IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MICHAEL S. LINDER and RANEA S. LINDER,	)	
Plaintiffs,	)	No. 020381D
v.	)	
DEPARTMENT OF REVENUE, STATE OF OREGON,	)	
Defendant.	)	**DECISION**

Plaintiffs appeal Defendant's additional income tax assessment for tax years 1998, 1999, and 2000. A trial was held on Thursday, August 15, 2002, at the Pioneer Courthouse in Portland, Oregon. Mr. Michael Linder appeared on behalf of Plaintiffs. Ms. Debra Sheehan, Tax Auditor, appeared on behalf of Defendant.

STATEMENT OF FACTS

On March 20, 1998, Judge John B. Lewis, Washington County Circuit Court Judge, signed the Judgment/Decree of Dissolution of Marriage (Judgment) obligating Plaintiff, Michael Linder, to pay spousal support to Brenda J. Linder and child support. (Ptfs' Ex 7.) In the court's Judgment, Mr. Linder was obligated to pay spousal support in the amount of $2,300 per month, beginning January 1, 1998, until February 1, 2002. *(Id*. at 7-O--7-P.) On February 1, 2002, Mr. Linder's obligation was reduced to $1,500. *(Id*. at 7-P.) On May 1, 2007, Mr. Linder's obligation will be reduced to $1,000, an amount he was obligated to pay as "permanent spousal support." (*Id*.) With respect to child support, the Judgment stated that Mr. Linder was required to pay $344.34 per child for a total monthly child support payment of $1,033.01, beginning January 1, 1998. *(Id*. at 7-O.) The child support payments continued until a child was no longer

"'attending school per ORS 107.108(4)' or until further order of the court." *(Id*.)

When he prepared his Oregon personal income tax returns for tax years 1998, 1999, and 2000, Mr. Linder concluded that only a portion of the spousal support was an allowable tax deduction (alimony). Because the Judgment tied the final reduction in the monthly spousal support to the date his youngest daughter turned 18 years of age, Mr. Linder concluded that the temporary regulation 1.71-1T(c) of the Internal Revenue Code did not permit him to deduct $500 of the $2,300 payment as an allowable alimony deduction. In claiming the balance of the spousal support payment ($1,800) as an allowable alimony deduction, Mr. Linder concluded that $1,000 of the monthly payment is a permanent payment and clearly qualifies. As to the $800 portion of the payment, Mr. Linder relied on a letter dated November 10, 1997, from Judge Lewis and subsequent correspondence between Judge Lewis and the attorneys representing the Linders. (Ptfs' Exs 4, 5 and 6.) From these documents, Mr. Linder testified that the "rationale" Judge Lewis used "in determining the level and duration of spousal support" can be found in the following passages from the Judge's November 10, 1997, letter:

> "SPOUSAL SUPPORT. Wife has no earning capability beyond minimum wage at this time. She has taken the initiative to make herself employable at a wage that will in three (3) to four (4) years be approximately one half to one third of Husband's current income, if she is successful in completing school and becoming employed as a Dental Hygienist. She has fibromyalgia which has disabled her mother and therefore must be considered. Even if she is successful, she will not begin to be able to approach her prior living standard. * * * I am awarding spousal support to Wife to met (sic) her basic needs and to help with her school in the amount of $2,300 per month for five (5) years to allow her to get through school and for the first child to reach 21 and the second child 18." (Ptfs' Ex 4-B.)

In relying on a letter dated March 6, 1998, from Judge Lewis, Mr. Linder testified that the Judge's letter "establishes a presumption on the judge's part that the spousal support awarded would be taxable to the recipient. In response to a question raised

regarding tax exemptions for the children (see Exhibit 5-A through 5-B) he [Judge Lewis] suggests that her award would be adjusted if the tax exemptions for the children were awarded to the father." (Ptfs' Ex 1-A.)

Defendant agrees with Plaintiffs that $1,000 of the monthly spousal payment is an allowable alimony deduction. It also agrees that $500 of the monthly spousal payment is not alimony. As to the balance of the monthly spousal payment ($800), Defendant does not agree that Plaintiffs can deduct this amount as alimony. Ms. Sheehan testified that in tying the reduction of the payment to the age of Mr. Linder's two oldest daughters the treasury regulation and case law support the classification of that portion of the payment as child support. Ms. Sheehan stated that Defendant's Conference Decision Letter, dated January 2, 2002, "clearly states the Department's position in this case." (Def's Ex A1.)

In response, Mr. Linder testified that the dates selected for the reduction in the payment "were chosen as a convenience." (Ptfs' Ex 1-A.) Mr. Linder testified that Judge Lewis' letter of November 10, 1997, setting forth the monthly spousal support amount and reduction dates was unclear because the time period of five years did not coincide with the date Mr. Linder's daughters turned 21 and 18 years of age. Mr. Linder's attorney wrote to Judge Lewis on February 13, 1998, and stated that his client would prefer "the Judgment to reflect specific dates rather than number of years." (Ptfs' Ex 5-A.) The letter went on to suggest that the first reduction in the monthly spousal support payment occur on February 1, 2002, and the second reduction occur on May 1, 2007. (*Id*.) Subsequently, Judge Lewis agreed to accept Mr. Linder's proposed dates. (Ptfs' Ex 7-P.)

Mr. Linder presented additional information to the court regarding Engel's Law.

He explained that Engel's Law "establishes economic theory that family spending declines as a percentage of income as income rises." (Ptfs' Ex 1-B.) Using data from Oregon's Child Support Guildelines, Mr. Linder presented an exhibit showing that "the percentage of income attributable to ex-spouse (amount claimed as deductible alimony by the Plaintiffs) is less than the percentages calculated by the US Census Bureau for family income attributable to a single adult with children." (*Id*. and Ptfs' Exs 9, 10, 11, and 12.)

COURT'S ANALYSIS

The parties agree that the issue before the court is the ability of Plaintiffs' to claim $800 as an allowable deduction for alimony paid to Plaintiff's (Mr. Linder) former wife.[1] In analyzing the law governing an allowable deduction for alimony, the court is guided by the legislature's expressed intent "to make the Oregon personal income tax law identical in effect to the provisions of the federal Internal Revenue Code relating to the measurement of taxable income of individuals." ORS 316.007.[2]

The Internal Revenue Code (IRC) sets forth the following provisions. IRC section 215 permits a taxpayer to deduct payments paid during a tax year for alimony as defined in IRC section 71. Alimony is defined as "any payment in cash if--

> "(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,
> "(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,
> "(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse

[1] The parties agree that $1,000 of the monthly spousal support payment is alimony. In addition, $500 of the payment is clearly tied to the age of Mr. Linder's youngest child, making it a child support payment. The only amount at issue before this court is whether $800 of the monthly spousal support payment is paid as alimony or child support.

[2] All references to the Oregon Revised Statutes (ORS) are to the 1997 and 1999 years; statute is the same for both years.

> and the payor spouse are not members of the same household at the time such payment is made, and
>
> "(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (In cash or property) as a substitute for such payments after the death of the payee spouse."

IRC § 71.

In denying Plaintiffs' alimony deduction, Defendant has relied on IRC Temporary Regulation Section 1.71-1T(c), specifically the questions and answers numbered 16, 17 and 18. (Effective December 31, 1984.) The regulations make it clear that amounts will not be treated as child support if they are either reduced "(a) on the happening of a contingency relating to a child of the payor, or (b) at a time which can clearly be associated with such a contingency." Temp. Reg. § 1.71-1T(c), A-16. The temporary regulations create a presumption that a reduction will be presumed to be "clearly associated" with a contingency relating to the child if (i) the payments are reduced within 6 months before or after the date when the child reaches the age of 18, 21, or the local age of majority; or (ii) the payments are reduced on two occasions within one year, before or after another child of the payor attains the age of 18 through 24. Temp Reg. § 1.71-1T(c), Q- & A-18. If the payments are reduced under either of the two circumstances described above, an amount equal to the reduction will not constitute alimony but will instead be treated as non-deductible child support unless the presumption is rebutted. A presumption that the reduction should be treated as a non-deductible child support payment can be rebutted "by showing that the time at which the payments are to be reduced was determined independently of any contingencies relating to the children of the payor." *Id*.

Plaintiffs attempt to overcome the presumption by stating that it was "purely coincidental" that the date chosen to reduce the payment was within 6 months of

Mr. Linder's daugthers' 21st and 18th birthdays. *See, Hill v. Comr*, T.C. Memo 1996-179, holding that it was "purely coincidental" that the termination date of the spousal support payment was within six months of the child's 18th birthday. In *Hill*, the court heard testimony from both parties, stating that the child's birthday had not been discussed in determining when the payments would end. In this case, only Mr. Linder testified, stating that there was no connection between the reduction in the payment and the age of his children. The court did not have the benefit of knowing whether the former Mrs. Linder's testimony would corroborate Mr. Linder's recollection.

The balance of Mr. Linder's evidence in support of Plaintiffs' position came from correspondence between the Linders' attorneys and the circuit court and the Judgment/Decree of the circuit court. When Judge Lewis reduced the payment, he specifically stated in the Judgment/Decree as follows:

> "The Court finds that Petitioner's basic needs and her additional need for assistance in acquiring an education are in the amount of approximately $2,300.00 per month for five years, *the Court being cognizant of the fact that at the completion of a five year period the eldest child will have attained the age of 21 years, and the second eldest will have attained the age of 18 years*."

(Def's Ex C-10.) (Emphasis added.)

The IRC temporary regulation specifically requires that the payment be reduced "independently of any contingencies relating to the children of the payor." Temp Reg. §1.71-1T(c), A-18. One of the possible contingencies related to children is age. *Id*. Judge Lewis wrote that he was cognizant of the ages of the children at the end of a five year period. "Cognizant" is defined as "knowledgeable of something." (Webster's, 10th ed. at 223.) Judge Lewis specifically stated that in setting the amount of the spousal payment for the five year period he had "knowledge of" the age of the children. This fact was important enough to Judge Lewis that he memorialized it for the benefit of the

parties and those reading his Judgment/Decree. In acknowledging the age of the children, Judge Lewis' decision to reduce the spousal payment amount after five years was not made *independently of any contingency* relating to the children.

Plaintiffs conclude that the presumption has been overcome based on Judge Lewis' "rationale" for reducing the payment based on a letter dated November 10, 1997. In that letter, Judge Lewis discussed the health and earning capability of Mr. Linder's former wife. Plaintiffs conclude that Judge Lewis considered many factors. While the court agrees with Plaintiffs that Judge Lewis considered many factors, it does not necessarily follow that his decision was made without considering a contingency related to the children, specifically their ages in five years. In Judge Lewis' letter, he specifically states that he is awarding $2,300 per month to Plaintiff's (Mr. Linder) former wife for five years to meet her basic needs and provide financial assistance to her while she pursues a certificate program as a dental hygienist, *and* "for the first child to reach 21 and the second child 18." (Ptfs' Ex 4-B.) By placing the word "and" in his list of reasons for setting the amount of the payment, the court concludes that in determining the amount of the payment Judge Lewis considered the age of the children. The court's conclusion is supported by the following statement in Judge Lewis' November 1997 letter: "At that time" (5 years later) "support will drop to $1,500.00 per month until the last child reaches 18 (approximately 6 more years)." (*Id*.) Judge Lewis' decisions to set the amount of the original payment at $2,300 and subsequently reduce it at two different intervals were both clearly associated with a contingency related to the ages of the children.

In support of their position that $800 of the monthly spousal support payment is paid for alimony, Plaintiffs make an additional argument based on the amount of child

support computed by the circuit court. Using the guidelines mandated by the state, Judge Lewis concluded that the total child support obligation for both the Linders was $1,494. (Ptfs' Ex 8-A.) The final line of the computation states that the "TOTAL PRESUMED CHILD SUPPORT" for the noncustodial parent, Mr. Linder, was $1,033.01. (*Id*.) Plaintiffs' remind the court that the federal law contains a rebuttable presumption that the amount of child support awarded from application of the state guidelines is correct. *See* 42 USC § 667(b)(2) (1994). While the court agrees with Plaintiffs that the amount of child support as computed appears to be in compliance with the guidelines, there is nothing in the federal or state law preventing an individual from paying child support in excess of the amount computed. In concluding a portion of Plaintiffs' monthly spousal payment was additional child support, the court's analysis was guided by the temporary treasury regulations as previously discussed.

Based on a careful review of the testimony and evidence, the court concludes that for tax years 1998, 1999, and 2000, Plaintiffs' are not allowed to claim $800 as an allowable deduction for alimony paid to Plaintiff's (Mr. Linder) former wife.

/ / /

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of October, 2002.

_____
JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON OCTOBER 29, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 29, 2002.