

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

WILLIAM J. SCHREINER,)	
)	
Plaintiff,)	TC-MD 050672D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s Notices of Tax Assessment for tax years 2000 and 2001. A telephone trial was held on Thursday, June 29, 2006. Plaintiff appeared on his own behalf. Ronald E. Jackson (Jackson), Auditor, appeared on behalf of Defendant.

I. PRELIMINARY MATTERS

At the beginning of the telephone trial, the court stated that it had only received exhibits from Defendant (Def’s Exs A-J). Plaintiff acknowledged that he had not submitted any exhibits to the court. He stated that it was his expectation Defendant would copy and appropriately label all documents previously given to Defendant during the audit of the tax years at issue and submit those documents on behalf of Plaintiff. Jackson stated that he only submitted documents to support Defendant’s case, and stated that Plaintiff had never verbally or in writing asked him to submit all documents. In addition, Plaintiff did not ask the court to issue an order for discovery. Plaintiff stated that he was “here in the spirit of cooperation” and Jackson was not “helping him.” Plaintiff stated he did not feel that he had been treated by Defendant’s auditors in a “fair professional manner” and the audit had been a “professional frustration.”

Plaintiff asked Defendant and the court to reset the date for the trial. Jackson stated that he was ready to move forward, having submitted his evidence to the court and Plaintiff.

Plaintiff acknowledged receiving Defendant's exhibits. However, Plaintiff stated that he did not have his copy of Defendant's exhibits with him. Because the parties agreed to the trial date and Defendant was ready for trial, and because Plaintiff waited until the actual time of the telephone trial to make his request to Defendant and the court for a reset, Plaintiff's request was denied.

II. FACTS

Plaintiff appeals Defendant's denial of deductions claimed on Schedule C and Schedule E of his filed federal income tax returns for tax years 2000 and 2001. The first disallowed deductions reviewed by the parties at trial were reported on Schedule E, entitled Rental Loss. Those losses were \$13,276 for tax year 2000 and \$14,508 for tax year 2001. Plaintiff testified that Defendant was incorrect in concluding that Plaintiff was leasing the property described on Schedule E. Plaintiff stated that he may have "used the wrong term" when he explained to Defendant that he took over a mortgage held by the son of the seller. When asked about Defendant's Exhibit B, entitled "Residential Lease with Option to Purchase" (Lease), which was signed by Plaintiff and correctly identified the subject property, Plaintiff testified that he may have given the wrong document to Defendant. Under the terms of the Lease, Plaintiff was to make a monthly payment of \$1,086 "until such time that" he "assume[d] mortgage in title." (Def's Ex B-2.) Plaintiff did not submit evidence to show that he "assume[d] mortgage in title." Jackson testified that he denied the claimed mortgage interest deduction because he concluded Plaintiff was leasing the property. In addition, Jackson stated that he disallowed all deductions claimed for renting the subject property to another because Plaintiff had claimed over \$27,000 in losses for a four year period and the property was rented to his fiancé's family. (Def's Exs C; H-2.)

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The second disallowed deductions reviewed by the parties were reported on Schedule C, Business Losses. Those losses were \$11,861 for tax year 2000 and \$11,328 for tax year 2001. Plaintiff testified that he was actively involved in an internet marketing/e-commerce company. (Def's' Ex G-3). Plaintiff testified that the business generated a profit in the "past and future" but not in tax years 2000 and 2001 because of the "tech bubble" and he was changing "operating methods." He acknowledged, when questioned by Defendant, that over a "6-year period ending with 2002" Plaintiff "reported a total of \$34,021 Schedule C losses." (Def's Ex E.) Plaintiff testified that he paid \$33,000 to Jervis Johnson to create a "sales pitch for an electronic newsletter." Plaintiff testified that he disagrees with Defendant's determination that those expenses were "start-up" and should have been amortized. He believes that those expenses were incurred in an on-going business and he should be allowed to claim a deduction for professional services of Mr. Johnson resulting from meetings between them held in Portland, Oregon, and Los Angeles, California.

Jackson testified that he concluded Plaintiff's activities reported on Schedule C were not engaged in for profit when evaluated using the nine factors found in the Internal Revenue Code Regulation 1.183-2(b)(1). He concluded that Plaintiff's "manner of carrying on the activity (ies) was haphazard and unsystematic" with "no clearly-defined business activity or clear-cut business plan and no expectation that assets used in the activity would increase in value." (Def's Ex labeled Answer at 2.) Jackson testified that Plaintiff earned over "\$100,000 working as an employee for Sunbelt Software" against which the "Schedule C and E" losses could be offset. Plaintiff countered that he had an "intent for profit" but that the operating expenses exceeded the gross receipts.

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II. ANALYSIS

In this proceeding before the court, the burden of proof falls “upon the party seeking affirmative relief.” ORS 305.427.¹ The statute provides that “a preponderance of the evidence shall suffice to sustain the burden of proof.” *Id.* “Preponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Rev.*, 4 OTR 302, 312 (1971). “It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate.” *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 394, 737 P2d 595 (1987) (citing Uniform Jury Instructions (Civil), Nos. 21.02 (Oregon CLE 1986).

Plaintiff testified, offering general statements about the facts at issue. The accuracy of Plaintiff’s testimony was placed in question by Defendant’s evidence. For example, Plaintiff failed to prove that the subject property was purchased by him contrary to the terms and conditions set forth in the Lease submitted by Defendant.

Plaintiff submitted no documents as evidence. He ignored the following statement on the court’s Notice of Scheduled Court Proceeding, dated May 23, 2006: “Each party shall provide the court and the other parties with copies of all materials to be introduced into evidence in support of that party’s case.” Plaintiff’s expectation that Defendant would properly label and exchange, in accordance with the court’s rules all documents previously submitted by Plaintiff during the tax audit, was unreasonable. Unfortunately, Plaintiff “failed to introduce evidence showing, by a preponderance, that the department’s assessments were erroneous.” *Curtis v. Dept. of Rev.*, 17 OTR 414, 424 (2004).

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¹ Unless otherwise stated, references to the Oregon Revised Statutes (ORS) are to 2005.

III. CONCLUSION

After carefully considering Plaintiff's testimony and Defendant's testimony and evidence, the court concludes that Plaintiff failed to carry the burden of proof by submitting "the more convincing evidence." ORS 305.427. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of August 2006.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on August 14, 2006. The Court filed and entered this document on August 14, 2006.