

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

LARRY B. VERMILLION and SHARON K. VERMILLION,)	
)	
Plaintiffs,)	TC-MD 030793D
)	
v.)	
)	
DEPARTMENT OF REVENUE, STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiffs appeal Defendant's Notices of Refund Denial for tax years 1999 and 2000. This issue is before the court on the parties' cross motions for summary judgment. Because Plaintiffs failed to appear for oral argument, the court's decision is based on the pleadings.

I. STATEMENT OF FACTS

Plaintiff, Larry Vermillion (Vermillion), retired after working many years for the Union Pacific Railroad. During tax years 1999 and 2000, Vermillion received pension income in two separate payments. The first payment was paid by the United States Railroad Retirement Board (RRB) and was not reported as state taxable income. That payment is not at issue.

The second payment was paid by the Union Pacific Pension Committee (UPPC). On Plaintiffs' original income tax returns for 1999 and 2000, the total amount (\$9,858.36) of the UPCC payment was reported as state taxable income. Subsequently, Plaintiffs filed amended state income tax returns and claimed that amount each year as an allowable "subtraction from federal taxable income." (Ptf's letter dated Oct 16, 2003.) Plaintiffs stated that they relied on the Oregon

Administrative Rule (OAR) 150-316.054, which stated that “any other supplemental annuities paid by the railroad are also allowed as a subtraction from federal taxable income.”

Defendant conceded that its OAR is “somewhat confusing in its statements of ‘any’ and ‘paid by the railroad.’” (Def’s Resp and Cross Mot for Summ J at 1.) Further, Defendant noted that “[t]here has been inconsistent treatment of taxpayers and their railroad pensions within the Department of Revenue.” (*Id.* at 2.) However, Defendant concluded that “Oregon law does not provide a modification (subtraction) for pension benefits from railroad employers.” (*Id.*)

II. ANALYSIS

In analyzing Plaintiffs’ claim that the UPPC payment is an allowable subtraction from federal taxable income in computing Oregon state taxable income, ORS 316.054¹ states, in part, that:

“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.”

(Emphasis added.)

To comply with the statute, Plaintiffs’ UPPC payment must be “tier 1 railroad retirement benefits” to be an allowable subtraction. *Id.* Plaintiffs do not allege that the UPPC payment is tier 1 railroad retirement benefits. Therefore, the UPPC payment does not meet the statutory requirements and is not an allowable subtraction from federal taxable income.

Plaintiffs’ sole reason for concluding that the UPPC payment is an allowable

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

subtraction is based on OAR 150-316.054. Defendant has promulgated a rule (OAR 150-316.054) expanding the categories of railroad retirement income that may be subtracted on the Oregon return. Plaintiffs allege that the UPPC payment is a supplemental annuity paid by the railroad, and “any other supplemental annuities paid by the railroad are also allowed as a subtraction.” OAR 150-316.054.²

In addition to “supplemental annuities”, the OAR lists three other types of payments that are allowed as subtractions: tier II, windfall, and dual-vested benefits. Those types of payments are not defined in the OAR. However, each of those three types of payments as well as supplemental annuities are described in the Railroad Retirement Act (Act).³ Because those same terms appear together in the OAR, the court concludes that the term “supplemental annuities” in OAR 150-316.054 is not a general term used for a private pension plan, but rather as defined in the Act.⁴

Under the Act, supplemental annuities are payable to railroad employees that meet certain age requirements, have completed 25 years of service and have at least one month of service before October 1, 1981. 45 USC § 231a(b) (1994). Currently, the amount of supplemental annuities paid to employees ranges from \$23 to \$43 a month.

² 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.)

³ The railroad retirement system was first established in 1934. The Railroad Retirement Act was restated in 1937 and completely revised in 1974. The Act defines the payment of the retirement benefits for railroad employees. 45 USC § 231b (1994).

⁴ If the court were to conclude that the term “supplemental annuities” referenced any public or private pension payments, the court’s analysis would focus on whether Defendant exceeded its rule making authority by permitting a subtraction for benefits not specifically referenced in the statute (ORS 316.054). Because the court reaches a different conclusion, the issue need not be addressed.

45 USC § 231b(e). Plaintiffs' UPPC payment is not a supplemental annuity defined in the Act because Plaintiffs' monthly payment was \$821.50, clearly in excess of the current range of monthly payments for supplemental annuities defined under the Act. Using the Act to define the term supplemental annuities found in the OAR, the court concludes that Plaintiffs' UPPC payment is not an allowable subtraction from federal taxable income.

Further, the court notes that the rule refers to "any other supplemental annuities paid by **the** railroad." OAR 150-316.054 (emphasis added.) Defendant specifically chose the word "the" that suggests a specific entity, rather than the word "a" or "any" that suggests a more expansive interpretation. The court concludes that the language of the OAR is best understood in the context of the supplemental annuities defined in the Act and paid by the railroad, not the pension committee.

III. CONCLUSION

Now, therefore,

IT IS ADJUDGED AND DECREED that Plaintiffs are not entitled to subtract from federal taxable income the payments paid to them by the Union Pacific Pension Committee in tax years 1999 and 2000.

Dated this _____ day of January, 2004.

JILL A. TANNER
PRESIDING MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON
JANUARY 13, 2004. THE COURT FILED THIS DOCUMENT ON JANUARY 13, 2004.**