

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

BIRCHEL R. ESTEP)	
and CHRISTINA D. ESTEP,)	
)	
Plaintiffs,)	TC-MD 040814B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal concerning certain Oregon income tax matters for the 2001 tax year. They claim there was income mutually taxed by both Oregon and Indiana.

A case management conference was held on September 20, 2004. Birchel R. Estep participated for Plaintiffs. Jason Iverson appeared for Defendant. The parties agreed the case would be decided based on written submissions. Defendant's subsequent written summary, by Amy Stalnaker, was filed September 24, 2004. Plaintiffs did not respond to Defendant's explanation nor submit anything beyond the original Complaint.

I. STATEMENT OF FACTS

Plaintiffs filed an Oregon Form 40P, a part-year resident income tax return for the 2001 tax year. Therein they claimed a \$656¹ credit for taxes paid to another state. The original form concluded a total tax before credits of \$1,206. Upon review, Defendant disallowed that claim and asserted a remaining tax due of \$656.

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¹ Plaintiffs' Form 40P - Line 59.

According to Plaintiffs' 2001 Indiana part-year return, \$656 was the same amount for state and county taxes withheld for that year. The Indiana final tax was \$415. Of those withheld amounts, \$241 were refunded to Plaintiffs by Indiana.

Defendant submitted an "Explanation of Adjustment," which was filed with the court on September 24, 2004. According to that summary, Defendant relied entirely on Plaintiffs' original reporting of income amounts and sources.

Oregon taxes income from all sources earned or received while an Oregon resident. ORS 316.119(1).² Plaintiffs' Oregon return reported taxable income of \$26,396.³ Oregon taxes only a portion of that. The formula for the applicable percentage is total income (\$31,005⁴) divided by Oregon source income (\$18,493⁵). That yields a percentage of 59.6;⁶ that is the apportionment factor that applies to Oregon. That figure applied to the total tax of \$2,024⁷ yields an Oregon tax owing of \$1,206,⁸ before credits.

II. ANALYSIS

Defendant has not levied taxes in an excessive amount. ORS 316.082. Had all of Plaintiffs' income been subject to Oregon's reach, the resulting computation would have been

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² All references to the Oregon Revised Statutes (ORS) are to 1999.

³ Plaintiffs' form 40P - Line 49.

⁴ Plaintiffs' form 40P - Line 39.

⁵ Plaintiffs' form 40P - Line 39b.

⁶ Plaintiffs' form 40P - Line 40.

⁷ Plaintiffs' form 40P - Line 50.

⁸ Plaintiffs' form 40P - Line 51.

\$2,024. That is \$818 more than Plaintiffs were actually taxed by Oregon. Plaintiffs did not demonstrate any error or omission in those calculations filed on September 24, 2004. There was no mutually taxed income for tax year 2001.

In these appeals, a preponderance of the evidence is required to sustain the burden of proof. "That burden of proof shall fall upon the party seeking affirmative relief." ORS 305.427. Plaintiffs have not met that statutory requirement in this record.

III. CONCLUSION

Now, therefore,

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

Dated this _____ day of December 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 ON DECEMBER 21, 2004. THE COURT FILED AND ENTERED THIS DOCUMENT DECEMBER 21, 2004.