

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Income Tax

Small Claims

DENNIS L. AND KIMBERLY A. COURTRIGHT,)	
)	
)	
Plaintiffs,)	No. 000080B
)	
v.)	
)	
DEPARTMENT OF REVENUE, STATE OF OREGON,)	
)	
)	
Defendant.)	DECISION AND JUDGMENT

A trial was held on May 2, 2000. Dennis Courtright participated on plaintiffs' behalf. Diana Vernezobre represented the defendant.

At issue are taxes assessed to Oregon residents for the payment of profit-sharing funds earned while living in Washington. Defendant has assessed a tax of \$667 for the 1998 tax year.

STATEMENT OF FACTS

Dennis Courtright was earlier employed in a management position at the Les Schwab Tire Center in Elma, Washington. He signed the first "profit share bonus agreement" on October 2, 1991. A second agreement was signed on July 31, 1995.

According to the record, managers have their profits go into a trust account that are subject to certain restrictions. According to the agreement at Section 10(C), if a manger leaves, he must wait one year before receiving any of the funds. Plaintiff was not able to withdraw the funds for personal use before that time; there was no

real or constructive receipt.

In April of 1997, Mr. Courtright decided to vacate his management position; the manager contract terminated at that time. He later relocated to a Les Schwab Tire Center in Salem, Oregon. He now works there in a nonmanagerial capacity.

On their 1998 Oregon tax return, plaintiffs subtracted \$10,385, which corresponded to the first of the five anticipated payments received for profits earned during the Washington years.

Defendant claims the distribution is subject to Oregon taxation.

COURT'S ANALYSIS

Oregon residents are taxed on all income received, whatever the source, unless specifically exempted. ORS 316.048. The Washington distribution is not specifically exempted by Oregon statutes. Therefore, it is properly taxable by defendant. The earning of the funds in Washington is not determinative; the critical factor is the later, actual distribution to an Oregon resident.

In *Peterson v. Dept. of Rev.*, (unpublished; OTC No. 2310; 1985), the Oregon Tax Court determined that distributions of compensation earned while a resident of another state were taxable by Oregon. The court held that because the compensation had not been previously subject to any personal income tax, it became subject to federal and state tax at the time of withdrawal.

A somewhat similar case was presented in *Simpson v. Dept. of Rev.*, 12 OTR 455 (1993), *aff'd per curiam*, 318 Or 579, 870 P2d 824 (1994) (1994). There, the former resident of Alaska presented constitutional arguments. The court rejected all those claims and upheld Oregon's taxation of Alaska retirement benefits. The court, at page

459, stated:

"[b]y moving to Oregon, plaintiffs subjected themselves to Oregon's sovereign powers and entitled themselves to participate in its political processes. In doing so, they placed themselves on equal footing with the other citizens of Oregon."

The tax assessment in this case is correct. The case presented here is similar to others decided by the Magistrate Division. See, e.g., *Kissner v. Dept. of Rev.*, OTR-MD 991097B.

CONCLUSION

IT IS HEREBY ADJUDGED AND DECREED that the appeal is denied.

Dated this ____ day of May, 2000.

JEFF MATTSON
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON ON
MAY 24, 2000. THE COURT FILED THIS DOCUMENT ON MAY 24, 2000.**