

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ALBERT L. ZEMKE,	)	
	)	
Plaintiff,	)	No. 010584D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>CORRECTED DECISION</b>

This matter is before the court on Plaintiff's Motion to Correct Omissions (Motion) in the court's written Decision filed on February 27, 2002.

Plaintiff's Motion, filed April 24, 2002, stated that the court erroneously omitted from its Decision a statement that a portion of the net operating loss (NOL) carryforward arose from losses sustained by Plaintiff after Plaintiff became a resident of Oregon. (See TCR-MD 17 A, requiring the requesting party to file a motion seeking relief from the court's Decision.)

In a telephone conference held on April 24, 2002, the parties informed the court that they agreed Plaintiff is entitled to claim in tax year 1997 that portion of the \$509,040 NOL carryforward that was incurred after December 2, 1993, when Plaintiff was a resident of Oregon. As of April 24, 2002, the parties had not computed the allowable NOL carryforward. The parties plan to use the next 60 days to complete their computation so that the court's Judgment can include the stipulated amount of the allowable NOL carryforward.

In its Decision, the court denied Plaintiff's Cross Motion for Summary Judgment stating that Plaintiff's NOL carryforward arose from a NOL while Plaintiff was a non-resident of Oregon and concluding that the NOL was attributable to California sources. The court omitted any reference to a portion of the NOL carryforward arising after Plaintiff

was a resident of Oregon. While Plaintiff's Motion does not ask the court to reconsider its Decision with respect to the NOL which arose while Plaintiff was a non-resident of Oregon, Plaintiff asks that the court affirm the parties stipulated agreement that Plaintiff is entitled to claim in tax year 1997 that portion of Plaintiff's NOL carryforward arising after Plaintiff was an Oregon resident.

After consideration, the court finds that its original Decision shall be corrected as follows. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is denied for that portion of Plaintiff's \$509,040 NOL carryforward arising when Plaintiff was a non-resident of Oregon and the NOL was attributable to California sources.

IT IS FURTHER DECIDED that the parties agree Plaintiff is entitled to claim in tax year 1997 that portion of the \$509,040 NOL carryforward, which is yet to be determined, that was incurred after December 2, 1993, when Plaintiff was an Oregon resident.

IT IS FURTHER DECIDED that Defendant's Cross Motion for Summary Judgment is granted in conformity with the court's granting of Plaintiff's Motion to Correct Omissions as set forth above.

Dated this \_\_\_\_\_ day of April, 2002.

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JILL A. TANNER  
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 CORRECTED DECISION OR THIS CORRECTED DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON APRIL 29, 2002. THE COURT FILED THIS DOCUMENT ON APRIL 29, 2002.**