

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

HARRY JOERS and KATHY JOERS,	)	
	)	
Plaintiffs,	)	TC-MD 030373D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant's Notice of Assessment, dated February 20, 2003, denying certain deductions claimed by Plaintiffs on their 1999 income tax returns. A trial was held in the Oregon Tax Courtroom, Salem, Oregon, on Tuesday, December 9, 2003. Jerry Olsen, Certified Public Accountant, appeared on behalf of Plaintiffs. Jerry Van Sickle, Auditor, appeared on behalf of Defendant.

At the time set for trial, Plaintiffs did not appear. Plaintiffs did not submit to the court stipulated facts or sworn affidavits, nor did they appear to testify.

The burden of proof in Tax Court proceedings is found in ORS 305.427.<sup>1</sup> The statute provides that "a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation." ORS 305.427. "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). "It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate." *Riley Hill General Contractor v. Tandy Corp.*, 303

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to year 2001.

Or 390, 394, 737 P2d 595 (1987). “[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof.” *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990).

In this case, the burden of proof fell on Plaintiffs, who failed to appear. An authorized representative cannot testify for a litigant. The exhibits submitted to the court were primarily copies of rulings from the Internal Revenue Service. Plaintiffs' sworn testimony could have explained to the court how those rulings apply to them and support their claims.

The issue before the court is one that can only be resolved by an application of the law to the facts. Without a clear understanding of the facts, the court cannot make a reasoned decision. Plaintiffs failed to meet the burden of proof.

### **CONCLUSION**

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is dismissed.

Dated this \_\_\_\_\_ day of December, 2003.

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JILL A. TANNER  
PRESIDING MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 18, 2003. THE COURT FILED THIS DOCUMENT ON DECEMBER 18, 2003.**