

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ANNIE M. BRUMBAUGH,)
)
 Plaintiff,) TC-MD 230036R
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 State of Oregon,)
)
 Defendant.) **DECISION**

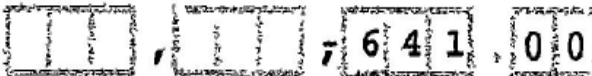
This matter is before the court on Plaintiff’s appeal of a Notice of Proposed Refund Adjustment dated October 3, 2022, for the 2021 tax year. Plaintiff filed her Complaint on January 30, 2023, requesting a refund of \$111 and an award of her \$50 court filing fee. Defendant agreed to Plaintiff’s request for a refund but opposed her request for an award of costs and disbursements.

I. STATEMENT OF FACTS

The following facts are derived from the Complaint and attachments thereto, the Answer, and the parties’ declarations in support of and in opposition to an award of costs and disbursements.

Plaintiff filed an OR-40-N tax form with Defendant for the 2021 tax year. On line 12F of the form, Plaintiff intended to report a negative number for “[b]usiness income or loss from federal Schedule 1, line 3” by placing a minus sign to the left of the number, but outside the nine boxes provided by the form (not including cents):

12F. **Business income or loss from federal Schedule 1, line 3.**

12F. 

Plaintiff's representative searched for instructions on Defendant's website and other websites to determine the proper way to present a negative number on the tax return but was unable to find any guidance. Plaintiff also attached her federal tax return to her Oregon return.

Defendant's scanning system did not recognize the number on line 12F of Plaintiff's return as negative, and instead recorded the number as positive. As a result, Defendant determined that Plaintiff's return should be adjusted and mailed Plaintiff a Notice of Proposed Refund Adjustment dated October 3, 2022 (Notice). The Notice advised Plaintiff of two options to appeal to the Department of Revenue: appeal by written objection or request a conference. To be timely, either of those options must have been completed "**within 30 days**" of the Notice. (Compl at 6 (emphasis in original).) The Notice also states:

"Appeal to the Oregon Tax Court.

"* * * * *

"If you didn't submit a written objection or request a conference, you must file your appeal within 120 days of the date of our original notice * * *."

(*Id.*)

Plaintiff's representative and tax preparer was away from his residence from October 6, 2022, to December 14, 2022. On December 15, 2022, Plaintiff provided the Notice to her representative. Plaintiff's representative contacted Defendant and was told that filing an untimely written objection was "worth a chance." Defendant received Plaintiff's untimely written objection on December 27, 2022. Plaintiff's representative called Defendant on January 4, 2023 and was told that "the untimely objection letter had been received and was being processed." Plaintiff's representative contacted Defendant about the objection on January 26, 2023 and was told that "the appeal was still processing." Plaintiff filed her appeal on January 30, 2023.

II. ANALYSIS

The only issue is whether to grant Plaintiff costs and disbursements of \$50 for her filing fee. The Magistrate Division has discretionary authority under ORS 305.490 to award costs and disbursements to the prevailing party.¹ *Wihtol v. Dept. of Rev.*, 21 OTR 260, 267 (2013). There is no question that Plaintiff is the prevailing party because Defendant agreed to the refund the amount demanded in the Complaint. The question is whether the court should exercise its discretion to award costs by ordering Defendant to pay Plaintiff for her filing fee. In exercising its discretion, this court is not bound to consider any specific factors. *See Wihtol v. Multnomah Cty. Assessor*, TC-MD 120762N, WL 274126 at *5 (Or Tax M Div 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.” *Kloenne v. Dept. of Rev.*, TC-MD 190226N, WL 3312443 at *1 (Or Tax M Div July 23, 2019). “In such cases, the court may decline to award costs and disbursements.” *Id.*

In Plaintiff’s favor, the court observes that Defendant does not appear to provide instructions on how to report a negative number. However, there are several factors in Defendant’s favor. First, Plaintiff’s use of a negative number outside of the boxes provided on line 12F appears improper. It seems apparent to the court that the boxes Plaintiff used on the Form OR-40-N are provided and intended to be the location for data—both numbers and negative signs included.² It is reasonable that data placed outside the boxes could be

¹ The court’s references to the Oregon Revised Statutes (ORS) are to 2019.

² The court is aware, having seen hundreds of forms in litigation, that not all tax forms include the type of boxes found on Plaintiff’s version of Form OR-40-N. The court takes no position as to whether a negative number on a tax return should be noted by using a minus sign or parentheses. Formatting appears to be form specific.

disregarded. Second, and more importantly, Plaintiff bears responsibility for delay in bringing an administrative appeal with Defendant. Although Plaintiff's representative and tax preparer was not available, Plaintiff offered no reason why Plaintiff herself could not have responded to Defendant's Notice in a timely fashion. It appears to be Plaintiff's delay in filing her administrative appeal that caused Defendant's insufficient time to respond and led to this appeal.

III. CONCLUSION

Upon careful consideration, the court declines to award Plaintiff costs and disbursements. Now, therefore,

IT IS THE DECISION OF THIS COURT that, as agreed upon by the parties, Defendant shall issue a refund to Plaintiff in the sum of \$111 for the 2021 tax year.

IT IS FUTHER DECIDED that Plaintiff's request for costs is denied.

Dated this _____ day of April 2023.

RICHARD DAVIS
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 Richard Davis and entered on April 11, 2023.