

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

STEVE DAVISON,	)	
	)	
Plaintiff,	)	TC-MD 120738C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s Notice of Tax Assessment, dated April 23, 2012, for tax year 2008, and Defendant’s Notice of Deficiency, dated April 23, 2012, for tax year 2009.

In his Complaint, filed August 29, 2012, Plaintiff stated that:

“Defendant (Department of Revenue) is in error because: The department has adjusted ‘Oregon Income Tax Withheld’ amounts to \$0 (exhibits 1 and 2) for tax years 2008 and 2009. The department clearly has information to the contrary of this, given that all payments made on behalf of a taxpayer by his or her employer are accompanied by the taxpayer’s identification, and must be duly credited to the taxpayer’s account. As proof that the original ‘Oregon Income Tax Withheld’ values are correct as filed, please refer to Exhibits 3 and 4 (forms W-2.)”

(Ptf’s Compl at 1.) Plaintiff’s Exhibits 3 and 4 were each described as a “W-2 Wage and Tax Statement” for tax years 2008 and 2009, respectively, “copy as provided by Intel Corporation.”

*(Id.)*

In response to Plaintiff’s Complaint, Defendant filed its Answer on October 4, 2012, stating the same response for the 2008 and 2009 tax year:

“Plaintiff filed a 2008 [and a 2009] Oregon return, received 11/23/2011. A Request for Information letter was mailed 12/27/2011 requesting a copy of Plaintiff’s W-2 because the one attached to the return was illegible. The return was adjusted to disallow the withholding because the requested W-2 was not received and the department did not have a way to verify the withholding.

///

“Based on the W-2 information provided with the complaint, Defendant agrees Plaintiff is entitled to \$3,822 in withholding [for tax year 2008 and \$3,520 in withholding for tax year 2009].”

(Def’s Ans at 1.)

Because Defendant agrees to provide the relief requested in Plaintiff’s Complaint, namely, the credit for income tax withheld claimed on each of Plaintiff’s filed returns for the tax years appealed, a decision can be issued.

In his Complaint, Plaintiff requests relief from interest, penalties, and “Distrain Warrants or liens issued against Plaintiff for tax years 2008 and 2009.” (Ptf’s Compl at 2.) Because the parties agree that, based on Plaintiff’s self-assessed Oregon income tax liability, stated on filed Oregon individual income tax returns, Plaintiff has no tax-to-pay for tax years 2008 and 2009, interest and penalties are not applicable to either tax year and Defendant cannot place a lien or issue a distraint warrant.

In his Complaint, Plaintiff requests that Defendant “refrain from any further collection activities against Plaintiff for tax year 2010” until September 15, 2012. (*Id.*) Plaintiff presented no evidence showing that Defendant failed to fulfill that request.

In his Complaint, Plaintiff requests the following relief:

“In light of the frivolous nature of the department’s actions against Plaintiff in these matters, Plaintiff requests that defendant compensate [P]laintiff for actual and reasonable court and legal fees that the Plaintiff incurs as needed to ensure fair payment of his share of taxes.”

(*Id.*) Plaintiff provided no evidence to support his claim that Defendant’s actions were “frivolous” as defined by Oregon law. Defendant stated in its Answer that it requested Plaintiff to provide legible copies of his W-2 wage statement information. (Def’s Ans at 1.) Plaintiff did not respond to Defendant’s request. There is no evidence that Defendant’s actions were contrary

///

to Oregon law that requires a taxpayer to substantiate claimed deductions and credits. *See* ORS 314.425(1),<sup>1</sup> stating that taxpayers must be ready to produce “any books, papers, records or memoranda bearing upon [any] matter required to be included in the return[.]” Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff is entitled to a credit for Oregon income tax withheld in the amounts of \$3,822 for tax year 2008 and \$3,520 for tax year 2009.

IT IS FURTHER DECIDED that based on Plaintiff’s information attached to his Complaint, Plaintiff has no tax-to-pay for tax years 2008 and 2009, and interest, penalty, liens or distraint warrants are not applicable for tax years 2008 and 2009.

IT IS FURTHER DECIDED that Plaintiff presented no evidence showing that Defendant failed to refrain from any collection activities against Plaintiff for tax year 2010.

IT IS FURTHER DECIDED that Plaintiff’s claim that Defendant’s actions were frivolous is denied.

Dated this \_\_\_\_ day of October 2012.

---

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 October 9, 2012. The Court filed and entered this Decision on October 9, 2012.***

---

<sup>1</sup> Reference to the Oregon Revised Statutes (ORS) is to 2011.