

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Income Tax

DONALD J. SMITH,)
)
 Plaintiff,) No. 010098F
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiff appealed from a Notice of Tax Assessment issued by defendant. This appeal involves plaintiff's personal income tax return for tax year 1996. A case management conference was held on June 4, 2001. With the agreement of the parties, the court agreed to decide the matter. Donald Smith appeared for himself. Kim Carey appeared for defendant. The sole issue to be determined is whether distributions from an Individual Retirement Account (IRA) are subject to Oregon income tax when the contributions to the IRA were made with earnings earned in another state.

STATEMENT OF FACTS

Prior to the spring of 1995, plaintiff lived and worked in Nevada. While living in Nevada, he participated in his employer's 401k plan. Plaintiff's employer closed its business. As a result, in late 1994 or early 1995, plaintiff rolled over his 401k account into an IRA. A few months later, plaintiff moved to Oregon. Plaintiff looked for other employment but was unsuccessful in his search. Consequently, plaintiff took a distribution from his IRA in 1996.

Plaintiff initially did not include the distribution as gross income on his 1996 federal or state income tax returns. The Internal Revenue Service (IRS) audited plaintiff's 1996 return. As a result of the audit, he owed approximately \$2,500 in additional income taxes. The IRS notified the defendant of the results of the federal audit. The defendant determined that plaintiff also owed an additional amount to Oregon. Plaintiff points out that he was a Nevada resident when he made the contributions to the 401k **and** when he rolled over the 401k to an IRA. Therefore, he argues Oregon should not be able to tax him for funds earned when he was a resident of Nevada.

The defendant points out that while the contributions to the 401k may have been earned while plaintiff was a resident of Nevada, plaintiff was a resident of Oregon when he took the distribution. Defendant also points out that plaintiff could have taken the distribution at the time he rolled over the 401k to the IRA. If plaintiff had taken the distribution from his 401k instead of rolling it over to a IRA, the distribution would have escaped state taxation since Nevada does not have a state income tax.

COURT'S ANALYSIS

This case is nearly identical to the Regular Division case of *Leaf v. Dept. of Rev.*, 15 OTR 53 (1999). While a resident of the state of Washington, Leaf made contributions to his IRA. He deducted the contributions on his federal income tax return. Washington has no state income tax so Leaf did not make a corresponding deduction on a state income tax return. After he moved to Oregon, Leaf began taking distributions from his IRA. He declared the income on his federal income tax return but excluded it on his Oregon return. The Department of Revenue treated the distributions as income and assessed additional taxes. *Id.* at 54.

The *Leaf* court interpreted ORS 316.159. That statute allows a subtraction for a distribution of an IRA from taxable income if certain conditions are met. ORS 316.159. Those conditions include that the taxpayer was a nonresident of Oregon when the contribution was made, no deductions were previously allowed for the contributions and no tax benefits had been allowed for the distributions. ORS 316.159(1). The court found that a taxpayer could not qualify for the benefit of ORS 316.159 unless his or her IRA contribution had been taxed by another state. *Leaf*, 15 OTR at 56. Because the state of Washington imposed no personal income tax, *Leaf* could not qualify for the subtraction. *Id.*

Also relevant to the analysis is ORS 316.159's associated administrative rule. OAR 150-316.159 (1)(c)(B) provides that certain specified contributions do not qualify for subtraction from income including "[c]ontributions made during a period when the taxpayer was a resident of a state that does not impose an income tax[.]"

CONCLUSION

The court finds the Regular Division's holding in *Leaf* controlling. Plaintiff is required to pay Oregon income tax on distributions from his IRA when those distributions were made while he was a resident of Oregon and the contributions to the IRA were made when plaintiff was a resident of Nevada, a state that does not impose a personal income tax. Now, therefore;

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IT IS HEREBY ADJUDGED AND DECREED that plaintiff's appeal is denied.

Dated this _____ day of June, 2001.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON JUNE 18, 2001. THE COURT FILED THIS DOCUMENT ON JUNE 18, 2001.