

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CAROL L. SILVA and MARY E. COX,)	
)	
Plaintiffs,)	TC-MD 150060N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION

The court entered its Decision in the above-entitled matter on May 1, 2015. Plaintiffs timely filed a Statement for Costs and Disbursements on May 15, 2015. As of the date of this Final Decision, Defendant has not filed an objection to Plaintiffs’ Statement for Costs and Disbursements. This matter is now ready for the court’s Final Decision. The court’s Final Decision incorporates its Decision without change and includes the court’s analysis and determination of Plaintiffs’ Statement for Costs and Disbursements in section B.

A. *Decision of the Merits*

This matter is before the court on the agreement of the parties. Plaintiffs filed their Complaint on March 5, 2015, appealing Defendant’s Notice of Proposed Adjustment and/or Distribution, dated November 4, 2014, disallowing a subtraction to imputed income in the amount of \$11,281 for the 2013 Oregon tax year. (Ptf’s Compl at 2.) In its Recommendation, Defendant agreed “to grant Plaintiffs’ request to revise the Notice of Proposed Refund Adjustment dated November 4, 2014, that disallowed Plaintiffs’ imputed income.

* * * [T]axpayers are allowed to subtract imputed income if they are Registered Domestic Partners.” (Def’s Rec at 1.) In their Response, dated April 27, 2015, Plaintiffs agreed to Defendant’s Recommendation. (Ptf’s Resp at 1.) Because the parties are in agreement, the case

is ready for decision.

B. *Costs and Disbursements Facts and Analysis*

The Magistrate Division has discretionary authority under ORS 305.490(2) (2011) to award costs and disbursements to the prevailing party. *Wihtol I v. Dept. of Rev.*, 21 OTR 260, 267 (2013). The Magistrate Division promulgated a rule, TCR-MD 16, setting forth the procedure for a prevailing party to request costs and disbursements. As required under TCR-MD 16 C(1), Plaintiffs filed a signed and detailed Statement for Costs and Disbursements on May 15, 2015, requesting that the court award them costs and disbursements totaling \$252, for the filing fee. (Ptf's Cost Statement at 1.) In its Answer, Defendant opposed Plaintiffs' request for costs. (Def's Ans at 2.) However, Defendant did not file an objection to Plaintiffs' Statement for Costs and Disbursements as allowed under TCR-MD 16 C(2)(a).¹

Under TCR-MD 16 B, "costs and disbursements may be allowed [only] to the prevailing party[.]" *See also Wihtol v. Multnomah County Assessor (Wihtol)*, TC-MD No 120762N, WL 274126 at *2 (Jan 24, 2014). There is no question that Plaintiffs are the prevailing party in this matter. Plaintiffs were granted their requested relief. The question is whether the court should, in its discretion, award Plaintiffs their costs and disbursements. "The award of costs and disbursements is entirely discretionary with the court" (citations omitted). *Id.* at *4.

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¹ TCR-MD 16 C(2)(a) states, "A party may file a written objection, but must do so no later than 10 days after the filing of the statement of costs and disbursements. The objection must be specific. It must be filed with the court and a copy provided to all other parties."

Plaintiffs argue that they are entitled to recover costs and disbursements because:

“[Defendant] should not have adjusted the tax return to disallow a legitimate deduction just because there was a question about how the information was entered on the tax form. There were conflicting and inadequate instructions for reporting this particular set of facts on the Form 40. Plaintiffs believe [Defendant] should have requested additional information from [P]laintiffs to resolve the question rather than adjusting their tax return.”

(Ptf’s Cost Statement at 1.)

After considering the matter, the court concludes that Plaintiffs’ request for costs and disbursements of \$252 should be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that, as agreed upon by the parties, Defendant must revise its Notice of Proposed Adjustment and/or Distribution, dated November 4, 2014, to allow Plaintiffs’ subtraction of imputed income of \$11,281.

IT IS FURTHER DECIDED that Plaintiffs’ request for costs and disbursements under TCR-MD 16 is granted. Plaintiffs are awarded costs of \$252.

Dated this ____ day of May 2015.

ALLISON R. BOOMER
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. TCR-MD 19 B.

This document was filed and entered on May 29, 2015.