

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JIM MARCELLA,)	
)	
Plaintiff,)	TC-MD 080173K
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

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

Plaintiff filed a Complaint, stating that he was entitled to “proper refund of the [2006] Oregon kicker.” On March 24, 2008, Defendant’s Answer stated that Plaintiff did receive his 2006 Oregon kicker refund and Defendant’s letter advising to the contrary was erroneous. Defendant submitted a copy of kicker refund check issued to Plaintiff and cashed by Plaintiff. (Def’s Ex A.) Court staff attempted to discuss the matter with Plaintiff, but was unable to reach him by telephone.

On April 14, 2008, the court wrote to Plaintiff, asking him to state in writing if he had an issue to appeal and whether he wanted to continue his appeal. The letter, which was sent to 1426¹ NE 160th Avenue, Portland, OR 97230, advised Plaintiff that failing to respond to the court by April 24, 2008, would result in dismissal. As of this date, Plaintiff has not responded to the court’s request, and the April 14, 2008, letter has not been returned as undeliverable. Because Plaintiff received a 2006 Oregon kicker refund and Defendant’s letter was issued in error, the court concludes the appeal should be dismissed. Now, therefore,

¹ Plaintiff’s correct address is 1428 NE 160th Avenue. As of this date, the court’s letter has not been returned as undeliverable.

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

Dated this _____ day of April 2008.

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 Magistrate Jill A. Tanner on April 30, 2008. The Court filed and entered this document on April 30, 2008..