

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JEFFREY H. GROVE)
and AMANDA B. GROVE,)
)
Plaintiffs,) TC-MD 120648C
)
v.)
)
DEPARTMENT OF REVENUE,)
State of Oregon,)
)
Defendant.) **DECISION OF DISMISSAL**

This matter comes before the court on Defendant’s request for dismissal, included in its Answer filed July 25, 2012. Plaintiffs appealed Defendant’s denial of vehicle expenses for the 2009, 2010, and 2011 tax years. Plaintiffs filed their Complaint on July 2, 2012. In a letter to Plaintiffs dated May 30, 2012, Defendant’s representative, Bruce McDonald (McDonald), stated that the vehicle expenses were not deductible and that:

“We need to adjust your return to correct it. I’ve enclosed a Proposed Auditor’s Report explaining the adjustments. Please read the report and contact me by June 14, 2012 to let me know if you agree with the adjustment.

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

“* * * * *

“Please don’t send payment now. If you get a Notice of Deficiency, it will have payment instructions.

“If I don’t hear from you by June 14, 2012, I’ll issue the Notice of Deficiency.”

(Ptfs’ Compl at 2.)

In its Answer, Defendant stated that no “deficiencies have been assessed, and therefore Mr. Grove has [no] appeal rights * * *.” The court agrees. An appeal to the tax court “may be

taken to the tax court from any notice of *assessment*.” ORS 305.265(15)¹ (emphasis added). At the time Plaintiffs’ filed their appeal, Defendant had not yet issued any assessments, which is the act giving rise to an appeal under ORS 305.265(15). In fact, Defendant had not even issued deficiencies before Plaintiffs filed their appeal.

As stated earlier, Plaintiffs filed their Complaint July 2, 2012. A case management conference was held August 28, 2012. During the conference, McDonald stated that Defendant did not issue notices of deficiency until July 3, 2012, for the 2009 tax year, and July 16, 2012, for the 2010 and 2011 tax years. Plaintiffs did not disagree with those dates.

Pursuant to statute, Defendant typically issues deficiencies before assessments. *See generally* ORS 305.265. No assessments had been issued before Plaintiffs filed their appeal on July 2, 2012. The May 30, 2012, letter Plaintiffs received from Defendant and put it with their Complaint to this court is not an appealable act, thus Plaintiffs’ appeal was premature. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ appeal is dismissed.

Dated this ____ day of August 2012.

DAN ROBINSON
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 Decision was signed by Magistrate Dan Robinson on August 30, 2012. The Court filed and entered this Decision on August 30, 2012.

¹ All references to the Oregon Revised Statutes (ORS) are 2009. The 2007 edition is applicable to the 2009 tax year, but the relevant provisions have no material differences between editions.