

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MICHAEL E. BOWMAN,)	
)	
Plaintiff,)	TC-MD 031064B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

A case management conference was held January 26, 2004. Michael E. Bowman participated on his own behalf. Auditor Jason #608 (no last name provided) represented Defendant. After speaking with the parties, the court determined that the case would best be presented by written documents and arguments. A Summary Judgment Order was issued February 25, 2004. Written materials were presented by each side; the record closed May 3, 2004.

I. STATEMENT OF FACTS

The issue concerns Plaintiff's Oregon income tax returns for the 1999 and 2000 tax years. He contends he is not liable for state taxes for assorted reasons discussed below.

Plaintiff did not timely file Oregon personal income tax returns for the 1999 and 2000 tax years. A Notice of Deficiency was sent by Defendant on April 1, 2003. That was followed by a Notice of Tax Assessment on April 28, 2003.

According to Defendant, Plaintiff received \$120,021 in compensation from Intersoft in 1999. Total compensation for 2000 was \$82,504, received from four sources: Intersoft (\$8,525), Professional Data Exchange (\$18,853), Hall Kinion Associates (\$25,216), and Robert Half (\$29,910). Those amounts and their sources were not contested by Plaintiff.

///

Plaintiff contends such compensation income is not taxable by Defendant. Plaintiff's main arguments focus on a so-called "the claim of right." He presented his opinions and some written arguments.

Plaintiff's pleading filed December 23, 2003, states:

"Plaintiff believes that the monies or properties entrusted to him by Almighty God, will be used in ways that are un-holy, un-Godly, and would constitute a contribution - *either directly or indirectly* - to the evil that prevails in our society."

(Ptf's Mot to Am Pleading at ¶ 7; emphasis in original.)

In its Answer filed November 18, 2003, Defendant requests the court uphold the assessments and award damages pursuant to ORS 305.437¹. In later materials filed April 16, 2004, Defendant requested "the court to award damages * * * in the amount of \$3,000 * * * [due to] plaintiff's constant belligerent and threatening calls and letters, [for which] the department has used extensive resources." (Def's Case Summ J at 2.)

II. PLAINTIFF'S ASSORTED MOTIONS

Plaintiff filed numerous motions with the court. Those motions focus on both procedural and substantive matters that presented "challenges" to Defendant's Answer and include requests for the court to award actual damages, for the magistrate to "cure his errors," and to do certain implausible things, such as award \$250,000 in punitive damages.

The court fully evaluated Plaintiff's motions and finds they are without substance and support, lack a basic legal foundation, and are unrelated to the merits of the claims asserted.

Plaintiff's motions are all denied.

///

///

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

III.. COURT'S ANALYSIS

"A tax is imposed for each taxable year on the entire taxable income of every resident of this state." ORS 316.037(1)(a). "Taxable income' means the taxable income as defined in subsection (a) or (b), section 63 of the Internal Revenue Code, with such additions, subtractions and adjustments as are prescribed by this chapter." ORS 316.022(6).

Income from wages, services, and commissions are taxable. IRC sections 61 and 63. A taxpayer may not deduct the cost of his labor from gross income. *Thomas v. Dept. of Rev.*, 14 OTR 136 (1997).

One of Plaintiff's presentations focuses on the "the claim of right" arguments. As cited in Defendant's Case Summary Judgment, IRS Revenue Ruling 2004-29 deals with such arguments. It refers to the attempts to reduce tax liability as "frivolous" and without merit. This court agrees.

Plaintiff cites *Smith v. Employment Division*, 307 Or 68, 763 P2d 146 (1988) as authority for his assorted positions; however, that case focused on Native American use of peyote in a religious ceremony. There, the citizen's right to worship was examined and upheld. Plaintiff's religious beliefs herein are not compromised by Defendant's actions. The case of *Smith* is not applicable to the payment of taxes due the State of Oregon.

Plaintiff alluded to certain other alleged "constitutional violations" committed by Defendant. After full review, the court finds no such violations. Instead, the court concludes that Defendant's employees fulfilled their statutory duties in exemplary fashion, despite Plaintiff's attempts to confuse the issues, interrupt proceedings, and cause general disruption to the tax collection processes.

The appeal submitted to this court is clearly without merit. It is a frivolous appeal. Federal courts have made similar findings. *Santangelo v. Commissioner*, 70 TCM (CCH) 878

(1995). The Regular Division of this court has taken a similar approach where a party "raises spurious constitutional arguments patched together with citations taken completely out of context." *Buras v. Dept. of Rev.*, __ OTR __ (Jan 26, 2004) (slip op at 8). A penalty pursuant to ORS 305.437 is justified and proper; therefore, the court concludes an award of \$2,000 is appropriate.

CONCLUSION

IT IS THE DECISION OF THE COURT that the appeal is denied, and

IT IS FURTHER DECIDED that Defendant is awarded \$2,000 for damages.

Dated this ____ day of June 2004.

JEFF MATTSON
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 JEFF MATTSON JUNE 25, 2004.
THE COURT FILED THIS DOCUMENT JUNE 25, 2004.**