

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

CAROL L. LESTER and MARILYN F. LESTER,)	
)	
Plaintiffs,)	TC-MD 030139E (Control);
)	030140E
v.)	
)	
DEPARTMENT OF REVENUE, STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiffs appeal Defendant's denial of refunds claimed for tax years 1998 and 1999. With no dispute of material fact being presented, Plaintiffs filed a Motion for Summary Judgment on July 1, 2003. Defendant filed a response to Plaintiffs' motion on July 16, 2003, and Plaintiffs filed their reply on August 5, 2003. The matter is before the court for decision.

I. STATEMENT OF FACTS

Carol L. Lester (Lester) worked for the Union Pacific Railroad. As part of his retirement package, Lester receives annuity income from the Union Pacific Pension Committee. Originally, Plaintiffs paid taxes on the annuity income to the State of Oregon. When talking to other railroad retirees, Plaintiffs determined they were entitled to subtract the annuity income on their Oregon return. Plaintiffs subsequently filed amended returns for 1998 and 1999 requesting refunds for both years. Defendant denied their refund claims and Plaintiffs appeal to this court.

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II. ANALYSIS

ORS 316.054¹ allows a taxpayer to subtract Social Security benefits and Tier 1 railroad retirement benefits from their federal taxable income on their Oregon return. The statute states:

“In addition to the other modifications to federal taxable income contained in this chapter, there shall be subtracted from federal taxable income the amount of any Social Security benefits, as defined in section 86 of the Internal Revenue Code (Title II social security or tier 1 railroad retirement benefits) included in gross income for federal income tax purposes under section 86 of the Internal Revenue Code.”

ORS 316.054.

The parties agree that the annuity income at issue does not fall within the statutory language. Defendant, however, has promulgated a rule expanding the categories of railroad retirement income that may be subtracted on the Oregon return. OAR 150-316.054 provides:

“A subtraction from federal taxable income is allowed for social security and Tier I railroad retirement benefits as defined under Internal Revenue Code Section 86. Tier II, windfall, dual-vested benefits, and **any other supplemental annuities paid by the railroad** are also allowed as a subtraction from federal taxable income. In all cases, the subtraction is allowed only to the extent that such benefits are included in federal taxable income.”

(Emphasis added.)

Plaintiffs argue that “any other supplemental annuities” refers to any annuity paid by any railroad. As a consequence, they claim the annuity income received by Lester from the Union Pacific Pension Committee qualifies for subtraction under the rule. Defendant argues that only those supplemental annuities paid by the Railroad Retirement Board

¹ All references to the Oregon Revised Statutes (ORS), United States Code (USC), and Oregon Administrative Rules (OAR) are to 1997.

(RRB) qualify for subtraction under the rule.

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The RRB is an independent federal agency that reports to the President and Congress and works with other federal and state agencies. See 45 USC § 231f(a). The RRB is comprised of three members who are appointed by the President and confirmed by the Senate. *Id.* To fulfill its statutory duties, the RRB has field offices located throughout the United States that assist railroad employees with filing claims and determining benefits. 45 USC § 231f(b)(9). The primary function of the RRB is to administer the retirement and unemployment benefit programs under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. 45 USC § 231f. Specific benefits that it administers under the Railroad Retirement Act are Tier I benefits, Tier II benefits, dual-vested benefits, windfall benefits, and supplemental annuities.

The parties disagree on whether the reference in OAR 150-316.054 to “any other supplemental annuities paid by the railroad” refers to supplemental annuities paid only by the RRB or supplemental annuities paid privately by any railroad. When interpreting an administrative rule, the court’s objective is to determine the intent of the agency that promulgated the rule. In doing so, the court applies “the same interpretative principles that apply to the construction of statutes.” *Pilgrim v. Clatskanie People’s Utility Dist.*, 149 Or App 234, 238, 942 P2d 821 (1997). In *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993), the Oregon Supreme Court noted that an examination of both the text and context of the statute or rule is the starting point in any analysis.

The rule at issue allows a subtraction from federal taxable income of Tier I and “Tier II, windfall, dual-vested benefits, and any other supplemental annuities paid by the railroad.” OAR 150-316.054. Plaintiffs argue that “any” means “all” supplemental annuities paid by a

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railroad. When reviewing the text, the court applies rules of construction that bear on the interpretation of the text. A principle of construction that applies to the subject rule is the maxim *ejusdem generis*, “which provides that where general words follow the enumeration of particular classes of things, the general words are to be construed as applicable to things of the same general nature or class.” *Gaston v. Parsons*, 318 Or 247, 253, 864 P2d 1319 (1994). The rule lists benefits that are specifically administered by the RRB with the last category being “any other supplemental annuities.” Applying the principle of *ejusdem generis* to the rule, the phrase “any other supplemental annuities” falls within the class of words that precede it. That is, it falls within the class of benefits administered by the RRB.

The court further observes that the rule refers to “any other supplemental annuities paid by **the** railroad.” (Emphasis added.) The agency chose the word “the,” which suggests a specific entity, rather than the word “a” or “any,” which would suggest a broader interpretation.

Plaintiffs argue that supplemental annuities paid by the RRB should be treated the same as private annuities because they are reported on the same line on the federal return. Supplemental annuities administered by the RRB are taxable at the federal level. However, where that income is reported does not dictate whether the State of Oregon may allow a subtraction for supplemental annuities administered by the RRB. In fact, the subtraction permitted by Oregon is required by 45 USC § 231m(a), which states that “no annuity or supplemental annuity shall be * * * subject to any tax * * * .”² No such exemption is required for private annuities.

² 45 USC § 231m(b)(1) notes that the exemption from taxation does not exclude supplemental annuities from taxation under the Internal Revenue Code.

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III. CONCLUSION

After reviewing the text of the administrative rule and applying principles of construction, it is the court's conclusion that the reference to "any other supplemental annuities" in OAR 150-316.054 refers only to supplemental annuities administered by the RRB. Now, therefore,

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

Dated this ___ day of December, 2003.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON DECEMBER 19, 2003. THE COURT FILED THIS DOCUMENT ON DECEMBER 19, 2003.