

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

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| MICHAEL E. BENZ, |) | |
| |) | |
| Plaintiff, |) | No. 020915D |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| STATE OF OREGON, |) | DECISION ON CROSS |
| |) | MOTIONS FOR SUMMARY |
| Defendant. |) | JUDGMENT |

Plaintiff appeals Defendant's Notices of Determination and Assessment, dated February 15, 2002, for tax years 1998 and 1999. There is no dispute of fact, and the matter has been submitted to the court on the parties' cross Motions for Summary Judgment. The court has carefully considered the stipulated facts and motions of the parties.

STATEMENT OF FACTS

Plaintiff did not file Oregon personal income tax returns for tax years 1998 and 1999. Defendant submitted information stating that Plaintiff had wage income from Benz Electric and Chets Electric in tax year 1998 and Benz Electric in tax year 1999. In addition, Defendant submitted copies of Federal Income Tax Schedule K-1(K-1), showing Plaintiff as a shareholder in Benz Electric, Inc. For tax years 1998 and 1999, the K-1s issued to Plaintiff reported ordinary income in the amount of \$6,257 and \$10,221, respectively.

Plaintiff alleges that he is "not a corporation" and does not "have any Income as defined by the courts." (Ptf's Resp to Mot for Summ J by Department of Revenue at 1 and Stipulated Facts and Mot for Summ J (Motion) at 1.) Further, Plaintiff concludes that

Defendant's "assessments were made upon sources of Income (as defined in IRC section 63) Not upon Income as defined by the U.S. Supreme Court cases* * *." (Ptf's Stipulated Facts and Mot for Summ J at 1-2.) Plaintiff cited three U.S. Supreme Court cases in support of his allegations that wages are not "profit or gain" and only profit or gain is taxable.

Defendant alleges that for purposes of assessing Oregon state income tax the statutory definition of income found in ORS 316.022 is the same definition set forth in the Internal Revenue Code, Section 63. Defendant concludes that Plaintiff has income and his income is taxable by the state of Oregon.

COURT'S ANALYSIS

Plaintiff appeals Defendant's determination that he has wage and other ordinary income subject to personal income taxation. In analyzing the law governing state taxable income, 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 316.007.¹

Plaintiff is a resident of Oregon. "A tax is imposed for each taxable year on the entire taxable income of every resident of this state." ORS 316.037(1)(a). "Taxable income" is defined in ORS 316.022(6) as follows:

"'Taxable income' means the taxable income as defined in subsection (a) or (b), section 63 of the Internal Revenue Code, with such additions, subtractions and adjustments as are prescribed by this chapter."

¹ All references to the Oregon Revised Statutes (ORS) are to the year 1997. Unless otherwise noted, the referenced statutes remain unchanged between 1997 and 1999.

The Internal Revenue Code (IRC) states that the term “taxable income” means gross income minus allowable deductions. “Gross income” is defined in IRC § 61(a):

“General definition.

Except as otherwise provided in this subtitle, gross income means **all income from whatever source derived**, including (but not limited to) the following items:

“(1) Compensation for services, including fees, commissions, fringe benefits, and similar items.”

(Emphasis added.)

Using those statutory definitions, this court has previously held that wages are clearly taxable. See *Combs v. Dept of Rev.*, 15 OTR 60, 61 (1999). With respect to wages, Plaintiff’s position is “unrealistic and uninformed.” *Id.* In addition, the all inclusive statutory definition of income includes the K-1 ordinary income reported to Plaintiff. Defendant’s Cross Motion for Summary Judgment (Motion) is granted and Plaintiff’s Motion for Summary Judgment is denied.

Defendant’s Motion also requests damages under ORS 305.437(1), which provides:

“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.”

In *Combs*, the court concluded that taxpayer’s appeal was “groundless and totally devoid of merit.” *Id.* Further, the court held that there was no “objective reasonable basis” for such as assertion. *Id.* at 61-62. After weighing various factors, the court assessed a frivolous penalty because of the time required of the court and the administrative agency,

Oregon Department of Revenue, to respond to taxpayer's groundless appeal. *Id.* at 62.

In evaluating the amount of the damages award, the court is guided by the definition of "frivolous" as a claim where "there was no objectively reasonable basis for asserting the position." ORS 305.437(2). In the case before the court, Plaintiff made the same assertion as the taxpayer in *Combs*: wages or other earned compensation are not subject to personal income tax. Prior to filing his Motion, the court advised Plaintiff of its prior ruling. Plaintiff's Motion did not present any legal argument in support of his appeal different from that previously denied by this court. Plaintiff made the same assertion that in a prior case (*Combs*) was deemed frivolous. The court awards Defendant \$1,000 in damages under ORS 305.437.

CONCLUSION

Now, therefore,

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

IT IS FURTHER DECIDED that Defendant's Cross Motion for Summary Judgment is granted.

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IT IS FURTHER DECIDED that pursuant to the provisions of ORS 305.437,

Defendant shall be awarded a money judgment against Plaintiff for damages in the amount of \$1,000.

Dated this _____ day of December, 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 DECEMBER 31, 2002. THE COURT FILED THIS DOCUMENT ON DECEMBER 31, 2002.