

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

PS OREGON, INC.,	)	
	)	
Plaintiff,	)	TC-MD 160178R
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>FINAL DECISION</b>

This matter came before the court on Plaintiff’s request to withdraw its appeal, filed November 17, 2016, and on Defendant’s Statement of Costs and Disbursements, filed November 21, 2016.

Plaintiff filed its Complaint on April 13, 2016, seeking a reduction in the real market value and exception value for property identified by the assessor account number R209887 for the 2015-16 tax year. On November 17, 2016, Plaintiff filed a letter with the court requesting to withdraw its appeal and to vacate the trial scheduled for November 21, 2016. On November 21, 2016, Defendant filed a Statement of Costs and Disbursements. As of the close of business on December 5, 2016, the court has not received a response from Plaintiff. This matter is now ready for the court’s Final Decision.

Plaintiff filed a letter requesting to withdraw its appeal on November 17, 2016. Tax Court Rule-Magistrate Division (TCR-MD) 7 states in pertinent part:

**E Motion to Dismiss or Withdraw Filed by Plaintiff.** The court may rule on a written motion to dismiss or withdraw filed by a plaintiff without waiting for a response from the nonmoving parties when the motion indicates that the parties agree that no party will seek costs and disbursements. In all other cases, the nonmoving parties have 10 days from the date of service to file a response before the court will rule on the motion \* \* \*.

**F Oral Argument.** Any party may request oral argument on a motion. The court will determine whether oral argument is held.

Defendant, the nonmoving party, filed a request for costs and disbursements within 10 days of Plaintiff's request to withdraw. Its request was timely and included evidence to support the request. Plaintiff has not responded to Defendant's request within the time period provided by TCR 7 E.<sup>1</sup> Since Defendant submitted evidence in support of its request and neither party has requested a hearing pursuant to TCR-MD 7 F, the court will decide the matter without a hearing.

The Magistrate Division has discretionary authority under ORS 305.490(2) to award costs and disbursements to the prevailing party. *Wihtol I v. Dept. of Rev. (Wihtol I)*, 21 OTR 260, 267 (2013). As required under TCR-MD 7 E, Defendant filed a cost statement within 10 of Plaintiff's request to withdraw. Defendant requests the court award costs and disbursements totaling \$122 and submitted documentary evidence that its costs were related to serving the court and Plaintiff with its trial exhibits.

Under TCR-MD 16 B, costs and disbursements may be awarded only to the prevailing party. *See Wihtol v. Multnomah County Assessor (Wihtol)*, TC-MD 120762N, WL 274126 at \*2 (Or Tax M Div Jan 24, 2014). There is no question that Defendant is the prevailing party in this matter. The question is whether the court should, in its discretion, award Defendant its costs and disbursements. *See Wihtol*, 2014 WL 274126 at \*4 (“[t]he award of costs and disbursements is entirely discretionary with the court.” (citations omitted)). In this case, Plaintiff filed its request to withdraw its appeal a few days before trial and after the deadline for the parties to submit trial exhibits. Defendant has submitted persuasive evidence that it was forced to incur expenses to deliver trial exhibits. These costs appear to be both necessary and reasonable. It is the opinion of this court that Plaintiff's request to withdraw should be granted and that Defendant's request for costs and disbursements should also be granted. Now, therefore,

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<sup>1</sup> The court has also added three days for mailing. *See* TCR-MD 3 B; TCR 10.

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is dismissed.

IT IS FURTHER DECIDED that Defendant is entitled to costs from Plaintiff in the sum of \$122 pursuant to ORS 305.490(2).

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RICHARD DAVIS  
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 December 8, 2016.***