

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

ABRAHAM D. ORTON, )  
 )  
 Plaintiff, ) TC-MD 030849C  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION**

Plaintiff appealed Defendant's decision to override his instructions to his employer as to the amount to be withheld from his wages against Oregon personal income taxes which will become due for the 2003 tax year.

**I. STATEMENT OF FACTS**

Plaintiff declared that he is exempt from federal and state income tax, and accordingly, that no monies ought to be withheld from his wages against Oregon taxes. On Defendant's instructions, Plaintiff's employer, Spirit Mountain Casino, withheld wages and forwarded them to Defendant on the basis of a status of single, with one exemption.

Plaintiff also asserts Defendant's Answer was untimely. The court's records show the Answer was filed on July 10, 2003. The Complaint was filed on June 5, 2003.

Defendant requests that it be awarded sanctions under ORS 305.437.

**II. ANALYSIS**

Plaintiff asserts that his employer is a private employer, and as such is not required to withhold his wages and forward the sums to Defendant. He goes on to assert that withholding is a matter of voluntary contract between himself and his employer, with which Defendant has no ability to interfere. Plaintiff also presents his conclusion that, as he is not

a federal employee, federal officer, or elected official of the national government, he is not required to file a federal income tax return. From this Plaintiff concludes that he also not required to file an Oregon personal income tax return or pay any Oregon tax calculated to be due.

Plaintiff is simply wrong in his contentions. Both private and public employers are required to withhold taxes from the wages of their employees. ORS 316.167.<sup>1</sup> Individuals such as Plaintiff may claim to be exempt from withholding if they had no tax liability for the preceding tax year, and expect to have no tax liability for the current tax year. OAR 150-316.177(1)-(A). Although Plaintiff contends that he is exempt from federal and state tax, his reasoning has been rejected by this court in its unequivocal decision that wages are taxable. *Combs v. Dept. of Rev.*, 15 OTR 60 (1999) and *Clark v. Dept. of Rev.*, 15 OTR 197 (2000), *on recons*, 15 OTR 209 (2000), *aff'd* 332 Or 236, 26 P3d 821 (2001).

Two points remain. Plaintiff's assertion that Defendant's Answer was untimely is not supported by the 35 day interval, especially as a portion of the time was spent in transmission in the mails. Next, Defendant has requested damages under ORS 307.437, asserting that Plaintiff's appeal is groundless or frivolous. Defendant does have a point in that no decision of this court supports Plaintiff's assertions. However, as to the matter of damages, Defendant's participation before this court was limited to a single proceeding of less than an hour's duration. Any damage to Defendant would be minimal. The court also notes that this decision is the first opportunity Plaintiff has had to present his point of view to an impartial entity. The court /// declines to award Defendant damages on this state of the record. However, this

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

conclusion might not be reached in the event of further appeals making these allegations.<sup>2</sup>

### III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied. Defendant's decision as to Plaintiff's withholding is upheld. No damages are awarded to Defendant.

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

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SCOT A. SIDERAS  
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 SCOT A. SIDERAS ON NOVEMBER 10, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 10, 2003.**

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<sup>2</sup> This appeal was heard at approximately the same time as a companion appeal filed by Plaintiff making the same allegations, *Orton v. Dept. of Rev.*, TC-MD 030905A. For purposes of resolving Defendant's request for damages, the two appeals are treated as contemporaneous.