

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

FREDRICK G. PAUCK,	)	
	)	
Plaintiff,	)	TC-MD 050067A
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

This appeal concerns Plaintiff's personal income tax liability for the 2001 and 2002 tax years. Plaintiff appeared and made his presentation. Defendant responded through its staff.

I. STATEMENT OF FACTS

Plaintiff's ability to claim cash and noncash contributions to charities as itemized deductions for the 2001 and 2002 tax years is at issue. Plaintiff claimed respective cash contributions for 2001 and 2002 of \$10,742 and \$11,330. Defendant reduced those sums to \$-0- and \$1,000. A similar pattern was followed as to contributions other than cash. For 2001 and 2002, Plaintiff claimed respective deductions of \$8,973 and \$14,606. Defendant's adjustments reduced those totals to \$2,699 and \$4,318.

The donations in controversy consist of a series of small contributions to a number of organizations. In 2001, Plaintiff's schedules show more than 150 donations to dozens of different organizations. Plaintiff donated most often to Alcoholics Anonymous and churches. The range in individual cash donations was from \$25 to \$200, with most of the donations at or below \$75. A similar pattern occurred in 2002. Plaintiff's schedules show 103 donations to dozens of entities, again with Alcoholics Anonymous and churches receiving the greatest number

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of contributions. For 2002, the range in contributions was higher, from \$25 to \$1,000, with \$200 appearing with greater frequency than the previous year.

Plaintiff's records as to those donations are, up to a point, remarkable. His materials give every indication of being created contemporaneously with the donation. They show the organization to which the donation was made, the date, and the amount. There are no receipts or cancelled checks. Plaintiff explained that those donations were made in cash, under circumstances where a receipt is not customarily given. Defendant, finding neither receipts nor cancelled checks, dramatically adjusted the deduction for cash contributions. Defendant did not permit any deduction for cash contributions for 2001 and, for 2002, reduced Plaintiff's deduction to a tenth of the amount claimed.

The pattern for noncash contributions is very similar. Plaintiff's records again give every indicia of being complete. They are detailed as to what was donated, the time it was donated, and the receipt. The records show Plaintiff's deductions for noncash items were of two types. The first was the contribution of groceries to food banks and toys to holiday drives. The second was the giving of possessions to charities. Defendant denied the deduction as to the toys and food and adjusted Plaintiff's deduction as to the contributed goods. Plaintiff had used 35 percent of original cost as an estimate of fair market value. Defendant reduced that amount to 15 percent.

Defendant reasoned that its choice of 15 percent was appropriate given the character and quality of the donated items. One source of the donated items was Plaintiff's parents' estate. Many of the pieces were gifts that his parents had received and had never put to use. Other items consisted of the tools Plaintiff's father had used in his trade as a mechanic. Those tools were of a quality so as to have an indefinite useful life.

Other donated items came from changes in Plaintiff's life. His retirement enabled him to donate items he had used in a career of teaching. Those goods were useful to educators as well as to parents home-schooling their children, and Plaintiff suggested the pricing of those items. Diabetes caused Plaintiff to lose considerable weight, and to forsake an outdoor lifestyle. Those changes meant Plaintiff no longer had a use for items he described as being of high quality. Plaintiff said that his asserted valuations are consistent with what he saw in ARC, Goodwill, and Salvation Army resale stores.

Defendant based its estimate of the fair market value of the donated items on its review of thrift stores and resale stores run by charitable institutions.

Plaintiff testified that he came from a family that was both impoverished and dysfunctional, was often hungry when growing up, and dependent on the generosity of others. Now enjoying a successful life and financial security, Plaintiff told of how he takes a great deal of satisfaction from making charitable contributions that repay the generosity he had received when he especially needed it. Plaintiff particularly enjoys the anonymity in making a large number of smaller contributions to a series of organizations. A review of Plaintiff's bank records show annual deposits for each year at issue of more than \$50,000.

Plaintiff pointed out he has been examined by the Internal Revenue Service, and has also consulted with it, and the Service has not criticized his methods.

## II. ANALYSIS

This appeal comes down to the question of whether Plaintiff's proofs are sufficient, under the tax code, to claim the deductions.

Beginning with the cash contributions, the law in this case is clear. As to cash contributions, Plaintiff is not required to present receipts or cancelled checks when the cash

contribution is less than \$250. Treas Reg § 1.170A-13(a)(1)(iii)(as amended in 1996). Instead, a taxpayer is allowed to substitute other proofs. *Id.* Separate contributions of less than \$250 to one charitable donee are not subject to the substantiation requirements of Internal Revenue Code (IRC) section 170(f)(8), regardless of whether the sum of the individual contributions during the tax year equals \$250 or more. Treas Reg § 1.170A-13(f)(1).

As to the cash contributions, the court is of the opinion that Plaintiff did, in fact, make the contributions and, as to those contributions less than \$250, is able to claim the deductions. Plaintiff gave every indication of sincerity when he told of how the circumstances of his childhood now led him to return to others the generosity he had received when he so desperately needed it. His records support the conclusion that they were contemporaneously kept. The majority of his donations were to Alcoholics Anonymous and churches, and his explanation that he preferred to drop cash in the collection basket during meetings is altogether reasonable. The balance of Plaintiff's cash donations under \$250 were also in situations and for amounts where it is reasonable to make a cash donation and not expect a receipt. Although Plaintiff's cash contributions certainly made up a significant part of the money at his disposal, Plaintiff had the means to make the donations. It is understandable that Plaintiff, at his stage of life and with his motivations, should choose to donate approximately a fifth of his available funds to charities.

Defendant makes the point that Plaintiff's cash contributions are, in the aggregate, very high. Although true, as the authorities discussed earlier indicate, that is not fatal to Plaintiff's case. The test is the reliability with which Plaintiff shows each contribution was, in fact, made. Here, we have an individual who chooses to attend church and Alcoholic Anonymous relatively often, and make a contribution on each occasion. Under all the facts of this case, the court finds that Plaintiff may claim the deduction for cash contributions less than \$250.

Turning to the noncash contributions, different results occur according to the two classes of noncash contributions at issue. Plaintiff donated food to food banks and toys to holiday drives. Defendant denied the deductions for lack of substantiation. However, because each contribution of donated property was under \$250, Plaintiff may substitute reliable written records for a receipt. Treas Reg §1.170A-13(b). Plaintiff's records as to the toys and food he donated are reliable for the same reasons his records for cash contributions were found to be persuasive. Plaintiff shall receive his deduction as claimed for the noncash contributions of food and toys.

However, a different perspective applies to Plaintiff's donation of the property from his parent's estate and the goods for which he no longer had any use. Unlike the other instances, the issue here is not whether Plaintiff, in fact, made the contribution. Here, Defendant agreed that Plaintiff made the contributions, but disagreed with Plaintiff as to the value of what was given. Although Plaintiff is not required to support his deduction with an appraisal or other evidence, that does not mean his opinion is the last word on the subject. Here, Plaintiff presented his opinion that the goods were worth 35 percent of their original retail value. Defendant responded with its own belief that 15 percent is reasonable, and liberal. Each assertion rests on a foundation of observation. Given this balance, the burden of proof rests with Plaintiff, and his assertion is unable to tip the scale in his favor. Defendant's adjustment to the noncash contributions consisting of Plaintiff's excess goods and property from his parents' estate stands.

### III. CONCLUSION

Plaintiff's appeal is granted in part and denied in part. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff shall be permitted to claim the cash contributions less than \$250 as set out on the returns. Plaintiff shall also be permitted the deductions for the noncash contributions of food and toys. As for the contributions of donated

property consisting of Plaintiff's excess possessions and the proceeds of his parents' estate,  
Defendant's adjustment stands.

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

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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 on October 13, 2005 .  
The Court filed this document on October 13, 2005.***