

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

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|------------------------|---|------------------------------------------|
| JAMES E. WELSHEIMER, |) | |
| |) | |
| Plaintiff, |) | TC-MD 030980C |
| |) | |
| v. |) | |
| |) | |
| DEPARTMENT OF REVENUE, |) | |
| STATE OF OREGON, |) | |
| |) | |
| Defendant. |) | DECISION AND GENERAL JUDGMENT |

Defendant adjusted Plaintiff's 2002 Oregon state income tax return and Plaintiff appealed. At issue is whether Plaintiff is entitled to a credit of \$1,452 for taxes paid to another state in accordance with ORS 316.082.¹

I. STATEMENT OF FACTS

Plaintiff lives in Oregon and in 2002 was employed by KLLM trucking, which is based in Jackson, Mississippi. Plaintiff testified that he worked out of a trucking terminal in Ontario, California, and neither lived nor worked in Mississippi in 2002. Plaintiff's employer withheld taxes for the state of Mississippi in 2002. There was no Oregon withholding for that year. The 2002 W-2 Wage and Tax Statement shows the employer's address as "P.O. Box 6098, Jackson, MS." Plaintiff timely filed an Oregon full-year resident return (Form 40) and a "Mississippi Non-Resident" return.

On the Oregon return, Plaintiff claimed a credit on line 41 of \$1,452 for taxes withheld and paid to Mississippi. Defendant disallowed the credit because there was no evidence of mutually taxed income. On the first page of the Mississippi non-resident return, Plaintiff reported zero "Mississippi Adjusted Gross Income" on line 18, but on the second page of the return, on lines 34 and 54, Plaintiff reported all of his wages

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

(\$37,320) in the “Mississippi income ONLY” column. The instructions advise the taxpayer to report on line 18 the amount of Mississippi income reported on line 54. As a result, the Mississippi return reported conflicting information, leaving the Mississippi state tax authorities to determine for themselves whether Plaintiff had \$37,320 of Mississippi income, as reported on line 54, or zero Mississippi income, as reported on line 18. Finally, Plaintiff did not enter any information on line 22 of the Mississippi return, which asks for the “Total Income Tax Due (From Schedule of Tax Computation).” Consequently, Plaintiff requested a refund of the entire amount of withholding (\$1,452). Mississippi issued a refund of only \$151.

II. ANALYSIS

As a resident of Oregon, Plaintiff is subject to Oregon’s income tax pursuant to ORS 316.037.² Plaintiff’s employer withheld Mississippi state income taxes, and Plaintiff objects to the double taxation.

Oregon provides a credit against Oregon income taxes for income taxes paid to another state. ORS 316.082. However, there are a number of prerequisites to the credit. Of relevance here are the requirements that Mississippi must have actually imposed income taxes on Plaintiff and that Plaintiff had Mississippi source income.

Oregon’s credit statute reads, in pertinent part:

"A resident individual shall be allowed a credit against the tax otherwise due * * * for the amount of any income tax imposed on the individual * * * for the tax year by another state on income derived from sources therein and that is also subject to tax under this chapter."

ORS 316.082(1).

² That statute provides that "a tax is imposed for each taxable year on the entire taxable income of every resident of this state." ORS 316.037. Oregon also imposes a tax on nonresidents if they have taxable income “derived from sources within this state.” ORS 316.037(3).

Did Mississippi impose an income tax on Plaintiff? To “impose” means to “charge” or “to make, frame, or apply.” *Webster’s Third New Int’l Dictionary* 1136 (unabridged ed 1993). Plaintiff asserts that he is not subject to Mississippi income taxes because he neither lived nor worked in that state.³ It appears that Mississippi’s income tax laws parallel Oregon, subjecting nonresidents to state taxes only on income earned from sources within that state. See Miss. Code Ann. § 27-7-23(b). Thus, if the facts are as Plaintiff asserts, Mississippi did not impose taxes on Plaintiff in 2002, and Plaintiff is not entitled to the credit he claimed on his Oregon return. Rather, Plaintiff, through employer withholding, erroneously paid taxes to Mississippi. Moreover, Plaintiff did not have “income derived from sources therein,” as required by Oregon’s credit statute. ORS 316.082(1). Because Plaintiff cannot satisfy either statutory requirement, he is not entitled to the credit.

Although this court is not in a position to answer for the actions of another jurisdiction, it appears that Mississippi resolved the conflict between lines 18 and 54 of the Mississippi return in its favor, concluding that all of Plaintiff’s income was attributable to Mississippi. That would explain why Mississippi reduced the refund from the requested amount of \$1,452 to \$151, the latter number likely being the difference between the amount of tax withheld by the employer and the correct amount due according to the tax table. Assuming Plaintiff is truly not liable for Mississippi income taxes, his dispute lies properly with the state of Mississippi, not Oregon. Oregon is not in the position to give up the tax due it because Plaintiff erroneously paid Mississippi taxes.

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³ That would be true under Oregon law if Plaintiff were a Mississippi resident working out of California.

It is possible that Plaintiff actually worked out of Mississippi; the W-2 shows a Mississippi address, and Plaintiff applied for Mississippi unemployment benefits in 2002. It seems unlikely that Plaintiff would be entitled to Mississippi unemployment benefits if he neither lived nor worked in that state. Nonetheless, the fact that he applied for benefits leads to an inference that he had more substantial ties to Mississippi than he represented to this court. And, there is only Plaintiff's testimony that he worked in California.

If Plaintiff had demonstrated that he was liable for Mississippi income taxes because he was either a resident of that state (which seems unlikely) or had Mississippi source income, he would be entitled to the credit against his Oregon income taxes. However, that is not the position Plaintiff takes and, on the evidence presented, the court finds that Mississippi did not impose an income tax on Plaintiff. As a resident of Oregon, however, Plaintiff does owe taxes to this state because Plaintiff was a resident of this state in 2002.

III. CONCLUSION

The court concludes that Plaintiff is not entitled to a credit under ORS 316.082 for taxes paid to another state because the other state (Mississippi) did not impose any income tax on Plaintiff, and there is no evidence to show that Plaintiff had Mississippi source income. Now, therefore,

IT IS ADJUDGED that Plaintiff's appeal is denied.

Dated this _____ day of May 2004.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON MAY 17, 2004.
THE COURT FILED THIS DOCUMENT MAY 17, 2004.**