

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Income Tax

JENNIFER L. TORPY,	)	
	)	
Plaintiff,	)	TC-MD 040972C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION and JUDGMENT</b>

Plaintiff appealed Defendant’s adjustment to her 2001 Oregon income tax return that disallowed the credit claimed for taxes paid to another state. The case was submitted to the court for decision after the November 22, 2004, case management conference because the relevant facts are not in dispute and the only issue presented is a legal one. Plaintiff appeared on her own behalf. Jason Iverson appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff moved to Oregon from Colorado on July 2, 2001. Plaintiff worked in Colorado before moving to Oregon and worked in Oregon after she moved to this state. Plaintiff filed a part-year Oregon resident return for 2001, reporting total income in the federal column and income attributable to Oregon in the Oregon column. Among the items reported on the return, Plaintiff claimed a credit of \$454 on line 59 of her return for income taxes paid to another state. That had the effect of reducing Plaintiff’s Oregon tax by \$454. Plaintiff reported a refund due of \$524 and Defendant originally issued that refund. Defendant subsequently audited Plaintiff’s return and determined Plaintiff was not entitled to the credit for the taxes paid to Colorado because there was no mutually taxed income. Accordingly, Defendant issued a Notice of Tax Assessment on May 28, 2004, for \$454.

## II. ANALYSIS

Oregon's credit for taxes paid to the state is intended to avoid double taxation. The credit is found in ORS 316.082<sup>1</sup>, and provides in relevant part:

“(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual \* \* \* for the taxable year by another state \* \* \* on income derived from sources therein **and that is also subject to tax under this chapter.**”  
(Emphasis added.)

As can be seen from the statute, the credit is available where an income tax is imposed “by another state \* \* \* on income derived from sources therein and that is also subject to tax [by Oregon].” *Id.* The credit can be easily understood by way of example. Oregon, like many other states, taxes an individual if he or she either lives or works in the state. ORS 316.037. Thus, a taxpayer living in Idaho and working in Oregon would be subject to tax by both states on all of the income earned for the year. Assuming Idaho does not allow the credit because the taxpayer lives in that state, Oregon would allow the credit. The reason the credit is allowed is because both states are taxing the same income.

In this case, Plaintiff filed an Oregon part-year resident return (Form 40P). By using that return, Plaintiff's Colorado income was not subject to tax by the State of Oregon. Rather, Plaintiff's Oregon tax was calculated as a percentage of the total tax that would have been due had Plaintiff lived in Oregon for the entire year. The percentage is based on the amount of income earned in Oregon versus total income for the year, both of which are adjusted by certain additions and subtractions as reflected on page one of Plaintiff's return.<sup>2</sup> According to the

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 1999.

<sup>2</sup> Plaintiff calculated the Oregon percentage to be 49 percent. (Ptf's Form 40P, line 40.) That number was determined by dividing Plaintiff's Oregon source income of \$13,118 by Plaintiff's total annual income (Federal Column) of \$26,688.

return, Plaintiff's Oregon tax would have been \$1,804,<sup>3</sup> but, because Plaintiff earned only 49 percent of her income in Oregon, Plaintiff's Oregon tax, by her own calculation, was \$884 (49 percent of the total). Plaintiff was in Oregon about half of the year, and her tax was halved.

Plaintiff explained that she was just trying to understand how the mistake was made because she followed the printed instructions in completing the return and simply provided the information asked on the form. The instructions provide in relevant part: "If you paid 2001 income tax to another state \* \* \* **on income also taxed by Oregon**, you may claim a credit." (2001 Instructions for Form 40P, at 28) (emphasis added). As explained above, Plaintiff's Colorado income was not taxed by Oregon. Plaintiff herself partially understands that fact, as evidenced by a letter Plaintiff submitted to the court with her Complaint. That letter states in part: "As is my right, I apportioned the amount of state taxes due between Oregon and Colorado based upon my length of residency in each state during 2001." (Ptf's Compl at 2.) However, Plaintiff draws the erroneous conclusion that "[b]ased upon the apportionment formula, it is clear that I do not owe the \$454.00, which I paid to Colorado, to the State of Oregon." (*Id.*)

The court understands that there is potential for confusion regarding the credit for part-year residents because the state does not simply tax the income in the Oregon column. Instead, the taxpayer is required to calculate the tax on all taxable income earned for the year (both within and without Oregon), and then adjust the tax by the percentage of income earned in Oregon versus total income. There are several reasons for that approach. First, taxing only Oregon source income would in some cases put the taxpayer in a lower tax bracket than full-year

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<sup>3</sup> During the November 22, 2004, proceeding, Defendant's representative stated that the tax from the table was actually \$1,809, not \$1,804, as Plaintiff reported on line 50. The resulting difference in tax is nominal.

Oregon residents with the same annual income.<sup>4</sup> Second, the deductions allowed in arriving at taxable income would all have to be adjusted by the percentage of Oregon income versus total income for the year, or the taxpayer could receive a windfall because both standard and itemized deductions are geared to a 12-month period.<sup>5</sup> That approach would, in many cases, involve more steps, which would increase the likelihood of an error in the calculations.

In this case, Plaintiff would be entitled to the credit if Oregon were taxing all income Plaintiff earned in 2001, because Colorado taxed a portion of that income. However, Oregon is not taxing all of the income, a fact even Plaintiff seems to recognize based on her statement that she apportioned the tax.

### III. CONCLUSION

Plaintiff is not entitled to the \$454 credit claimed for taxes paid to another state because Plaintiff's Oregon tax was based on her Oregon income; Oregon has not taxed Plaintiff's Colorado earnings. Now, therefore,

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<sup>4</sup> For example, a taxpayer who in 2001 earns more than \$5,000 but less than \$12,600 after moving to Oregon would be in the 7 percent marginal bracket even if she earned substantially more than \$12,600 for the year and would otherwise be in the 9 percent bracket.

<sup>5</sup> For example, Plaintiff took the standard deduction of \$1,800, which is the amount allowed a full-year Oregon resident filing single with one exemption in 2001. Plaintiff in this case is only reporting income for a 6-month period and it would be inequitable to allow her to take the full standard deduction, which is based on a 12-month period. The same reasoning applies to the deduction for federal tax, which is also based on a 12-month period. Likewise, a taxpayer itemizing deductions would be reporting all allowed deductions for the year, some of which would be incurred before moving to Oregon.

IT IS ADJUDGED that Plaintiff's appeal is denied and Defendant's request that the court uphold the assessment is granted.

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

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DAN ROBINSON  
MAGISTRATE

**THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON  
DECEMBER 30, 2004. THE COURT FILED THIS DOCUMENT DECEMBER 30, 2004.**