

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

BARNEY E. WHEELER,)
)
 Plaintiff,) TC-MD 011241A
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION**

The issue in this appeal is whether \$82,370 that Plaintiff, a nonresident, received from Fort James Corporation in 2000 was severance pay, taxable to Oregon. On July 12, 2002, this court entered a Journal Entry discussing this case. That Journal Entry, with its Statement of Facts and Analysis, is incorporated by reference in this Decision.

STATEMENT OF FACTS

Following the issuance of the Journal Entry, Plaintiff provided materials describing the circumstances surrounding the disputed payment from his former employer.

The first was a letter to the court from Michael G. Woods, who was Plaintiff's immediate supervisor during his last years of employment with Fort James Corporation. This letter described the payment as a salary continuance based on years of service, done at the same schedule and same rate as when Plaintiff was employed. The letter specifically stated the payment was not severance pay, as Plaintiff was not involuntarily terminated.

The second piece of evidence was the agreement that Plaintiff signed to obtain the payment. This agreement specifically recited that Plaintiff wished to resign from employment with Fort James, and that employees who resign are not entitled to salary

continuation benefits. However, the agreement noted, Fort James and Plaintiff wanted to "settle, resolve and release any and all existing or potential claims, controversies, differences, disputes or disagreements, known or unknown, that you [Mr. Wheeler] may have with Fort James." In exchange for Mr. Wheeler signing the release, Fort James agreed to provide Plaintiff's benefits, specifically those at issue in this appeal, to which he would not otherwise be entitled to receive upon separation.

ANALYSIS

The most persuasive evidence in this appeal is the release. It established that Plaintiff, a nonresident, was not being paid the monies in 2000 as compensation for personal services rendered in the state of Oregon. Instead, he received the payment for agreeing not to sue. At the time of the agreement, he was not an Oregon resident. Oregon has no nexus to tax under these circumstances. As discussed in the Journal Entry, the case establishing the precedent for this decision, and more completely explaining the reasoning of the court, is *Ballard v. Dept. of Rev*, 13 OTR 201 (1994).

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is granted.

Dated this _____ day of May, 2003.

SCOT A. SIDERAS
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 SCOT A. SIDERAS ON MAY 21, 2003. THE COURT FILED THIS DOCUMENT ON MAY 21, 2003.