

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Income Tax

DONNA FAY SHERER AND VINCENT	)	
RAYMOND SHERER III,	)	
	)	
Plaintiffs,	)	No. 010125C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appealed the adjustments made by defendant to their 1999 part-year tax return. The telephone case management hearing scheduled for April 17, 2001, was converted to a trial. Donna Sherer appeared for plaintiffs. Michael Hamilton appeared for the defendant. For use of reference the parties will be referred to as plaintiffs and the department. The record was left open one week after the trial to allow plaintiffs to submit additional information from the tax instruction booklet.

**STATEMENT OF FACTS**

Plaintiffs lived in Oregon until roughly May 1, 1999. They then moved to Arizona for employment reasons. With the deadline approaching to submit the Oregon return in calendar year 2000 plaintiffs completed the only form they had for Oregon - an Oregon full-year return. The return indicated they were only in Oregon for part of the tax year. The department subsequently sent plaintiffs a part-year return to complete. Plaintiffs completed that return and submitted it to the department. The return is a 2-page form with a federal column and an Oregon column. The instruction booklet included with the form explains which information goes into the two columns. Plaintiffs only put Oregon information on the

return. They left blank the federal column on page 1 of the form. On page 2, line 39a, plaintiffs put Oregon income information in both the federal and Oregon columns. Plaintiffs insist they reported only Oregon information and that Oregon is trying to tax them on non-Oregon source income.

### **COURT'S ANALYSIS**

Plaintiffs believe that the Oregon tax should be determined from the tax tables based solely on the income earned in Oregon, as adjusted by allowable deductions and modifications. However, that belief does not comport with the law.

Oregon imposes its personal income tax upon the entire taxable income of every part-year resident of the state. ORS 316.037(2).<sup>1</sup> “The amount of the tax shall be computed \* \* \* as if the part-year resident were a full-year resident and shall be multiplied by the ratio provided under ORS 316.117 to determine the tax on income derived from sources within this state.” *Id.* The ratio “is the federal adjusted gross income of the taxpayer from Oregon sources divided by the taxpayer’s federal adjusted gross income from all sources.” ORS 316.117(1).

Guided by those provisions the department reduced plaintiffs’ adjusted gross income of \$64,282 (Federal form 1040, Line 34) by \$6,000 (\$3,000 federal income tax allowed and standard deduction of \$3,000) to arrive at an Oregon taxable income of \$58,282. (Def’s Ex C-2.) The tax was taken from the tables based on that income, but then reduced to 39.4% based on the percentage of Oregon income to federal income, as

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<sup>1</sup>The relevant portion of the statute reads: “A tax is imposed for each taxable year upon the entire taxable income of every part-year resident of this state.” ORS 316.037(2).

provided in ORS 316.117.<sup>2</sup>

The court accepts the department's method as the correct approach to determining the plaintiffs' state income tax. Plaintiffs' method uses Oregon source income only, which is contrary to ORS 316.037 and overlooks the tax calculation provided in ORS 316.117. Moreover, plaintiffs' method allows the full standard (non-itemized) and federal income tax deductions in arriving at taxable income whereas the intent of the law is to allow only a percentage based on the amount of income earned in this state as compared to total income. Plaintiffs also erroneously subtracted from the tax due the full amount of the two-person exemption credit.

### CONCLUSION

Plaintiffs incorrectly filled out their 1999 part-year resident return and as a result miscalculated the tax they owe. The department reworked the return and arrived at the correct tax due in accordance with applicable law, as explained above.

IT IS THE DECISION OF THIS COURT that plaintiffs' requested relief is denied and the department's Notice of Refund Allocation is upheld.

Dated this \_\_\_\_\_ day of May, 2001.

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DAN ROBINSON  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON MAY 18,**

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<sup>2</sup>25,338 ÷ 64,282 = .3941 = 39.4%.

**2001. THE COURT FILED THIS DOCUMENT ON MAY 18, 2001.**