

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

SAMUEL MICHAEL KLOENNE,)	
)	
Plaintiff,)	TC-MD 190226N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff filed his Complaint on May 15, 2019, requesting a refund of \$1,246.39, composed of amounts paid to Defendant, service fees, a bank levy fee, and the court’s filing fee. (Compl at 1, 48.) Defendant agreed to refund Plaintiff “eligible payments made to Defendant in the amount of \$885.14 less collection charges incurred by the Defendant according to ORS 314.430 and OAR 150-314-0275 plus any required statutory refund interest.” (Answer at 2.)

During the case management conference held on June 20, 2019, Defendant’s representative clarified that the refund amount after subtracting collection charges is \$671. He agreed to send Plaintiff a calculation of statutory interest to be added to the refund. Plaintiff accepted that Defendant would not refund the bank levy fee and service fees. The sole remaining dispute is Plaintiff’s request for a cost award of \$265 for the court’s filing fee.

A. *Court’s Authority to Award Costs and Disbursements*

The magistrate has discretionary authority to award “costs and disbursements” to prevailing parties. *Wihol I v. Dept. of Rev.*, 21 OTR 260, 267-68 (2013); *see also* Tax Court Rule-Magistrate Division (TCR–MD) 16 B (authorizing court to award costs and disbursements,

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including the filing fee, to a “prevailing party”). There is no dispute that Plaintiff is a prevailing party in this case. The question is whether the court should exercise its discretion to award costs.

In exercising its discretion, this court is not bound to consider any specific factors. *See Wihtol v. Multnomah County Assessor*, TC-MD 120762N, WL 274126 at *5 (Jan 24, 2014). This court has previously considered as relevant whether the inaccurate assessment was due to the taxpayer’s failure to file an accurate return or failure to take advantage of available administrative review by responding to requests for information. *See id.* In such cases, the court may decline to award costs and disbursements. *See id.*

B. *Analysis of Plaintiff’s Request for Costs and Disbursements*

Defendant objects to Plaintiff’s request for costs because Defendant “sent the audit correspondence to [Plaintiff’s last] known address” as required by ORS 305.265(11).¹ (Def’s Objection at 1.) Defendant reasons that, “[b]ecause Plaintiff did not update his address with Defendant, Plaintiff lacked his opportunity to provide substantiation and appeal during the regular audit process, which could avoid the magistrate process and consequently the payment of its fee.” (*Id.*) Defendant notes Plaintiff’s other errors that led to Defendant’s adjustments and this appeal: Plaintiff erroneously filed an Oregon part-year resident return (rather than a nonresident return) for the 2013 tax year even though he did not live or work in Oregon; Plaintiff failed to update his address with his employer to avoid Oregon income tax withholding; and Plaintiff failed to request that his employer stop withholding Oregon income tax. (*Id.*) In response, Plaintiff reiterated that he is the prevailing party and, therefore, entitled to recover his filing fee. (Ptf’s Disagreement with Def’s Objection at 1.)

¹ ORS 305.265(11) (2017) states: “Mailing of notice to the person at the person’s last-known address shall constitute the giving of notice as prescribed in this section.”

Upon careful consideration and for the reasons articulated by Defendant, the court declines to award Plaintiff his costs and disbursements in this case. Now, therefore,

IT IS THE DECISION OF THIS COURT that, as agreed by the parties for the 2013 tax year, Defendant will refund Plaintiff \$885.14, less collection charges incurred by the Defendant according to ORS 314.430 and OAR 150-314-0275, plus any required statutory refund interest.

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

Dated this ____ day of July 2019.

ALLISON R. BOOMER
MAGISTRATE

If you want to appeal this 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 this Decision or this Decision cannot be changed. TCR-MD 19 B.

This document was signed by Magistrate Allison R. Boomer and entered on July 23, 2019.