

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

THOMAS E. MADDOX,)	
)	
Plaintiff,)	TC-MD 021143F
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

The court decides this matter based on the oral argument made at the case management conference held on November 26, 2002, and the written material submitted by Plaintiff.¹

STATEMENT OF FACTS

On June 25, 2002, Defendant issued a Notice of Tax Assessment for tax year 1999 in the amount of \$2,096 to Plaintiff. Defendant determined Plaintiff's taxable income based on an Internal Revenue Service audit report. The audit report showed that Plaintiff was paid \$26,102² by his employers. Plaintiff timely filed his appeal asserting Defendant seeks "information from a 1040 form which is a legal and logical impossibility." (Ptf's Compl at 1.) He asks that the court dismiss Defendant's claim against him "as unfounded in law." (*Id.*) In support of his request, Plaintiff submitted an 11 page document that detailed his reasoning. It is written in the form of a letter that starts out "[t]o whom it may concern." (Ptf's Ltr at 1.) At the close of the document, Plaintiff states:

¹ Defendant declined to submit additional material.

² The audit report showed income of \$20,915 from Michael Land and Timber Inc., \$2,996 from Rough and Ready Lumber Co., and \$2,191 from Pampered Chef totaling \$26,102.

"I hereby demand that you provide verification and proof of your claims, in light of the above facts, or admit that you are attempting to misconstrue and misapply the law. * * * For a public servant to misapply the law due to ignorance or misunderstanding is called misfeasance of office, a misdemeanor. For a public servant to *knowingly* misapply the law is known as malfeasance, a felony. * * * You are on notice that you may be committing a crime, and must now prove that you are not attempting to compel me to do what the law does not require me to do."

(*Id.* at 11.) (Emphasis in original.) The document set forth a number of legal theories which will be discussed in some detail below.

Defendant points out that, because it received its information as a result of a federal audit, it is not requesting any information from Plaintiff's form 1040. Defendant asks the court to uphold the assessment. It further asks that the court award damages pursuant to ORS 305.437.³

LEGAL THEORIES

Plaintiff set forth four main theories to support his view that he is not subject to an income tax. He first argues that the taxing powers of the federal government and the individual states are mutually exclusive. In other words, if the federal government may tax an item, the state may not. States' power to tax, according to Plaintiff, arises from their police powers. He contrasts this to the federal government which he states has no police powers except within federal territories, that is, such places as military bases.

Plaintiff's second theory is that the federal government may tax only citizen and residents of the 50 states' foreign source income. According to Plaintiff, the exception to this is if the citizen or resident is a federal employee. Only aliens and foreign corporations may be taxed on their domestic incomes. The federal government may, however, tax the

³ All references to the Oregon Revised Statutes (ORS) are to 2001.

income of residents of the District of Columbia and possessions of the United States such as Puerto Rico and American Samoa.

Plaintiff's third theory is that the federal income tax is a "profits" tax. He argues that "[e]mployment is not a profit situation, so there is no 'income tax' on wages or employment." (*Id.* at 4.) He contrasts income taxes with employment taxes arguing that employment taxes appropriately tax employment while income taxes may not.

Finally, Plaintiff theorizes that he may not be taxed on his wages because he is paid in federal reserve notes. His logic is thus: federal reserve notes are obligations of the United States pursuant to 18 USC § 8 (1994) and obligations of the federal government are exempt from taxation pursuant to 31 USC § 3124 (1994).

COURT'S ANALYSIS

Merits of Claim

Plaintiff sets forth a number of theories and arguments as to why his income is not taxable under the Internal Revenue Code or Oregon law. Many of Plaintiff's arguments start with a false premise. Such arguments necessarily lead to incorrect conclusions. Some arguments have conclusions without supporting reasoning. **All** of Plaintiff's theories arguments are flawed. In the interest of judicial efficiency, the court will discuss only a sampling of these arguments and theories rather than analyze each one in detail.

Separation of Powers

In a case to foreclose on a tax lien, the United States District Court for the district of New Jersey stated that:

“Relying on a notion of separation of powers between the federal and state governments that harkens back to the days of the benighted *Dred Scott* decision, the tax protestor movement encourages its members to deny that the taxation power of the federal government exists, and to resist the

enforcement and collection actions taken by the federal government against them in pursuit of those tax revenues. * * * Federal courts have never accepted these arguments, holding instead that the federal government has the power to tax the income of all citizens in the United States.”

U.S. v. Freeman, 93-1 US Tax Cas (CCH) ¶ 50,296 (D NJ 1993), 1993 WL 179115, citing *Dred Scott v. Sanford*, 60 US 393 (1857); *Brushaber v. Union Pacific R.R. Co.*, 240 US 1, 12-19 (1916) (federal income tax imposed on citizens throughout nation); other citations omitted.

The phrase “separation of powers” is defined as “the allocation of executive, legislative, and judicial powers to branches of government independent of each other.” *Webster’s Third New Int’l Dictionary* 2070 (unabridged ed 1993). See also *Black’s Law Dictionary* 1369 (7th ed 1999) (“[t]he division of governmental authority into three branches of government”). Division of powers, on the other hand, is defined as “[t]he allocation of power between the national government and the states.” *Id.* at 494. Plaintiff confuses the two terms. This court agrees with the *Freeman* court; Plaintiff’s separation of powers argument fails.

Foreign Source Income

Plaintiff argues that the federal government may only tax its citizens and residents’ foreign source income. Presumably this is due to Plaintiff’s assertion that individual states are the “domestic” governments while the federal government is the “international” government and they may not tax the same items of income. (See Ptf’s Ltr at 2 - 4.) To support this argument he relies on the instructions for form 1040 which require individuals to report their foreign source income. In contrast, he argues, the federal government may tax the worldwide income of the residents of the District of Columbia and possessions of the United States such as Puerto Rico and American Samoa. To “prove” this point he

relies on statutes that define state to include the District of Columbia and possessions of the United States. (*Id.* at 7.) Both premises rely on faulty logic.

Plaintiff is correct in that the instructions for form 1040 require a taxpayer to report his or her foreign source income. Plaintiff is wrong on the significance of the instruction. The instructions are not the statute. Further, gross income is defined as "all income from **whatever source derived** * * * ." IRC § 61(a) (2001) (emphasis added). The instructions merely clarify that income includes all income including that income from foreign sources.

Plaintiff construes a definition of state so as to exclude the individual states. Once again he is wrong. The Internal Revenue Code provides that "[t]he terms 'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined."

IRC § 7701(c) (2001). Using the same reasoning as Plaintiff, a taxpayer recently argued that he was not a person within the meaning of the Internal Revenue Code. This court held that "[t]he use of the word 'includes' does not exclude in individual from the definition. For example, an automobile includes four wheels. However, many more items are included in an automobile than just four wheels." *Enerson v. Dept. of Rev.*, OTC-MD No 011057F (Jan 15, 2003). Further, in a case where the plaintiff was arguing the definition of person and employee, the Court of Appeals for the Seventh Circuit held that "[i]t is obvious that within the context of both statutes the word 'includes' is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others." *United States v. Latham*, 754 F2d 747, 750 (7th Cir 1985).

Income Tax is Profits Tax

Plaintiff also argues that the federal income tax is a tax on profits. He argues that because he does not make a profit on the wages he is paid by his employer he is not required to pay income taxes on those wages. Plaintiff's argument is simply another way of saying that wages are not income. This court will state what many courts before it have stated "WAGES ARE INCOME." See e.g. *U.S. v. Connor*, 898 F2d 942, 943 (3rd Cir 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income.") (citations omitted); *Wilcox v. C.I.R.*, 848 F2d 1007, 1008 (9th Cir 1988) ("wages are income") (citation omitted); *United States v. Koliboski*, 732 F2d 1328, 1329 n 1 (7th Cir 1984) ("WAGES ARE INCOME."). Plaintiff's attempts to recharacterize the federal income tax as a "profits tax" does not make it something other than what it is.

Federal Reserve Notes

Plaintiff's argument that he may not be taxed on his wages because he is paid in federal reserve notes⁴ is no more credible than any of his other arguments. As authority for his argument he points to 18 USC § 8 (1994) which defines federal reserve notes as obligations of the United States and 31 USC § 3124 (1994) which exempts obligations of the United States from taxation. The definition of obligations of the United States set forth in 18 USC § 8 (1994) is for purposes of crimes and criminal procedures, such as counterfeiting and embezzlement. It was not intended to address the issue before the court.

The Maryland Court of Special Appeals had this issue before it in *Provenza v. Comptroller*, 497 A2d 831, 64 Md App 563 (1985). That court held that the phrase

⁴ Plaintiff presented no evidence that he was actually paid in federal reserve notes. It is much more likely that he was paid in the form of checks from his employers.

"obligations of the United States" as used in 31 USC § 3124 (1994) "refers to interest bearing instruments such as United States bonds." *Id.* at 834 citing *Memphis Bank & Trust Co. v. Garner*, 459 US 392, 395-96, 103 S Ct 692, 695-96, 74 L Ed 2d 562 (1983); *Smith v. Davis*, 323 US 111, 116-17, 65 S Ct 157, 160, 89 L Ed 107 (1944). Thus, the *Provenza* court held that payment in Federal Reserve notes did not exempt that payment from Maryland income tax pointing out that to rule otherwise "would have the absurd effect of preventing state taxation of any income which may be received in Federal Reserve Notes." *Provenza*, 497 A2d at 834. This court finds the analysis in *Provenza* persuasive.

Summary of Arguments

While at first glance Plaintiff's materials appear to be well-written,⁵ a closer look reveals that Plaintiff's theories and arguments are without merit. As this court has stated before "[t]he only possible interpretation of law leads to the inescapable conclusion that plaintiffs' arguments are totally without merit." *Sesma v. Dept. of Rev.*, OTC-MD No 001078F, WL 958920, *4 (July 31, 2001) (awarding \$2,000 in damages for pursuing a frivolous appeal).⁶

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⁵ Plaintiff appears to have ordered his 11 page letter from a web site entitled www.taxax.org, apparently hosted by someone named Jack Cohen. See *The Tax Ax* (visited Mar 12, 2003) <www.taxax.org>. The web site contains similar language to Plaintiff's material. Additionally, the web site has certain documents for sale, including one referred to as "The State Paper" for \$50.00. It is described as "your solution to state income tax. It is an 11 page memorandum in plain english that explains why states cannot tax **your** income. Applicable in all states that have personal income tax. Simple but explosive!" *The Tax Ax Publications* (visited Mar 12, 2003) (emphasis in original) <http://www.taxax.org/cgi-bin/ez-catalog/cat_display.cgi?0X366306>.

⁶ The *Sesma*'s subsequently appealed to the Regular Division of the Oregon Tax Court. See *Sesma v. Dept. of Rev.*, 16 OTR 29, 31-32 (2002) (court increased the award of damages to \$2,500 and also awarded attorney's fees).

Damages

Defendant requests the court award it damages under ORS 305.437. That statute provides:

“(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** * * *.

“(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 (emphasis added).

Plaintiff’s beliefs may be sincerely held, if misguided. This court has previously held that “[o]rdinary 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.” *Harvey v. Dept. Of Rev.*, 11 OTR 407, 409 (1990). In a case affirming the dismissal of a taxpayer’s petition as frivolous and upholding the imposition of a penalty, the Fifth Circuit Court of Appeals stated:

“An appeal that lacks merit is not always - or often - frivolous. However, we are not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority. * * * The government should not have been put to the trouble of responding to such spurious arguments, nor this court to the trouble of ‘adjudicating’ this meritless appeal.”

Crain v. Com., 737 F2d 1417, 1418 (5th Cir 1984).

As this court stated in *Mansuetti v. Dept. of Rev.*, OTC-MD No 991425F (March 14, 2000):

"The language of ORS 305.437 is mandatory. In order to determine the appropriate level of damages, the court will evaluate a number of factors. Some of the factors include: the specific arguments presented to the court,

whether plaintiff made threats against the government or its employees, whether any amount was withheld from wages, the number of years at issue, whether returns were filed, whether plaintiff sent defendant a "demand" letter, how many levels of authority plaintiff has appealed to and whether defendant is represented by an attorney. This list is not meant to be exhaustive nor is each argument weighted equally. The first two factors address whether it is appropriate to impose damages. The balance goes to the level of damages."

Taking all the factors into consideration and the time that both Defendant and the court spent on Plaintiff's claim, the court finds that the appropriate level of damages under ORS 305.437 is \$1,000.

CONCLUSION

Plaintiff misconstrues a variety of statutes, case law and other sources. His construction of these statutes conveniently provides that he is not obligated to pay either federal or state income taxes.

The court's view of Plaintiff's theories is best expressed by paraphrasing the court in a case involving bankruptcy. *See In re Abesbaum*, 70 F2d 628 (2nd Cir 1934). The stories of taxpayers who believe that they are not required to pay taxes

"have assumed a form almost as conventional as the plots one finds in the plays of Plautus and Terence. Indeed, if they were told with art and possessed more fertility of imagination, a new anthology might be gathered for American literature from the ['tax protestor'] field. As it is, they contain little more than standardized forms of falsehood so often reiterated as to be neither credible nor interesting."

Id. at 628-29. Plaintiff presented no legitimate reasons why his income should not be taxed. Now, therefore,

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

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IT IS FURTHER DECIDED that pursuant to ORS 305.437, Defendant shall be awarded a money judgment for damages against Plaintiff in the amount of \$1,000.

Dated this _____ day of April, 2003.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON APRIL 10, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 10, 2003.