

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

JUSTIN RABY,)
)
 Plaintiff,) TC-MD 021028D
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant's determination to change his withholdings and requests the court determine he is exempt from Oregon personal income tax for tax years 1999 and 2000.¹ The parties submitted cross motions for summary judgment. Oral argument was held on Wednesday, March 19, 2003.

STATEMENT OF FACTS

The parties agree that Plaintiff lives in Oregon and works for Intel Corporation. On April 24, 2002, Defendant notified Plaintiff that based on its determination Plaintiff incorrectly claimed withholding allowances. Defendant instructed Plaintiff's employer, Intel Corporation, to withhold state income tax based on a single status with two allowances. (Def's Determination to Change the Withholding Certificate dated April 24, 2002.) Plaintiff appeals Defendant's determination because he claims he is exempt from Oregon personal income tax.

On May 10, 2002, Defendant sent Plaintiff a Request-to-File Notice for tax years 1999 and 2000. Plaintiff appeals Defendant's Notices, stating he is exempt from Oregon

¹ During oral argument, Plaintiff orally amended his Complaint and withdrew his appeal for tax year 2001.

personal income tax.

ANALYSIS

In support of his position that he is exempt from Oregon personal income tax, Plaintiff makes the following arguments:

Wages are not income.

Only foreign source income, not income earned in the United States, is taxable.

The only "employees" subject to state income tax are employees of the federal government.

State income taxes constitute a "taking" of property without due process of law, violating the Fifth Amendment.

The Sixteenth Amendment to the United States Constitution was not properly ratified and, therefore, the federal income tax laws are unconstitutional.

Unfortunately for Plaintiff, all of his arguments have been rejected by the courts. For example, Plaintiff's argument that wages are not income has been "unequivocally rejected" by "[e]very court which has ever considered the issue." *United States v. Connor*, 898 F2d 942, 943-44 (3rd Cir), *cert den*, 497 US 1020 (1990). Further, the Oregon Tax Court has previously held that wages are clearly taxable. *Combs v. Dept of Rev.*, 15 OTR 60 (1999). With respect to wages, Plaintiff's position is "unrealistic and uninformed." (*Id.* at 61.)

Contrary to Plaintiff's allegations, recent United States Tax Court cases hold that taxpayers alleging that only foreign source income (IRC 861(b) and Treas Reg 1.861-8(f)) is taxable are making frivolous arguments. *Madge v. Commissioner*, 80 TCM (CCH) 804 (2000); *See also Corcoran v. Commissioner*, 83 TCM (CCH) 1107, 1110 (2002) (The court rejected taxpayers' argument that their income was not from any of the sources in Treas Reg 1.861-8(f) and therefore not taxable. The court further required the taxpayers to pay a \$2,000 penalty because "they * * * wasted limited judicial and administrative resources.")

This court finds that Plaintiff has not presented any new or persuasive evidence to

convince the court that Plaintiff's arguments should prevail. The court concludes that Plaintiff's appeal must be denied.

Defendant's Cross Motion for Summary Judgment and Response requests damages under ORS 305.437(1),² 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." *Combs*, 15 OTR at 61. 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. Plaintiff's Motion for Summary Judgment did not present any legal argument in support of his appeal different from that previously denied by this court and other courts. Plaintiff made the same assertion that in prior cases has been deemed

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

frivolous. *Clark v. Dept. of Rev.*, 15 OTR 197 (2000), *on recons*, 15 OTR 209 (2000), *aff'd*, 332 Or 236, 26 P3d 821 (2001); *Clark v. Dept of Rev.*, 16 OTR 51 (2002); *Combs*, 15 OTR 60. The court awards Defendant \$500 in damages under ORS 305.437.

CONCLUSION

Now, therefore,

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

IT IS FURTHER DECIDED that Defendant is awarded damages in the amount of \$500.

Dated this _____ day of April, 2003.

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 APRIL 30, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 30, 2003.