

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ROBERT R. BALLIET JR.)	
and VICKIE T. BALLIET,)	
)	
Plaintiffs,)	TC-MD 050917C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on the court’s own motion to dismiss Plaintiffs’ Complaint based on the pleadings and the information elicited from the parties during the January 19, 2006, case management conference. Importantly, Plaintiffs acknowledged during the case management conference that they do not qualify for the Internal Revenue Code (IRC) section 217 moving expense deduction claimed on their Oregon income tax return for tax year 2002.

Plaintiffs moved from Oregon to Pennsylvania on November 20, 2002, in search of employment, and ultimately obtained a job in Indiana that began on May 19, 2003. Plaintiffs did not receive Defendant’s written requests for information because of the second move, but did receive Defendant’s Notice of Assessment issued September 27, 2005. Plaintiffs timely appealed and, during the course of their appeal, learned that there were several legal bars to their entitlement to the claimed expenses.

Plaintiffs failed to satisfy the federal requirement that they work at least 39 weeks during the 12-month period immediately following their arrival in the new location. *See* IRC § 217(c)(2) (A) (2000). Additionally, Oregon’s administrative rule requires that the “moving expenses must be connected with employment within Oregon.” OAR 150-316.127(3)(a) (2001).

Plaintiffs were unaware of either of those requirements. Because the parties are in agreement that Plaintiffs do not qualify for the deduction for moving expenses for 2002, there is no longer an issue for the court to resolve and the appeal must be dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' Complaint is dismissed.

Dated this ____ day of January 2006.

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 document was signed by Magistrate Dan Robinson January 30, 2006. The Court filed and entered this document January 30, 2006.