

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MICHAEL ALAN HILLECKE)	
and CAROLYNE RUTH HILLECKE,)	
)	
Plaintiffs,)	TC-MD 040854D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s Notice of Determination and Assessment for tax year 1998 and Defendant’s Notices of Tax Assessment for the 1999, 2000, 2001, and 2002 tax years. The parties submitted cross motions for summary judgment.¹

I. STATEMENT OF FACTS

Plaintiffs did not file an Oregon state income tax return for tax year 1998. Using the best available information, Defendant determined Plaintiffs’ income tax liability for tax year 1998. Plaintiffs were then issued a Notice of Determination and Assessment by Defendant on March 19, 2004. (Def’s Cross Mot at 2.) For tax years 1999, 2000, 2001, and 2002, Plaintiffs filed state income tax returns. On those returns, Plaintiffs showed “-0-” on each line except the line for standard deduction, exemption credit and Oregon income tax withheld. (Def’s Answer and Ex A, tax year 2002.²) Plaintiffs attached a W-2 Wage and Tax Statement for Carolyne R.

¹ Plaintiffs requested oral argument “if the court deems it is necessary and or beneficial to prevent a reoccurrence of these events.” (Ptf’s Mot Summ J at Request for Oral Arguments.) The court did not find it necessary or beneficial.

² Plaintiffs filed a Motion in Limine, asking the court “for an order excluding from evidence all the Defendant’s exhibits and all other documents manufactured by the Defendant,” including the Internal Revenue Service Income Tax Examination Changes report, “for lack of foundation.” The Magistrate Division of the Oregon Tax Court “is not bound by * * * statutory rules of evidence” and “may conduct the hearing in any manner that will achieve substantial justice.” ORS 305.501(4)(a). Because the court finds the documents relevant, Plaintiffs’ motion is denied.

Hillecke to their return. In tax year 2002, Carlyne Hillecke's wage and tax statement showed wages in the amount of \$25,397.22. (Def's Ex A-1.) Plaintiffs attached a Disclosure Statement, Internal Revenue Service Form 8275 to their returns. On Form 8275, Plaintiffs stated that "the W-2 report of 'wages' is erroneous and a correction was requested" and "the 1099 reports of 'business income' being taxable and legally includible in 'gross income' were erroneous." (Def's Answer, Ex A- 4.) Plaintiffs requested refunds in the amount of state income tax withheld. (Def's Answer, Ex A-3.)

In their motion for summary judgment, Plaintiffs allege that their "compensation is lawfully defined as non-taxable as per U.S. Supreme Court rulings and contrary to the Oregon Department of Revenue's claim. Any alleged 'rent' is also non-taxable again as per U.S. Supreme Court rulings. The claim of 'disability income' is fictitious and therefore not taxable." (Ptf's Mot Summ J at 5.) Plaintiffs did not submit any evidence to support their allegations.

Defendant alleges in its Cross Motion that "[e]very argument the plaintiff makes in his Motion for Summary Judgment has been consistently ruled as frivolous and without merit by the courts." (Def's Cross Mot at 1.) Further, Defendant "**requests** the court to award damages for frivolous or groundless appeal under ORS 305.437³ of at least \$3,000." (*Id.* at 2.) (emphasis in original.)

II. ANALYSIS

In support of their motion for summary judgment, Plaintiffs make the following arguments:

Wages are not taxable income.

Rent received by Plaintiffs is not taxable income.

³ All references to the Oregon Revised Statutes (ORS) are to 2003.

Plaintiffs did not receive any disability income for the tax years at issue.

A. *Wages.*

Forming the foundation of Plaintiffs' position is their argument that wages are not income. (Ptf's Mot Summ J at 2.) This argument has been "unequivocally rejected" by "[e]very court which has ever considered the issue." *United States v. Connor*, 898 F2d 942, 943-944 (3rd Cir), *cert den*, 497 US 1020 (1999). According to the federal definition, upon which the Oregon definition is based, gross income includes "compensation for services, including fees, commissions, fringe benefits, and similar items." IRC § 61(a) (1997)⁴. The Oregon Tax Court held that wages are clearly taxable income and that to argue otherwise is "unrealistic and uninformed." *Combs v. Dept. of Rev.*, 15 OTR 60, 61 (1999). In *Clark v. Dept. of Rev.*, 332 Or 236, 237, 26 P3d 821 (2001), the Oregon Supreme Court wrote that the "Tax Court's rulings were correct" in *Combs*, "holding that wages are subject to Oregon's personal income tax and that a taxpayer's argument to the contrary was frivolous." *See Combs v. Dept. of Rev.*, 331 Or 245, 14 P3d 584 (2001). For purposes of computing Oregon state taxable income, it is well settled law that wages are income.

B. *Rents.*

Recently, this court held that "[t]he taxpayer's position that rents from real estate are not statutorily or constitutionally within the definition of gross income under IRC section 61 has been rejected and has no authoritative support. *See Brushaber v. Union Pac. R.R.*, 240 US 1, 17-18, 36 S Ct 236, 60 L Ed 493 (1916) (upholding the constitutionality of taxing rental income)." *Curtis v. Dept. of Rev.*, 17 OTR 414, 418 (2004). Rents received by Plaintiffs are taxable income.

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⁴ The Internal Revenue Code definition of gross income remains unchanged for all tax years at issue.

C. *Disability Income.*

Plaintiffs allege that “no such ‘disability income’ exists for the years (1998, 1999, 2000, 2001 & 2002) included within these proceedings.” (Ptf’s Mot Summ J at 4.) Defendant determined Plaintiffs’ adjusted gross income and concluded that Plaintiffs’ received disability income for tax years 1999, 2000 and 2001, from the information it received from the Internal Revenue Service (IRS), specifically Explanation of Items (Form 886A), attached to the IRS Income Tax Examination Changes Form 4549A. (Def’s Ex A.) Plaintiffs moved to strike the evidence, arguing that “the Oregon Department of Revenue” must “present into evidence the name (company or organization) of the entity making these ‘disability income’ payments to the plaintiffs for the purposes of cross-examination * * *.” (Ptf’s Mot Summ J at 4.) Plaintiffs’ demand that Defendant present specific information “illustrates one of many misunderstandings under which” they have “operated.” *Curtis* at 420. Plaintiffs object because Defendant relied on information obtained from the IRS. This court has held that “that practice is clearly available to the department for the purposes of determining and assessing tax” especially in cases like this where Plaintiffs “failed to avail” themselves “of opportunities to clarify, review, or rebut the material upon which both the federal and state tax agencies were relying.” *Curtis* at 419. Plaintiffs failed to submit any evidence showing that the statement they made on their loan application concerning the receipt of disability income was in error.

Defendant requested that the court award it damages under ORS 305.437. That statute gives the court the authority in certain situations to award the Department of Revenue damages in an amount no greater than \$5,000. Those situations occur when the court concludes that the proceedings “before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer’s position in such proceeding is frivolous or groundless.” ORS 305.437(1). Defendant correctly alleges that “[t]he arguments brought forward to the [court] by the plaintiff are

frivolous and merit less.” (Def’s Cross Mot at 2.) In a prior case, the court held that a taxpayer’s position that wages are not taxable is “groundless and totally devoid of merit.” *Combs* at 61. In *Curtis*, the court awarded damages to Defendant, concluding that “[t]here is no objectively reasonable basis for taxpayer’s legal positions,” including her conclusion that “rents from real estate are not statutorily or constitutionally within the definition of gross income.” *Curtis* at 418 and 425. Like *Curtis*, the court awarded damages in *Combs*, stating that “[a]n award of damages constitutes a message that while people may be free to express dissatisfaction with their taxes, they may not impose needless costs on the public.” *Combs*, 15 OTR 60, 62. Specifically, the court was concerned about a situation like this case, wherein Plaintiffs failed to provide relevant information in their possession, forcing Defendant to obtain the information from the IRS and to assess taxes on the basis of the IRS information. Multiple times during this appeal Plaintiffs were advised by Defendant and the court that those who came before this court with similar allegations have failed and damages have been assessed. The court awards Defendant \$2,000 in damages.

III. CONCLUSION

After evaluating Plaintiffs’ pleadings, the court finds that Plaintiffs’ wages, interest, and disability payments were subject to taxation by Oregon. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ Motion for Summary Judgment is denied;

IT IS FURTHER DECIDED that Defendant’s Cross Motion is granted;

IT IS FURTHER DECIDED that Plaintiffs’ Motion in Limine asking the court to not receive Defendant’s exhibits into evidence “for lack of foundation” is denied; and

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IT IS FURTHER DECIDED that Defendant is awarded damages in the amount of \$2,000.

Dated this _____ day of February 2005.

JILL A. TANNER
PRESIDING 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 PRESIDING MAGISTRATE JILL A. TANNER ON FEBRUARY 10, 2005 . THE COURT FILED THIS DOCUMENT ON FEBRUARY 10, 2005.