

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

DENNIS G. OLSEN and CAROLYN HARDY)
OLSEN,)
)
Plaintiffs,) No. 020889F
)
v.)
)
DEPARTMENT OF REVENUE,)
STATE OF OREGON,)
)
Defendant.) **DECISION AND JUDGMENT**

Plaintiffs appeal a Notice of Deficiency issued by Defendant concerning tax year 2000. A hearing was held on August 19, 2002.

STATEMENT OF FACTS

Plaintiffs timely filed their 2000 personal income tax return. In that return they excluded from income \$10,792. This amount represents moneys earned by Ms. Olsen while she lived in California but paid to her, via direct deposit, in early January 2000, after Plaintiffs moved to Oregon. On August 23, 2001, Plaintiffs left the country, not returning until April 24, 2002. Before leaving the country, Plaintiffs prepaid all their bills and arranged for someone to collect, but not open, their mail. Because Plaintiffs were traveling, they did not leave a forwarding address. On September 14, 2001, Defendant sent Plaintiffs a Notice of Deficiency, asserting an additional tax to pay of \$1,534.47 plus interest. Upon returning to the United States, Plaintiffs promptly paid the deficiency and the associated interest. Plaintiffs are cash basis taxpayers.

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COURT'S ANALYSIS

Gross income is defined as "all income from whatever source derived." IRC § 61(a). For cash basis taxpayers, such as Plaintiffs, moneys are "includible in gross income when actually or constructively received." Treas. Reg. § 1.451-1(a) (2001). Courts **"have long held that the doctrine of constructive receipt is to be applied sparingly and is to be invoked only when the taxpayer has an unrestricted right to receive payment of money that is available to him."** *Miller v. Commissioner*, 2002 WL 1825366 (US Tax Ct) (citations omitted). Constructive receipt of income is defined as:

"* * * Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given." Treas. Reg. § 1.451-2(a).

The amount in question was not credited to Ms. Olsen's account, so that she could "draw upon it at any time," until after Plaintiffs moved to Oregon. Ms. Olsen did not actually or constructively receive the moneys until early January 2000. Defendant properly included it in Plaintiffs' income for tax year 2000. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that Plaintiffs' appeal is denied.

Dated this _____ day of September, 2002.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON SEPTEMBER 6, 2002. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 6, 2002.