

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

ANDRÉ G. TOKAYUK, )  
 )  
 Plaintiff, ) TC-MD 030933F  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION AND JUDGMENT**

Plaintiff appeals Defendant's assessment of income taxes owed for the 2002 tax year. Plaintiff disputes the tax due on \$7,184 shown on a W-2 form included with his tax return as wages earned from Alaska Fisheries, LLC. A telephone conference was held on October 7, 2003, with a followup telephone conference on December 8, 2003.

**I. STATEMENT OF FACTS**

Plaintiff is a resident of the State of Oregon. From August 15, 2001 through November 9, 2001, Plaintiff worked as a crew member on a commercial fishing vessel operated in international waters and owned by a company based in Anchorage, Alaska. Plaintiff was to be paid an agreed-upon percentage of the net proceeds of the vessel's catch. However, when Plaintiff received his share in January 2002 he discovered that significant deductions had been taken for food, crew advance, and crew purchases, in addition to the usual employee deductions for federal withholding, social security, and Medicare. Plaintiff's pay stubs showed that he was charged \$352.50 for food during the first 45-day period he was on board and \$600.00 for food for the next 40 days. He was

also charged \$704.17 for purchases made while at sea. Due to the size of those deductions, as well as advances taken by Plaintiff (totaling \$2,011), the first check he received was for \$2,354.95 and the second was for \$0.00.

When Plaintiff filed his income tax return for the year 2002 he declared as income the \$7,184 that was shown as compensation on the Form W-2 he had received from Alaska Fisheries; the \$7,184 included the amounts deducted for food and purchases. It appears he did not submit payment for the taxes due at that time. When Defendant notified him of his underpayment, he filed this appeal with the Tax Court in the form of a letter that explained that he did not feel he should be taxed on the portion of his pay deducted by his employer for food and expenses, particularly because he was charged for items such as “room & board, weather gear, fuel, observer, and pretty much anything else they could think of.” (Ptf’s Compl at 1.) He also included photocopies of the two paychecks he had received.

In its answer, Defendant agreed with the above facts and stated that, as the photocopied checks supported the amount declared as wages on the return, the magistrate should find for Defendant and uphold the tax as assessed.

## **II. ANALYSIS**

The issue in this case is whether Plaintiff should be taxed on the amounts deducted by his employer from his crew share for purchases and food consumed while working onboard a vessel at sea. Plaintiff also questioned the ability of his employer to deduct items such as food and purchases from his crew share, which in effect caused him to

cover expenses one might think were more naturally considered an expense of doing business and attributable to the owner of the vessel.<sup>1</sup>

As defined by the Internal Revenue Code (IRC), gross income is defined as “all income from whatever source derived.” IRC § 61(a) (1994). The IRC subsequently identifies items that may be excluded from gross income, allowing the taxpayer to pay tax on a lesser amount. See IRC § 101. The result is the taxpayer’s federal taxable income.

Oregon law requires Oregon residents to pay a tax on their income to the State of Oregon as well; the portion of their income that can be taxed is again defined by statute which states that “[t]he entire taxable income of a resident of this state is the **federal taxable income** of the resident as defined in the laws of the United States, with the modifications, additions and subtractions provided in this chapter and other laws of this state applicable to personal income taxation.” ORS 316.048 (emphasis added).<sup>2</sup> The “modifications, additions and subtractions” identified include such items as social security benefits and interest or dividends on municipal obligations. See ORS 316.054 to 316.056. However, those modifications do not include a provision allowing employees to deduct meals or supplies from their federal taxable income.

The court is sympathetic to Plaintiff’s unhappiness at the amounts he was charged for food and purchases while working onboard the fishing vessel. That he should be charged tax on those amounts as well only makes the experience more onerous.

---

<sup>1</sup> It seems questionable to the court that a fishing boat owner can legitimately charge its employees for expenses such as Plaintiff cited, particularly the cost of having a federally-mandated observer onboard. However, a search of both statutory and case law did not turn up any law disallowing such an action. To charge crew members for food is also customary in the Alaskan fishing industry. Crew members are usually paid a percentage of the catch; all vessels provide food to their crews, but approximately two-thirds of the vessels charge them for the food they eat while onboard. *Disallowance of Full Deductions for Fishermen’s Meals “Smelts” Bad!*, 93 J Tax’n 380, 380 (2000).

<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

However, the statute governs which items can be deducted from federal taxable income to avoid paying tax in the State of Oregon; the court cannot rule contrary to law.

Plaintiff also raised the question of whether the amounts he earned while working during the 2001 tax year, but received as pay during 2002, should be taxable income to him for the tax year 2002. As Defendant correctly pointed out in its answer, Plaintiff is a cash basis taxpayer; as such, he must declare income in the year it is received. The money advanced to him during 2001 was in the form of a loan against paychecks to be received in the future, which his employer issued to him (with the corresponding Form W-2) during 2002.<sup>3</sup> Hence, the checks received on January 10 and 22, 2002, and declared as income by Plaintiff on his 2002 tax return, are properly taxed as income to him during that tax year.

The court is sympathetic to Plaintiff's feelings of being ill-used, but, under the law as stated above, cannot waive the taxes that have been assessed as due. Plaintiff has been assessed tax only on the amount he declared as income on the return he filed with the state. If Plaintiff felt his employer had misrepresented the amount he received as wages, or breached his employment contract by deducting expenses that were not valid, or breached its duties as an employer in some other way, Plaintiff's recourse is against his former employer.<sup>4</sup>

Plaintiff has not provided evidence to the court that the \$7,184 shown as gross earnings was inaccurate. Therefore, the court finds that Defendant acted properly in

---

<sup>3</sup> The term 'advance payment' is defined as "payment made in anticipation of a contingent or fixed future liability or obligation." *Black's Law Dictionary* 1150 (7th ed 1999).

<sup>4</sup> In his letter, Plaintiff also stated that he was "injured on the last trip and they didn't even pay me their 'maintenance.'" Such breaches of duty by an employer should prompt the immediate filing of a complaint with the Bureau of Labor and Industry (BOLI) to circumvent, as Plaintiff told the court has occurred here, the possibility of the employer declaring bankruptcy and becoming judgment proof.

assessing tax on that amount. However, as Defendant stated during the second telephone conference, the Department of Revenue has the authority to waive tax balances of \$50.00 or less, penalties, and interest upon a showing of “good and sufficient cause.” ORS 305.145(3). The Department of Revenue also has the authority to enter into an agreement in writing with any taxpayer for “any taxable period open to adjustment under the pertinent statutes of limitation.” ORS 305.150(1).

### **III. CONCLUSION**

After considering all of the facts in this case, the court finds for Defendant. The taxes are due as assessed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is denied.

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

---

SALLY L. KIMSEY  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON  
DECEMBER 31, 2003. THE COURT FILED THIS DOCUMENT ON DECEMBER 31,  
2003.**