

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

SEAN L. ARNOLD)	
and PERSEPHANE A. ARNOLD,)	
)	
Plaintiffs,)	TC-MD 110870D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s written status report, filed November 15, 2011.

A case management conference for the above-entitled matter was held on August 11, 2011. Plaintiffs appeared on their own behalf. Faith Derickson (Derickson), Tax Auditor, appeared on behalf of Defendant. During the conference, it was determined that Plaintiffs were appealing Defendant’s Notices of Proposed Adjustment and/or Distribution, dated June 22, 2011, stating that Plaintiffs’ refunds were applied to Plaintiffs’ tax-to-pay.

At the conclusion of the conference, Derickson stated that she would review “the case and the tax returns for the tax years 2007 and 2008.” (Def’s Req for Additional Time, Aug 16, 2011.) In her written request for additional time, Derickson stated that she “held a phone conversation with Plaintiff, Persephane Arnold” on August 15, 2011. During that conversation Plaintiff agreed to provide additional information to resolve the issues related to tax years 2007 and 2008.

On November 7, 2011, Debbie Smith (Smith), Auditor, wrote to Plaintiffs:

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“I have received this account from Faith Derickson. As of 11/7/11 we have not received the information that was requested in order to finish processing your 2008 tax return as filed. I tried to contact you twice on 11/4/11. I received your answering machine both times. I left a message the second time informing you that I needed the additional information and to return my call. I also left you my direct phone number.

* * * * *

“Please read the [enclosed Proposed Auditor’s] report and contact me by 11/14/11 to let me know if you agree with the adjustments. I will process the 2008 tax return with my adjustments unless I hear from you by 11/14/11.

“We have not received the documentation requested from your doctor to verify the severely disabled, extra exemption credit for Persephane on the 2007 tax year. No adjustment will be made on the 2007 tax year.

“If you don’t agree with the adjustments, send me a letter that explains why. Also, include any other documentation to support your position.

“If I don’t hear from you by 11/14/2011, I’ll issue the Notice of Deficiency [for tax year 2008]. The notice will show the additional tax due plus interest.”

(Def’s Ltr, Nov 7, 2011.)

On November 15, 2011, Defendant wrote to the court, stating:

“As of today’s date, Tuesday, November 15, 2011, the defendant has not received any of the requested information or any other type of correspondence from the plaintiff. * * *

“Since I have not received the requested information for 2007 tax year, no changes to the deficiency will be made. The tax due was \$386.00 and has been paid in full.

“The 2008 tax year has not been processed but will be adjusted for additional income, gross distributions from Fidelity Investment and US Bank. I am allowing a decrease in income due to active Military pay. The tax due per my adjustments is \$3,168.00 plus statutory penalty and interest. (See attached auditors (*sic*) report proposed)[.]”

(Def’s Status Report, Nov 15, 2011.)

Even though agreeing to provide additional information to Defendant, Plaintiffs have not communicated with the court or Defendant. Defendant has made adjustments based on available

information and, according to Smith's proposed auditor's report, Defendant will issue a notice of deficiency for tax year 2008. Plaintiffs can appeal a notice of deficiency assessment after Defendant issues that notice. For tax year 2007, Plaintiffs have failed to provide any additional information. Plaintiffs have paid the tax liability for tax year 2007. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal for tax year 2007 is dismissed for lack of prosecution; and

IT IS FURTHER DECIDED that Plaintiffs' appeal for tax year 2008 is premature because Defendant has yet to issue a notice of deficiency assessment.

Dated this ____ day of November 2011.

JILL A. TANNER
PRESIDING 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 the Decision or this Decision becomes final and cannot be changed.

This document was signed by Presiding Magistrate Jill A. Tanner on November 30, 2011. The Court filed and entered this document on November 30, 2011.