

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ETHAN A. SPOO	)	
and KIRSTEN L. TORKELSEN-SPOO,	)	
	)	
Plaintiffs,	)	TC-MD 140255C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>FINAL DECISION</b>

Plaintiffs appeal Defendant’s Notice of Proposed Refund Adjustment dated February 4, 2014, for the 2010 tax year. The court held a case management hearing by telephone on July 8, 2014. Adrienne A. San Angelo appeared on behalf of Plaintiffs. Ethan Spoo testified on behalf of Plaintiffs. Aaron Snyder appeared and testified on behalf of Defendant.

In their Complaint, Plaintiffs requested a refund of excess taxes paid with their timely filed Oregon Form 40N. (Ptf’s Compl at 1.) Plaintiffs included a detailed explanation of the requested relief with the complaint. (*Id.* at 2.) Defendant filed an Answer agreeing to cancel its Notice of Proposed Refund Adjustment based on the additional information it received with Plaintiffs’ Complaint. (Def’s Ans at 2.) The parties informed the court during the July 8, 2014, telephone hearing that the tax issue – cancellation of the proposed tax and acceptance of the amended Oregon Form 40N – was resolved.

Plaintiffs also requested a refund of the filing fee in the event that they prevailed. (Ptf’s Compl at 2.) Defendant in its Answer disagreed with that request. Defendant explained in its Answer that Plaintiff’s’ original return reported Oregon wages of \$19,200 and that their amended return reported \$-0- in Oregon wages. Defendant further explained:

“On October 11, 2013, Defendant sent Plaintiffs a Request for Information, requesting a copy of Plaintiffs’ Oregon Amended Schedule and an explanation of the changes requested on Plaintiffs’ amended Form 40N. Plaintiffs did not provide the requested information. On February 4, 2014, Defendant issued Plaintiffs a Notice of Refund Adjustment, explaining that the refund requested on Plaintiffs’ amended Form 40N had been denied.

“Plaintiffs filed a complaint with this court on April 28, 2014. Plaintiffs’ complaint included the information identified by Defendant in its October 11, 2013 request.”

(Def’s Answer at 1.)

The court discussed Plaintiffs’ request for a refund of the filing fee with the parties during the July 8, 2014, proceeding. Tax Court Rule – Magistrate Division (TCR-MD) 19 authorizes the court to award costs and disbursements, which include the filing fee, but the award is not required. The rule provides “costs and disbursements may be allowed to the prevailing party \* \* \* unless the court otherwise directs.” TCR-MD 19 B.

The court does not find that costs and disbursements are appropriate in this case because Plaintiffs clearly could have avoided the payment of the filing fee accompanying their Complaint to this court by responding to Defendant’s written request for information and explaining the changes to their amended return. Plaintiffs argue that Defendant could have ascertained they had no Oregon taxable income by reviewing their W-2s and their amended Form 40N. However, Plaintiffs also acknowledged that the amended Form 40N states that certain forms and schedules are not to be attached and that they followed those instructions. Those documents might well have provided Defendant adequate information to reach the conclusion it subsequently reached after Plaintiffs filed their Complaint with its accompanying explanation. In any event, Plaintiffs were afforded an opportunity to provide Defendant an explanation as to why they had changed their return to report no Oregon taxable income; they chose to not respond. Defendant requested an explanation from Plaintiffs by letter dated October 11, 2013. Plaintiffs, instead, waited until

Defendant issued its February 4, 2014, Notice of Proposed Refund Adjustment, and then filed an appeal with this court. The filing of the Complaint (Plaintiffs' court appeal) required payment of the filing fee Plaintiffs have now requested they be awarded by way of costs and disbursements, a request that, if granted, would require Defendant to reimburse Plaintiffs for their filing fee. Under the facts of this case, the court finds Plaintiffs' request for costs and disbursements unwarranted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant shall cancel its February 4, 2014, Notice of Proposed Refund Adjustment for the 2010 tax year; and

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

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

---

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 July 10, 2014. The court filed and entered this document on July 10, 2014.***