

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Income Tax

JAMES M. GROSHONG)	
and SANDRA LEE GROSHONG,)	
)	
Plaintiffs,)	TC-MD 040023A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs appeal an assessment of personal income taxes for the 2000 tax year. A telephonic trial was held March 31, 2004. James Groshong (Groshong) appeared for Plaintiffs. Defendant was represented by Amy Stalnaker, a member of its staff.

I. STATEMENT OF FACTS

This appeal is as to the credit that Oregon gives to taxes paid to another state. In June 2000, Groshong left his position as deputy chief of the Salem Fire Department and moved to California to become fire chief of the Ross Valley Fire Department.

Plaintiffs had two significant sources of income for the year at issue. The first was wages. The second was pension income, from two sources, totaling \$22,555. The bulk of that pension income, some \$20,166.03, came to Plaintiffs from Groshong's previous employment with the City and County of San Francisco. That pension was paid on a month-to-month basis. The balance of the pension income was a Public Employment Retirement System (PERS) distribution taken by Groshong when he terminated his Oregon employment.

Plaintiffs filed part-year resident returns with both Oregon and California. The dispute in this appeal is as to how pension income was treated on each return. Only \$8,571 was reported on the Oregon return for pension and annuity income. The California return set out \$20,166 as

the pension income taxable to that state.

Plaintiffs used the tax paid to California in calculating the credit Oregon allows for taxes paid to another state. Defendant did not allow the credit and adjusted Plaintiffs' return.

II. ANALYSIS

The conclusion of the court is that Plaintiffs overpaid their tax to California. Oregon and California both tax pension income by looking to the residency of a taxpayer at the time the distribution is received. Plaintiffs' PERS distribution would not be taxable by Oregon because, at the time Plaintiffs received that sum, they had severed their connections to Oregon and taken up residency in California. However, the pension income from the City and County of San Francisco was paid on a month-to-month basis. Plaintiffs did not become residents of California until after June 2000. Half of that year's distribution of \$20,166.03 would be taxable to Oregon. Plaintiffs reported that entire sum as California income on their 2000 part-year return.

That conclusion resolves the appeal. The credit for taxes paid to another state is designed to ameliorate the burden when two states are taxing the same income. Here, Oregon and California should not be taxing the same income. Oregon should be taxing the wages and pension income Plaintiffs received while they lived in Oregon. California should be doing the same for the balance of the year, after Plaintiffs left Oregon for their new home.

Plaintiffs made the point that, in determining the credit for taxes paid to another state, they carefully followed the instructions with the Oregon return. The particular problem is that the instructions apply only if income tax is paid to another state on income also taxed by Oregon. In Plaintiffs' case, Oregon is not taxing income that is also taxed by California. Instead, the

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assessment at issue corrects Plaintiffs' assignment of too much of their income to California and too little to Oregon.

If Plaintiffs' income is compared to a pie, the problem is that, when Plaintiffs completed their returns, they gave California too large a slice of the pie and Oregon too small a slice of the pie. Plaintiffs' remedy is not with the State of Oregon. Plaintiffs' option is to amend their California return.

III. CONCLUSION

IT IS THE DECISION OF THIS COURT that the appeal must be denied.

Dated this _____ day of June 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 JUNE 16, 2004. THE COURT FILED THIS DOCUMENT JUNE 16, 2004.