

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DANIEL RAY BEELER,	)	
	)	
Plaintiff,	)	TC-MD 041004C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

This matter is before the court on Defendant’s Motion for Summary Judgment. For ease of reference, the parties will be referred to as taxpayer and the department.

I. STATEMENT OF FACTS

Taxpayer earned Oregon wages in 2003, but, as of October 13, 2004, the date Defendant’s Answer was filed, taxpayer had not filed a state income tax return for that year. Based on wage information received by the department, taxpayer would have a state income tax liability for 2003. On June 22, 2004, the department received a copy of taxpayer’s W-4 Employee’s Withholding Allowance Certificate from taxpayer’s employer, Hampton Lumber Mills, located in Willamina, Oregon. The certificate is dated June 16, 2004, and claims exemption from withholding. On June 23, 2004, the department adjusted taxpayer’s withholding to “single” with one dependent allowance. Plaintiff timely appealed. The two issues presented are: 1) does the department have the legal authority to adjust a taxpayer’s withholding, and, if so, 2) was the adjustment in this case appropriate?

II. ANALYSIS

Taxpayer argues that earnings are not subject to income tax, and that the department lacks the authority to change his withholdings. The department insists it has the right to adjust

taxpayer's withholding certificate based on various Oregon statutes and administrative rules. In reviewing a motion for summary judgment, the court views the record in favor of the nonmoving party, providing all reasonable inferences, TCR 47 C.<sup>1</sup>

A. *Does the Department Have Authority to Adjust Withholding?*

For Oregon state income tax purposes, employer withholding deductions from employee wages are generally based on the employee's election on his federal exemption certificate.<sup>2</sup> ORS 316.182(2), however, authorizes the department to "require an exemption certificate to be filed on a form prescribed by the department in any circumstance where the department finds that an exemption certificate filed for purposes of the Internal Revenue Code does not properly reflect the number of withholding exemptions allowable under this chapter." The administrative rule adopted to implement that statute provides that the employer is required to submit a copy of the employee's withholding certificate in cases where total exemption from withholding is claimed, and the employee's income is expected to exceed \$200 per week. OAR 150-316.182(4)(b).<sup>3</sup> The department is authorized "to change the withholding certificate based on available information." OAR 150-316.182(5).

This court upheld the department's authority to adjust an employee's withholding certificate in *Dept. of Rev. v. Clark*, 17 OTR 218, 222 (2003). In that case, the court held that the department is "permitted to make a change in the withholding certificate based on available

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<sup>1</sup> Tax Court Rule.

<sup>2</sup> Under ORS 316.167(1), employers are required at the time of payment of wages to an employee, to deduct and retain withholding from wages. ORS 316.167(2) provides that "the amount withheld shall be computed on the basis of the total amount of the wages and the number of withholding exemptions claimed by the employee." Moreover, ORS 316.182(1) requires the employer to use the employee's federal exemption certificate in computing the tax to be withheld for Oregon withholding tax purposes. All references to the Oregon Revised Statutes (ORS) are to 2003.

<sup>3</sup> All references to the Oregon Administrative Rules are to 2003.

information” and that “the provisions of [OAR 150-316.182] \* \* \* are consistent with the statutory concern expressed in ORS 316.182 and ORS 316.177 that the department be able to avoid, and in some cases punish, employee exemption designations where there is a lack of adequate foundation for the claim of complete exemption \* \* \*.” *Id.* at 222-223.

Based on the foregoing, the court concludes that the department has the authority to change an employee’s withholding certificate where circumstances warrant an adjustment.

B. *Was the Department’s Adjustment Appropriate?*

As indicated above, taxpayer claimed total exemption from withholding. The department reviewed taxpayer’s withholding certificate and determined an adjustment was necessary. By the adjustment, made in June 2004, taxpayer’s withholding was changed to a filing status of single and one dependent deduction.

OAR 150-316.177(1)-(A) provides that an employee is only entitled to total exemption from Oregon withholding if “[t]he employee:

“(1) Did not owe any Oregon income tax last year; [and]

“(2) Does not expect to owe any Oregon income tax for the current year.”

Taxpayer appears to argue that he did not owe any Oregon income tax in 2003 and did not expect to owe any such tax in 2004, because earnings are not subject to income tax.

Taxpayer’s position represents another misguided attempt to avoid the obligation to pay income taxes based on illogical arguments purportedly supported by case law and United States Constitution.

Oregon imposes a tax on the taxable income of residents and on the Oregon source income of nonresidents. *See* ORS 316.037. Oregon generally follows federal personal income tax law in determining taxable income for individuals. *See* ORS 316.007. ORS 316.022(6)

provides that “taxable income” is based on Internal Revenue Code (IRC) section 63(a) or (b). Taxable income is gross income minus allowable deductions. IRC § 63(a). Gross income, in turn, is “all income from whatever source derived.” Treas Reg § 1.61-1(a). 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)(1) (1997). This court has previously held that wages are clearly taxable. *See Combs v. Dept of Rev.*, 15 OTR 60, 61 (1999) (“Taxpayer’s position is unrealistic and uninformed. Wages are clearly taxable \* \* \*”). Federal courts have reached the same inescapable conclusion. *See United States v. Connor*, 898 F2d 942, 943-44 (3rd Cir), *cert den*, 497 U.S. 1029 (1990).

Not surprisingly, a brief survey of the cited authorities reveals that taxpayer has failed to read the judicial opinions and constitutional provisions upon which he relies. Taxpayer cites *Saltzman v. City of Council Bluffs*, 214 Iowa 1033, 243 NW 161 (1932), for the proposition that earnings are not income and therefore cannot be taxed by the state. The issue in *Saltzman* was whether commingled monies in a municipal water fund, derived from a combination of water rentals and taxes levied for the operation of the municipal water plant, constituted surplus earnings that by law could be used for constructing public buildings unrelated to waterworks, or whether the money instead constituted surplus accumulated from taxes, that could not be so used. The case had nothing to do with a state’s authority to impose a tax, whether on property or income. Moreover, the definition of “earnings” used by the *Saltzman* court undercuts taxpayer’s case. The court’s definition of “earnings” provides in part: “that which is earned; money earned; the price of services performed; reward; the reward of labor or the price of personal service performed, the reward for personal services, whether in money or chattels, the fruit or reward of labor.” 243 NW at 162 (citation omitted). The court went on to state that “[t]axes’ are generally

defined as enforced contributions to provide for the support of the government.” *Id.* (Citation omitted). Thus, *Saltzman* is inapposite.

Taxpayer argues that under *Flint v. Stone Tracy Co.*, 220 US 107, 31 S Ct 342, 55 L Ed 389 (1911), his earnings are not taxable because he is not “engaged in occupation of franchise, or exercise of privilege, requiring licenses,” but rather is exercising a right to make a living “without hindrances from the State,” and asserts the state cannot interfere with his endeavors of “livelihood necessary to life, liberty, and the Orderly pursuit of Happiness.” (Ptf’s Mot for Summ J with Resp at 7.)<sup>4</sup> *Flint* involved a tax imposed on the exercise of the privilege of doing business in a corporate capacity, a tax measured by net income. The court upheld the tax because it was an excise tax not subject to apportionment under Article 1, section 2, clause 3, of the United States Constitution.<sup>5</sup> The court’s discussion about the excise tax has no bearing on Oregon’s income tax.

Taxpayer makes further arguments under the Sixteenth Amendment of the United States Constitution and the Supreme Court’s opinion in *Eisner v. Macomber*, 252 US 189, 40 S Ct 189, 64 L Ed 521 (1920). (Ptf’s Mot for Summ J with Resp at 9.) Taxpayer’s Sixteenth Amendment argument is understood by reference to his November 19, 2004, Appeal Memorandum. In that document, taxpayer asserts that “[t]he 16th Amendment d[oes] not give the government the authority to impose a non-apportioned direct tax on the earnings of a private American Citizen.” (Ptf’s Appeal Memo, filed Nov 19, 2004, at 5.) (Emphasis omitted.)

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<sup>4</sup> According to the request of the parties and the briefing schedule set out by the court, Defendant was to file a Motion for Summary Judgment and Plaintiff was to file a Response to Defendant’s motion. Plaintiff’s “response” was titled Motion for Summary Judgment with Response.

<sup>5</sup> Article I, section 2, clause 3, of the United States Constitution provides in relevant part:

“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers \* \* \*.”

Taxpayer's argument fails on many grounds. Among them is the fact that the requirement for apportionment of direct taxes is found in the United States Constitution and limits only the federal government, not the states.<sup>6</sup> Additionally, the Sixteenth Amendment only applies to the federal government. Thus, the whole force of taxpayer's argument springs from the wrong body of law. Moreover, whatever limitations are imposed by the federal constitutional apportionment rule, the Sixteenth Amendment authorizes Congress to impose an income tax without apportionment. The Sixteenth Amendment provides that: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Taxpayer's reliance on *Eisner* is similarly misplaced. *Eisner* addressed the issue of stock dividends, not income. The dividends were not taxable in *Eisner* because they were not cash dividends, but rather a distribution of paper certificates (stocks) that neither altered the stockholder's proportionate interest in the company nor increased the intrinsic value of his holdings. 252 US at 210-211. The dividends were simply part of a book adjustment and did not involve the realization of a profit – the taxpayer neither received nor realized any income. *Id.* at 211-212. The court also noted, however, that if the stockholder sells his stock and the sale results in a profit, that profit, like income, is taxable under the Sixteenth Amendment. *Id.* at 212.

Although most adult individuals require no legislative or judicial authority for the proposition that earnings are subject to tax, whether they be called wages, income, or earnings, the above discussion supports the court's conclusion in this case that wages are income subject to

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<sup>6</sup> Apportionment of direct taxes is required by Art. I, § 2, cl. 3, and Art. I, § 9, cl. 4. The text for Art. I, § 2, cl. 3, appears in footnote 3 above. Art. I, § 9, cl. 4, provides:

"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

tax. Taxpayer had Oregon-source income in 2003, creating a tax liability that year. He continued to work in Oregon in 2004, and, therefore, could expect to owe an income tax in 2004. Accordingly, under OAR 150-316.177(1)-(A), set forth above, taxpayer was not entitled to exemption from Oregon withholding, and the department was justified in adjusting his withholding certificate.

C. *Damages*

The department has asked the court to impose damages for frivolous or groundless appeal under ORS 305.437. (Def's Mot for Summ J Including Damages at 4.) ORS 305.437 provides:

“(1) Whenever it appears to the Oregon Tax Court that 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, damages in an amount not to exceed \$5,000 shall be awarded to the Department of Revenue by the Oregon Tax Court in its judgment. Damages so awarded shall be paid within 10 days after the judgment becomes final. If damages remain unpaid, the department may collect the amount awarded in the same manner as income taxes are collected under ORS 314.430.

“(2) As used in this section, a taxpayer's position is 'frivolous' if there was no objectively reasonable basis for asserting the position.”

Taxpayer has cited no authority to support his assertion that the department lacked the authority to adjust his withholding certificate, a claim grounded in the contention that his earnings were not income subject to tax. Taxpayer's arguments are not rational or legitimate. Taxpayer has no objectively reasonable basis for asserting his position. Accordingly, damages are in order. The court has discretion in the amount of damages to award, but no discretion to deny damages where warranted under the statute. The statute set forth above provides that “damages \* \* \* shall be awarded \* \* \*.” ORS 305.437(1) (emphasis added); *see also Sesma v. Dept. of Rev.*, 16 OTR 29, 31 (2002).

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### III. CONCLUSION

The department has the legal authority to adjust a taxpayer's withholding certificate, and taxpayer in the instant appeal was not entitled to exemption from withholding because he had an Oregon tax liability in 2003 and could expect to have an Oregon tax liability in 2004. Finally, the department acted appropriately in adjusting taxpayer's withholding certificate based on available information. Now, therefore,

IT IS THE DECISION OF THIS COURT that the department's Motion for Summary Judgment is granted; and

IT IS THE FURTHER DECISION OF THIS COURT that the department is awarded damages in the amount of \$1,000.

Dated this \_\_\_\_\_ day of September 2005.

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DAN ROBINSON  
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 Dan Robinson September 23, 2005. The Court filed and entered this document September 23, 2005.***