

IN THE OREGON TAX COURT  
REGULAR DIVISION  
Income Tax

MICHAEL J. GARRISON,	)	
	)	
Plaintiff,	)	<b>TC 4796</b>
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	<b>ORDER DENYING PLAINTIFF'S</b>
	)	<b>MOTION TO VACATE AND MOTION</b>
Defendant.	)	<b>FOR RECONSIDERATION</b>

On January 24, 2008, the court issued an order that granted summary judgment in favor of Defendant Department of Revenue (the department) on the basis that Plaintiff Michael J. Garrison (taxpayer) had not timely filed his complaint in this court. On February 5, 2008, taxpayer filed a Motion to Vacate and Motion for Reconsideration. Defendant filed a response on February 8, 2008.

Tax Court Rule (TCR) 1 E provides:

**Filing Fee.** Unless exempt by law, the plaintiff shall pay a \$50 filing fee as provided by ORS 305.490. That fee must be tendered at the time of the filing of the complaint. If the plaintiff wishes the court to consider a motion for deferral or waiver of the filing fee, as provided under ORS 21.605, the plaintiff shall make such motion to the court at the time of filing the complaint and serve the motion on all parties to the appeal.

The court is authorized to adopt rules under ORS 305.425(3)<sup>1</sup> that conform “to the rules of equity

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<sup>1</sup> All references to the Oregon Revised Statutes are to the 2005 edition.

practice and procedure in this state.” Requiring the filing fee to be paid at the time of filing conforms to the rules of equity practice and procedure in this state. *See* ORS 21.111 (governing domestic relations); ORS 21.310 (governing probate). It is also consistent with the practice of circuit courts in this state. *See* ORS 21.110 (requiring fee to be collected at time of filing); ORS 305.405 (granting the Tax Court all the powers of a circuit court). *See also U.S. National Bank v. Lloyd’s*, 239 Or 298, 305, 382 P2d 851 (1964) ([T]he \* \* \* clerk should refuse to file any document unaccompanied by the fee.”). Now, therefore,

IT IS ORDERED that Plaintiff’s Motion to Vacate and Motion for Reconsideration is denied.

Dated this \_\_\_\_ day of February, 2008.

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Henry C. Breithaupt  
Judge

***THIS DOCUMENT WAS SIGNED BY JUDGE HENRY C. BREITHAUPT ON FEBRUARY 21, 2008, AND FILED THE SAME DAY. THIS IS A PUBLISHED DOCUMENT.***