

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DAVID C. CAMPBELL,)	
)	
Plaintiff,)	TC-MD 050020B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

This appeal concerns a 2002 personal income tax refund that was offset and paid to another state agency. A case management conference was convened on March 31, 2005. David Campbell appeared on his own behalf. Defendant was represented by Lorie Jensen, Tax Auditor. At the request of the parties, the case will be decided based on written submissions. During the March 31 conference, the parties agreed to submit additional written arguments and legal authority; nothing was received. The record closed June 5, 2005.

Plaintiff appeals Defendant's Notice of Proposed Adjustment, dated September 17, 2004, concerning the 2002 tax year. He disputes allocation of his tax refund to outstanding liabilities owed to the University of Oregon. Defendant asserts that Plaintiff earlier had his hearing regarding the issue of his debt pursuant ORS 293.250;¹ the debt amount was finalized; and there remains nothing to be decided by this court.

I. STATEMENT OF FACTS

Plaintiff earlier requested an administrative review with the University of Oregon (the claimant agency) contesting his outstanding liabilities. He believed it was held in 1999 or 2000. That hearing was held to determine whether he owed a debt and the amount of such debt.

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

Plaintiff did not prevail in his earlier protest. As a result, Defendant subsequently released \$550.84 of Plaintiff's tax refund in order to set off Plaintiff's outstanding liabilities. Defendant provided notice of that action to Plaintiff on September 17, 2004.

II. ANALYSIS

The authority for Defendant's action is found at ORS 293.250(3)(a), which allows for collection of debt through "all means available," including setoff. ORS 293.250(3)(d) provides for notice to the debtor of any setoff action:

"(d) At the time any setoff is made the debtor shall be notified by the Department of Revenue of its intention to apply sums due from a state agency against the debtor's delinquent account. The notice shall provide that the debtor within 30 days may request a hearing before the claimant agency or county. *No issues at the hearing may be considered that have been litigated previously*, or if the debtor after being given due notice of rights of appeal has failed to exercise them timely."

ORS 293.250(3)(d) (emphasis added).

Plaintiff candidly admits he did appeal the issues concerning his outstanding debt with the University of Oregon. That now forecloses any opportunity for that entity to rehear the issue. Subsequent to Plaintiff's hearing, Defendant proceeded to set off the debt as authorized by statute.

No setoff will be made by Defendant unless the debt is in a liquidated amount. *See* ORS 293.250(3)(b). Here, Plaintiff presented his case to the University of Oregon. He lost and the debt became liquidated. All statutory procedures were followed. Accordingly, Defendant's actions in setting off Plaintiff's liquidated debt with the University of Oregon were appropriate.

Plaintiff has the burden of proof and must establish his case by a "preponderance" of the evidence. *See* ORS 305.427. A "[p]reponderance of the evidence means the greater weight of

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evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). “[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof.” *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990). Plaintiff has not met that statutory requirement in this record.

III. CONCLUSION

There has been no error or omission by Defendant in this case. Now, therefore,

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

Dated this _____ day of December 2005.

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 December 21, 2005. The Court filed and entered this document December 21, 2005.