

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

BRYAN GORES,)	
)	
Plaintiff,)	TC-MD 170339N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION

The court entered its Decision in this case on January 9, 2018. On January 12, 2018, Defendant filed its Written Objection to Plaintiff’s request for costs and disbursements in the amount of \$265 for the filing fee. This case is now ready for final decision by the court. The court’s Final Decision incorporates its Decision without change in section I. The court’s analysis and determination of Plaintiff’s request for costs and disbursements is contained in section II.

I. DECISION

This matter came before the court on Defendant’s Recommendation, filed December 11, 2017. Plaintiff filed his Complaint October 23, 2017, challenging Defendant’s Written Objection Determination dated September 26, 2017. Defendant previously denied Plaintiff’s Working Family Household and Dependent Care Credit in the amount of \$2,507 for the 2016 tax year. (Compl at 4.) Plaintiff requested the following relief: “\$2,512.92 in tax owed to me plus \$265 Filing Fee.” (*Id.* at 1.)

A case management conference was held on December 5, 2017, during which Plaintiff agreed to provide to Defendant the “Form PS” from his child care provider and 2016 bank statements or cancelled checks demonstrating his child care expenses. Defendant agreed to file

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written recommendations after reviewing that information and Plaintiff agreed to file a written response to Defendant's recommendations by December 26, 2017.

Defendant's Recommendation, filed December 11, 2017, stated: "[b]ased on the documents submitted to us, * * * we accept the working family child dependent care credit as filed of \$2,507 for the 2016 tax period." Defendant did not respond to Plaintiff's request for his \$265 filing fee. As of the date of this Decision, Plaintiff has not responded to Defendant's Recommendation or otherwise communicated with the court. After considering the matter, the court adopts the Department's Recommendation.

II. COSTS AND DISBURSEMENTS

Plaintiff requested costs and disbursements in the amount of \$265 for the filing fee in his Complaint, as allowed by Tax Court Rule-Magistrate Division (TCR-MD) 16 C(1). Defendant timely filed an objection to that request. *See* TCR-MD 16 C(2)(a).

Magistrates of the Oregon Tax Court have discretionary authority to award costs and disbursements to prevailing parties under ORS 305.490(2). *Wihitol I v. Dept. of Rev.*, 21 OTR 260, 267–68 (2013). Plaintiff is the prevailing party in this appeal because Defendant has agreed to allow the Working Family Household and Dependent Care Credit, totaling \$2,507, that Plaintiff requested in his Complaint. The question the court must now decide is whether a discretionary award of costs and disbursements is appropriate in this case.

This court has previously explained that, "where taxpayers * * * fail to take advantage of available administrative review, this court may decline to award costs even if taxpayers ultimately prevail in their appeal." *Wihitol v. Dept. of Rev.* TC-MD 120762N, WL 274126 at *5 (Or Tax M Div, Jan 24, 2014). Defendant wrote in its Written Objection that Plaintiff "did not provide the documentation we requested" during Plaintiff's administrative appeal. (Written Objection at 1.) Defendant further explained, "Had [Plaintiff] provided the required documents when we requested

them, he would not have had to go through the appeals process and would not have incurred the court's fee of \$265." (*Id.*) As described above, once Plaintiff provided documents substantiating his childcare payments for 2016 to Defendant, Defendant agreed that Plaintiff was entitled to the relief requested in his Complaint. That strongly suggests that had Plaintiff provided those documents during his administrative appeal, an appeal to this court would have been unnecessary. Under those circumstances, the court finds that Plaintiff's request for costs and disbursements should be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff is allowed a Working Family Household and Dependent Care Credit of \$2,507 as filed for tax year 2016.

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

Dated this ____ day of February 2018.

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 signed by Magistrate Allison R. Boomer and entered on February 2, 2018.