

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

DENNIS L. PETERSON and BARBARA J. PETERSON,)	
)	
)	
Plaintiffs,)	TC-MD 030058A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

This appeal is the fourth involving the Petersons and their attempts to claim Oregon income taxes as an itemized deduction on their Oregon return, contrary to ORS 316.695(1)(d)(A).¹ The cases are TC-MD 010565B for the 2000 tax year, TC-MD 020265C for the 1998 tax year, and TC-MD 020932C for the 1999 tax year. This fourth appeal is for the 2001 tax year. Cases 020265C and 020932C² contain a discussion of the relevant facts, and analysis of the court, that is appropriate for the resolution of this case as well. The court will not repeat that discourse here. Instead, by reference it incorporates those results as the decision of this appeal, and affirms the assessment of the agency.

The remaining issue is the Department of Revenue's request for sanctions under ORS 305.437. The court chooses to deny the request for sanctions based on two lines of reasoning. The first is that the Petersons' appeals have been small claims cases. As small claims cases they cannot be appealed. Cases 020265C and 020932C were

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

² Case 010565B, as the court's endorsement of the parties' stipulated agreement, does not contribute.

decided by the same magistrate. It can be argued that a different magistrate might have reached a contrary result. As a practical matter, the only way for the Petersons to test the strength of those decisions was to appeal a later tax year. The court will not punish the Petersons for their decision to do so. The second reason the court will not award sanctions is because, in the totality of these appeals, the Department of Revenue's conduct has been equivocal. Resolution of the appeal for the 2000 tax year, in TC-MD 010565B, was by a stipulated agreement that can be construed as supporting the Petersons' position. The court cannot, as to this particular appeal, discount that point when evaluating the Petersons' motives in bringing their appeal. However, the court will comment that, although it will not award sanctions in the context of this particular appeal, the reasoning behind this choice may not apply if the Petersons appeal this same issue to the court again.

CONCLUSION

Now, therefore,

IT IS ADJUDGED AND DECREED that this appeal is denied. No damages for frivolous or groundless appeal are awarded to the Department of Revenue.

Dated this _____ day of June, 2003.

SCOT A. SIDERAS
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A SIDERAS ON JUNE 19, 2003. THE COURT FILED THIS DOCUMENT ON JUNE 19, 2003.