 with statutory interest, if any.¹

Dated this ____ day of July 2013.

ALLISON R. BOOMER
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 was signed by Magistrate Allison R. Boomer on July 15, 2013. The Court filed and entered this Decision on July 15, 2013.

¹ Defendant stated that it intended to mail a refund check on June 27, 2013. (Def's Ltr, Jun 26, 2013.)