

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

JAMIE DANIELLE-THAYER BERKEY, )  
 )  
 Plaintiff, ) TC-MD 040081B  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 State of Oregon, )  
 )  
 Defendant. ) **DECISION**

A telephonic case management conference was held April 13, 2004. Plaintiff participated on her own behalf. Auditor Jason #608 (no last name provided) represented Defendant. After speaking with the parties, all agreed that the case would best be presented through written documents and arguments. Written materials were presented by each side; the record closed July 1, 2004.

I. STATEMENT OF FACTS

The issue in this appeal concerns Plaintiff's Oregon income tax return for the 2002 tax year. Plaintiff contends she is not liable for state taxes for assorted reasons discussed below.

Plaintiff did not timely file an Oregon personal income tax returns for the 2002 tax year. Defendant sent a Notice of Deficiency to Plaintiff on September 11, 2003. That was followed by a Notice of Tax Assessment on November 25, 2003.

According to Defendant, Plaintiff received \$37,309 in wages from CC Services in 2002. That amount and its source was not contested by Plaintiff.

Plaintiff contends such wages are not taxable by Defendant. Plaintiff's main arguments focus on her opposition to certain state-funded activities. She presented her opinions and some written arguments.

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For example, Plaintiff's Complaint filed February 23, 2004, states:

"I am not required to contribute to such things as: funding Oregon's abortion program that kills unborn children with \$3.7 million dollars from the general fund. Furthermore, I am not required to pay taxes when the taxes will be used to fund activities that are evil, violate my conscience, hinder my faith, or, damage my ability to 'worship' Almighty God (to be 'obedient' to Almighty God)."

(Plf's Compl at 3.)

In its Answer filed March 5, 2004, Defendant requests the court uphold the assessment and award damages pursuant to ORS 305.437.<sup>1</sup> In later materials filed June 16, 2004, Defendant requested "the court to award damages \* \* \* in the amount of \$3,000 \* \* \* as the plaintiff has caused the department to use extensive resources." (Def's Cross Motion at 2.)

## II. ANALYSIS

Plaintiff filed several requests with this court and with Defendant. Those requests focus on both procedural and substantive matters that presented "challenges" to Defendant's Answer and include requests for the court to do certain implausible things, such as award \$1,000 in damages for Plaintiff's "pain and suffering." (Plf's letter filed July 6, 2004 at 2.)

The court fully evaluated Plaintiff's requests 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.

As to the merits of Plaintiff's claims, the starting point is that "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).

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<sup>1</sup>All references to the Oregon Revised Statutes (ORS) are to 2001.

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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).

Plaintiff cites *Smith v. Employment Division*, 307 Or 68, 763 P2d 146 (1988) as authority for her 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 substantially 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 damages is appropriate. Due to the written presentation of the case and the single conference call utilized, the court finds damages appropriate at \$500.

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CONCLUSION

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

IT IS FURTHER DECIDED that Defendant is awarded \$500 for damages.

Dated this \_\_\_\_ day of September 2004.

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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 ON SEPTEMBER 27, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 27, 2004.**