

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

STEPHEN H. KING)	
and ANGELENA E. LUNA,)	
)	
Plaintiffs,)	TC-MD 130326D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal tax years 1997, 1998, 2009, 2010, 2011 and 2012, requesting that Defendant allow Plaintiffs’ claimed dependants.¹

A case management conference was held on July 24, 2013. Stephen H. King (Plaintiff) appeared on his own behalf. John Koehnke (Koehnke) appeared on behalf of Defendant.

In his Recommendation, dated August 5, 2013, Koehnke wrote:

“After reviewing the requested information received during this appeal the defendant agrees 8 exemptions disallowed previously should be allowed on the plaintiff’s 2009 Oregon income tax return. Since all the exemptions reported has been allowed, the earned income credit has been restored as well.

“Defendant requests relief be granted as shown on the attached proposed auditor report. Abatement in the amount of \$1,161 (plus statutory interest) will be issued when defendant receives judgment from the court.”

Defendant’s notices for tax years 1997 and 1998 were issued to Plaintiffs on December 29, 2005. Plaintiffs’ Complaint was filed on May 6, 2013. This interval is longer than the 90 days required by ORS 305.280(2), which provides:

“An appeal under ORS 323.416 or 323.623 or from any notice of assessment or refund denial issued by the Department of Revenue with respect to a tax imposed

¹ At the case management conference, Plaintiff verbally withdrew his request that he was entitled to a Biofuel Consumer credit for tax year 2009.

under ORS chapter 118, 308, 308A, 310, 314, 316, 317, 318, 321 or this chapter, or collected pursuant to ORS 305.620, shall be filed within 90 days after the date of the notice. An appeal from a proposed adjustment under ORS 305.270 shall be filed within 90 days after the date the notice of adjustment is final.”

The court is not aware of any circumstances that extend the statutory limit of 90 days.

Defendant’s motion to dismiss Plaintiffs’ appeal of tax years 1997 and 1998 is granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs are entitled to claim eight dependants for tax year 2009.

IT IS FURTHER DECIDED that Plaintiffs’ appeal of tax year 1997 and 1998 is dismissed.

IT IS FURTHER DECIDED that Defendant shall refund to Plaintiffs income tax refunds for tax years 2010, 2011 and 2012 that were applied to Plaintiffs’ 2009 tax-to-pay that is no longer due.

Dated this ____ day of August 2013.

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 Decision was signed by Presiding Magistrate Jill A. Tanner on August 13, 2013. The Court filed and entered this Decision on August 13, 2013.