

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JEFFREY M. DUNKIN,)	
)	
Plaintiff,)	
)	No. 021016F
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on its own motion to dismiss this case for want of prosecution.

A case management conference was scheduled on September 30, 2002, to consider Plaintiff's appeal. On July 29, 2002, notice of the case management conference was sent to Plaintiff at 507 N. Arthur St. #C202, Kennewick, Washington 99336, which was the address Plaintiff provided to the court. The notice was not returned as undeliverable. Plaintiff did not appear at the case management conference, and there was no explanation for Plaintiff's failure to appear.

On September 30, 2002, the court sent Plaintiff a letter, which explained the importance of diligently pursuing an appeal. This letter was returned as undeliverable on October 11, 2002. The letter advised that if Plaintiff did not provide a written explanation by October 10, 2002, for his failure to appear, the court would dismiss the appeal. As of this date, Plaintiff has not contacted the court. Under such circumstances, the court finds the appeal must be dismissed for want of prosecution.

This matter is also before the court on Defendant's motion, made in its Answer, for an award of damages pursuant to ORS 305.437.¹ That statute reads:

¹ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.

“(1) Whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceeding is *frivolous or groundless*, damages in an amount not to exceed \$5,000 shall be awarded * * *.

“(2) As used in this section, a taxpayer's position is ‘frivolous’ if there was no objectively reasonable basis for asserting the position.”

ORS 305.437 (Emphasis added.)

Even though he had income of \$42,005, Plaintiff did not file a personal income tax return for 2000 because of his belief that he "was not involved in any taxable activities during 2000." (Ptf's Compl at 2.) Plaintiff presented no evidence that the \$42,005 was not taxable income. Plaintiff's beliefs may be sincerely held, if misguided. This court has previously held that “[o]rdinary citizens without legal training are free to interpret the laws any way they choose. However, if their interpretations are contrary to those of the legislature and the Supreme Court, they do so at their peril.” *Harvey v. Dept. of Rev.*, 11 OTR 407, 409 (1990). In a case affirming the dismissal of a taxpayer’s petition as frivolous and upholding the imposition of a penalty, the Fifth Circuit Court of Appeals stated:

“An appeal that lacks merit is not always - or often - frivolous. However, we are not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority. * * * The government should not have been put to the trouble of responding to such spurious arguments, nor this court to the trouble of ‘adjudicating’ this meritless appeal.”

Crain v. Com., 737 F2d 1417, 84-2 USTC ¶ 9721 (1984).

As this court stated in *Mansueti v. Dept. of Rev.*, OTC-MD No. 991425F (Mar 14, 2002), 2000 WL 321415:

"The language of ORS 305.437 is mandatory. In order to determine the appropriate level of damages, the court will evaluate a number of factors. Some of the factors include: the specific arguments

presented to the court, whether plaintiff made threats against the government or its employees, whether any amount was withheld from wages, the number of years at issue, whether returns were filed, whether plaintiff sent defendant a 'demand' letter, how many levels of authority plaintiff has appealed to and whether defendant is represented by an attorney. This list is not meant to be exhaustive nor is each argument weighted equally. The first two factors address whether it is appropriate to impose damages. The balance goes to the level of damages."

Taking all the factors into consideration and the time that both Defendant and the court spent on Plaintiff's claim, the court finds that the appropriate level of damages under ORS 305.437 is \$500. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

IT IS FURTHER DECIDED that pursuant to ORS 305.437, Defendant shall be awarded a money judgment for damages against Plaintiff in the amount of \$500.

Dated this ____ day of November, 2002.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. 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 MAGISTRATE SALLY L. KIMSEY ON NOVEMBER 26, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 26, 2002.