

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TERRY L. CANBY,)	
)	
Plaintiff,)	TC-MD 041062A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appealed Defendant's personal income tax assessment for the 1998 tax year. Plaintiff appeared and made his arguments. Defendant was represented by Laurie Fery, of its staff.

I. STATEMENT OF FACTS

Plaintiff, a former employee of Defendant, did not file a return for the 1998 tax year. Defendant issued a Notice of Determination and Assessment. Plaintiff subsequently filed a return requesting a refund, which was denied under ORS 314.415,¹ on the basis of its timeliness. The return was subsequently selected for audit. The issues that emerged upon audit were for exemption credits, itemized deductions, rental losses, payments disbursed by Marion and Polk Schools, and the Public Employee Retirement System.

Some issues were directly resolved. During the course of this appeal, Plaintiff abandoned the contest for the exemption credit. Defendant came to the conclusion its assessment overstated the payments received by Plaintiff. Defendant also accepted Plaintiff's Schedule E as filed. Other points were not definitively established. Plaintiff asserted that, while he did not have proofs in his possession verifying the business bad debt claimed on his return, such proofs existed and are in the possession of his former employer. Plaintiff stated that his relationship

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.
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with his former employer was such that he could not access the information and that Defendant should take on the task. Defendant pursued that request to the extent of requesting information from another of Plaintiff's former employers, Grim Logging, as to contracts setting out any loans between it and Plaintiff.

Defendant did not receive, from Grim Logging or any other source, any records substantiating arm's-length transactions for bona fide loans between Plaintiff and his former employer that would support the business bad debt claimed on the return.

II. ANALYSIS

Where proofs existed, Defendant reduced its original assessment. Where Plaintiff had no proofs, Defendant made an inquiry and received an unequivocal response. There is no other evidence substantiating Plaintiff's return. The appeal is granted only to the extent of Defendant's adjustments.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's personal income tax for the 1998 tax year is revised consistent with Defendant's adjustment to \$12,062, with additional amounts of penalty and interest.

Dated this _____ day of January 2006.

SCOT A. SIDERAS
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 Scot A. Sideras January 17, 2006. The Court filed and entered this document January 17, 2006.