

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

ERIC RULAND,)	
)	
Plaintiff,)	No. 020171E
)	
v.)	DECISION DENYING
)	PLAINTIFF'S MOTION FOR
DEPARTMENT OF REVENUE,)	SUMMARY JUDGMENT AND
STATE OF OREGON,)	GRANTING DEFENDANT'S
)	MOTION FOR SUMMARY
Defendant.)	JUDGMENT

This matter is before the court on cross motions for summary judgment.¹ Plaintiff appeals Defendant's 2000 Notice of Determination and Assessment dated February 21, 2002. Plaintiff requests that the court cancel the assessment and grant him a refund of \$82.97, which was withheld from his wages during the 2000 tax year. Defendant requests that the court uphold the assessment and deny Plaintiff's refund request. Defendant further requests damages under ORS 305.437.² For ease of reference herein, the parties are referred to as "taxpayer" and "the department."

I. STATEMENT OF FACTS

During 2000, taxpayer worked for the Portland Bottling Company and had \$82.97 withheld from his wages. Taxpayer also received unemployment compensation during 2000. Taxpayer did not file a 2000 Oregon income tax return in April 2001. Instead, according to taxpayer, he filed a "Wage Withholding Return," which he maintains qualifies as a valid return. The "Wage Withholding Return" is a typed document containing taxpayer's name, address, and social security number. It requests a refund

¹ During the case management conference held August 13, 2002, the parties agreed the issues presented by Plaintiff were legal issues. As a result, they agreed the best method for resolving the appeal was through cross motions for summary judgment.

² All references to the Oregon Revised Statutes (ORS) are to 2001.

of the \$82.97 withheld from his wages.

Determining taxpayer needed to file a return, the department sent taxpayer a request to file a return on November 21, 2001. According to taxpayer, he resubmitted his statement requesting his withholdings be refunded. Having not received a Form 40 return, the department sent taxpayer a demand to file a 2000 return on December 31, 2001. Taxpayer again submitted his statement. Determining taxpayer owed a tax for 2001, the department sent taxpayer a Notice of Determination and Assessment on February 21, 2002. The notice advised taxpayer the department had assessed a tax of \$358, plus penalties and interest, for the year 2000.

Taxpayer claims he does not owe a tax to the State of Oregon because paying taxes is voluntary and he has chosen not to pay them. He further claims that his wages are not income and, therefore, are not subject to tax. As a result, he seeks cancellation of the assessment and refund of the \$82.97 in taxes withheld by his employer Portland Bottling Company. The department requests that the court uphold its assessment and award it damages under ORS 305.437, claiming taxpayer has filed a frivolous and groundless appeal.

II. COURT'S ANALYSIS

A. *Voluntary System*

Taxpayer first claims he is not liable for an income tax because the system of taxation is based on a voluntary system rather than a mandatory one. As a result, he believes he should not have to pay a tax unless he chooses to pay one. Taxpayer cites *Flora v. United States*, 362 US 145, 80 S Ct 630, 4 L Ed 2d 623 (1960) as support for his claim. Taxpayer quotes the provision from the case that states, "Our system of taxation is based upon voluntary assessment and payment, not distraint [FN42]." *Id.*,

362 US at 176. The referenced footnote, however, refers the reader to the case of *Helvering v. Mitchell*, 303 US 391, 58 S Ct 630, 633, 82 L Ed 917 (1938). In *Helvering*, the Court noted that the word “voluntary” refers to the voluntary nature of the disclosed information by an individual to the Internal Revenue Service (IRS) to aid the IRS in determining the amount of taxes owed. The Supreme Court stated:

“In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade tax, Congress imposes sanctions.”

Id., 303 US at 399. Even though the disclosed information is voluntary, the actual disclosure itself *is required*. Failure to disclose the information results in a penalty.

Taxpayer’s argument is not original and has been raised repeatedly by other individuals. The courts have consistently rejected this “voluntary” argument as excusing a person from paying an income tax. *See, e.g., McLaughlin v. Commissioner*, 832 F2d 986, 987 (7th Cir 1987) (“The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation but * * * has been repeatedly rejected by the courts.”) *See also Wilcox v. Commissioner*, 848 F2d 1007, 1008 (9th Cir 1998) (“paying taxes is not voluntary”).

Therefore, although the income tax system relies on individuals to voluntarily file their returns each year, it does not mean that failure to file is without consequence. The law imposes a liability and the liability is not voluntary.

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B. *Wages as Income*

Taxpayer also asserts that wages are not income and, as a result, his wages should not be subject to tax. As support for his claim, taxpayer cites *Eisner v.*

Macomber, 252 US 189, 40 S Ct 189, 64 L Ed 521 (1920). *Eisner*, however, addresses the issue of *stock dividends, not income*. In *Eisner*, the Court held that, because a stock dividend does not increase the value of the stockholder's holdings, the stock dividend is not income. See *id.*, 252 US at 210-11. However, the Court also noted that, if the stockholder sells his stock and the sale results in a profit for the stockholder, that profit, like income, is taxable. *Id.* at 212.

Similar to the voluntary taxes argument above, ample case history supports the conclusion that wages are income and subject to tax. See, e.g., *United States v. Gerads*, 999 F2d 1255, 1256 (8th Cir 1993) ("Likewise, we have held that wages are within the definition of income under the Internal Revenue Code and the Sixteenth Amendment, and are subject to taxation.") See also *Wilcox v. Commissioner*, 848 F2d 1007, 1008 (1998) ("wages are income").

In *Clark v. Dept. of Rev.*, 15 OTR 197, *aff'd*, 332 Or 236, 26 P3d 821 (2001), the Oregon Tax Court addressed a taxpayer's claim that wages are not income. In response, the court stated:

"Taxpayer's error leads him to assert that 'his personal salary and compensation is not technically included within the federal definition of income adopted by reference into Oregon law * * * .' That is a wholly irrational view. It is akin to saying that the earth is flat. It is a view that is so patently distorted and removed from reality that the great majority of society look upon a person making such a statement with suspicion."

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Id. at 200. See also *Combs v. Dept. of Rev.*, 15 OTR 60, 61 (1999) ("Taxpayer's position is unrealistic and unformed. Wages are clearly taxable * * * .")³

³ Taxpayer claims that court decisions hold no legal standard or precedent. However, the Tax Court has responded and rejected similar claims. In *Clark*, the court noted:

C. Damages for Frivolous Appeal

ORS 305.437 requires the court to award the department damages whenever the court concludes a taxpayer has raised a claim that is frivolous or groundless. The statute states:

“(1) Whenever it appears to the Oregon Tax Court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer’s position in such proceeding is frivolous or groundless, damages in an amount not to exceed \$5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment. Damages so awarded shall be paid within 10 days after the judgment becomes final. If the damages remain unpaid, the department may collect the amount awarded in the same manner as income taxes are collected under ORS 314.430.

“(2) As used in this section, a taxpayer’s position is ‘frivolous’ if there was no objectively reasonable basis for asserting the position.”

ORS 305.437.

The department requests that the court award it damages under ORS 305.437 claiming taxpayer’s appeal is frivolous because similar arguments have been repeatedly rejected by the courts. Taxpayer maintains his arguments are not frivolous
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and further maintains that he made the arguments in response to the court’s directive to file a motion for summary judgment.

During the case management conference held August 13, 2002, the court advised taxpayer that his arguments ran contrary to established case law and cautioned

“Taxpayer argues that ‘[i]nferior federal and state courts make up their own definitions of income with intent to maximize tax revenue * * *.’ Taxpayer asserts that the courts cannot ‘offer vocabulary lessons to the Oregon Legislative Assembly.’ Taxpayer is wrong in both statements. Under our system, the authority to construe the law is delegated to the judicial branch. See *Marbury v. Madison*, 5 US 137, 2 L Ed 60, 1 Cranch 137 (US Dist Col) (1803). Consequently no other individual, group, or institution is authorized to declare that the courts are wrong.”

Clark, 15 OTR at 200.

that, if he continued with his arguments, the court could impose a penalty.

Notwithstanding the court's caution, taxpayer raised his arguments in his Motion for Summary Judgment. Taxpayer claims this court ordered him to make the arguments in his motion and, therefore, they cannot be considered frivolous. The court, however, only requested that he file a motion putting into writing the reasons why he believed he was entitled to relief. The court certainly did not mandate that taxpayer make frivolous arguments in his motion.

As noted above, there is substantial case law directly refuting taxpayer's arguments. His claims are neither novel nor legitimate. The Tax Court has awarded damages in previous cases where similar arguments were raised. It may be that taxpayer is sincere in his belief that he does not owe an income tax. However, the court has held that sincerity is not an excuse for raising a frivolous argument. In *Harvey v. Dept. of Rev.*, 11 OTR 407, 408-09 (1990), the Tax Court noted:

"Sincerity * * * will not absolve plaintiff from imposition of a penalty * * * Ordinary citizens without legal training are free to interpret the laws any way they choose. However, if their interpretations are contrary to those of the legislature and the Supreme Court, they do so at their peril."

See also Watkins v. Dept. of Rev., OTC-RD No 4148, WL 283154 (May 26, 1998) ("Taxpayer has fallen into the usual 'tax protestor' pattern of relying upon words and phrases taken out of context and used to support unsupportable arguments * * * The court finds that taxpayer's position is frivolous and that taxpayer should have recognized it as such.") The legal precedent is clear that, in appeals like taxpayer's, damages or sanctions are appropriate. Now, therefore,

IT IS THE DECISION OF THIS COURT that taxpayer's Motion for Summary Judgment is denied;

IT IS FURTHER DECIDED that the department's Motion for Summary Judgment

is granted; and

IT IS FURTHER DECIDED that the department is awarded damages in the amount of \$500 based on the court's conclusion that taxpayer's claims are both groundless and frivolous.

Dated this _____ day of November, 2002.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON NOVEMBER 29, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 29, 2002.