

IN THE MAGISTRATE DIVISION

OF THE OREGON TAX COURT

Small Claims

Income Tax

GARY D. AND DEBORAH J. ROPER,)	
)	
Plaintiffs,)	
)	No. 000173D
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT OF DISMISSAL

A case management conference was held in the above-entitled matter on Tuesday, June 13, 2000. Mr. Gary Roper appeared on behalf of plaintiffs. Ms. Anna Porter, Auditor, appeared on behalf of defendant.

During the conference, the parties discussed plaintiffs' appeal. Mr. Roper stated that he feels his accountant incorrectly advised him when he failed to mention that Mr. Roper would be subject to Oregon state income tax on the sale of his business in 1998.

Ms. Porter stated that on March 28, 2000, she interviewed Mr. Roper. Ms. Porter stated that the purpose of the interview was to understand the facts of Mr. Roper's appeal and review the exceptions to the Oregon underpayment statute in relation to Mr. Roper's situation. In response to Ms. Porter's questions about residency, Mr. Roper stated that he started a new job in Oregon on the same date as the sale transaction closed. Mr. Roper was living in a motel in Oregon at the time. Ms. Porter explained that Mr. Roper had established his domicile in Oregon. Ms. Porter stated that in her opinion regrettably none of the exceptions applied to Mr. Roper.

The court advised Mr. Roper that it must follow the law as promulgated by the legislature. The legislature has delegated discretionary authority to the agency, the Oregon Department of Revenue. The court told Mr. Roper that if he wanted a trial on the merits of his appeal he would need to present facts that would show that the underpayment penalty was improperly assessed. Mr. Roper stated that based on the discussion he did not think he could make a persuasive legal argument. The court discussed his concern that he received incorrect advice from his accountant. Mr. Roper stated that he would not continue his appeal.

Ms. Porter told Mr. Roper that he could work with the Collection Division of the Oregon Department of Revenue on a payment plan.

The court advised Mr. Roper that it would provide a written Decision and Judgment of Dismissal. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that plaintiffs' appeal is dismissed.

Dated this ____ day of June, 2000.

JILL A. TANNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON JUNE 15, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 15, 2000.