

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

SHANNON L. GILBERT,)	
)	
Plaintiff,)	TC-MD 030870A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiff appealed an assessment of personal income taxes for the 2001 tax year. She appeared and made her arguments. The Department of Revenue responded, and was represented by Laurie Fery.

I. STATEMENT OF FACTS

Despite repeated requests from the Department of Revenue and Oregon withholdings of \$4,660.11, Plaintiff did not file an Oregon personal income tax return for the 2001 tax year. In the face of that intransigence, the Department of Revenue computed an assessment based on a W-2 from Intel Corporation showing wages of \$83,113.62.

Plaintiff's assertion is that, according to her books and records, there is no tax liability, and she is not obligated to file a return. Plaintiff went on to state that she would not file a tax return unless it could be shown that it does not interfere with her constitutional rights.

During the course of this appeal, Defendant moved that it be awarded damages under ORS 305.437 on the grounds that Plaintiff's appeal is frivolous or groundless.

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II. ANALYSIS

Plaintiff cannot prevail in this appeal. The essence of her case is her claim that she can prove that she owes no tax. However, claiming one can prove that no tax is owed is not at all the same as actually presenting the information to the court in the form of a completed tax return. The combination of ORS 316.048, ORS 316.022, and ORS 316.027¹ and the W-2 showing income earned in Oregon is a potent proof that Plaintiff is exactly the citizen who is obligated to file a return.

That leads to the argument that, if it is so immediately apparent that Plaintiff's appeal is without merit, then the court should award damages on the basis of concluding this is a frivolous appeal. Although that point is a strong one, the difficulty is identifying the amount of damage Defendant has sustained. Defendant's role in this process consisted of filing its pleadings and participating in brief case management conferences and a short telephone trial. Defendant has not filed an affidavit with the court or otherwise demonstrated the extent to which those events have caused it injury. An award of \$5,000 seems excessive. Lacking substantiation by Defendant of a lesser reasonable amount, the court will not speculate as to what award Defendant might be entitled.

Another element in the thinking of the court is that, although this appeal might be characterized as frivolous or groundless, a more accurate description of it is naive. The proceeding before the Magistrate Division was Plaintiff's first opportunity to present her points to an entity other than the Department of Revenue. She has not received from the court the message that she ought to do as the Department of Revenue has requested. However, Plaintiff is on notice that the patience of the court is limited.

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

Should Plaintiff chose to appeal this dispute without recognizing the conclusions reached by the court in this decision, it may well be that the reviewing tribunal will decide to award damages. However, on this state of the record, the Magistrate Division declines.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied. No damages are awarded.

Dated this _____ day of April 2004.

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 APRIL 6, 2004. THE COURT FILED THIS DOCUMENT ON APRIL 6, 2004.