

IN THE OREGON TAX COURT
REGULAR DIVISION
Personal Income Tax

GERY G. ELLIBEE,)
)
 Plaintiff,) **TC 4631**
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 State of Oregon,)
)
 Defendant.)

DEPARTMENT OF REVENUE,)
 State of Oregon,)
) **TC 4630**
 Plaintiff,)
) **ORDER GRANTING PLAINTIFF'S MOTION**
 v.) **FOR SUMMARY JUDGMENT**
)
 GERY G. ELLIBEE,)
)
 Defendant.)

This matter is before the court on a motion filed by the Department of Revenue (the department), Plaintiff in TC 4630, requesting summary judgment on its claim for prevailing party attorney fees. An Objection and Response has been filed by Defendant (taxpayer), in TC 4630.

In its prior order, this court granted the motion for

summary judgment filed by the department in the consolidated cases. By its order, the court intended the award of attorney fees provided for in that order to encompass fees expended by the department both in proceedings before the Magistrate Division and the Regular Division of this court.

In order to clarify that intent, the court now grants the motion of the department, as Plaintiff in TC 4630, for attorney fees incurred by it in connection with proceedings before the Magistrate Division in TC 4631.

The court notes that taxpayer in this matter has filed no specific written objection as to any particular amount claimed by the department for attorney fees and has filed no memorandum or other statement outlining why the fees claimed by the department may not be awarded under Oregon law. Accordingly, the Judgment to be issued by this court will include an award of attorney fees without a hearing on objections as provided by TCR 68.

The department has requested an award of \$6,208 as reasonable attorney fees. That is computed on the basis of \$97 per hour. The department seeks an award for 64 such hours, although its records indicate that more than 114 hours of attorney time were actually spent on the proceeding. The court finds the amount of time and rate per hour as claimed by

the

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department to be reasonable. The department is awarded attorney fees in the amount of \$6,208. Now, therefore,

IT IS ORDERED that Plaintiff's motion for summary judgment is granted, and

IT IS FURTHER ORDERED that Plaintiff is awarded attorney fees in the amount of \$6,208.

Dated this ____ day of November 2003.

Henry C. Breithaupt
Judge

**THIS ORDER WAS SIGNED BY JUDGE BREITHAUPT NOVEMBER 12, 2003,
AND FILE STAMPED NOVEMBER 12, 2003. IT IS A PUBLISHED ORDER.**