

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

RYAN F. COREY,)	
)	
Plaintiff,)	TC-MD 050681D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s Notices of Tax Assessment, dated May 24, 2005, for tax years 2001, 2002, and 2003 and disputes Defendant’s allocation of child support and spousal support¹ payments. The case management conference held October 5, 2005, was converted to a trial. Ryan Corey appeared on his own behalf. Sofia Parra (Parra), Tax Auditor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

On December 11, 2000, Plaintiff was ordered, under the terms of a Judgment and Decree of Dissolution of Marriage (Decree), to pay spousal support to Beverly Anne Corey in the amount of \$500 per month for 60 months beginning October 1, 2000. (Def’s Ex A-8.) In addition, the Decree obligated Plaintiff to pay child support in the amount of \$424 per month beginning July 21, 2000, for Plaintiff’s two children until they each reached the age of majority. (Def’s Ex A-6.) Plaintiff’s children were 10 and 15 years old at the time of the Decree. (Def’s Ex A-2.) Plaintiff’s older child reached the age of majority on August 29, 2003. (*Id.*) Plaintiff’s younger child was under the age of majority for all tax years at issue here. (*Id.*)

¹ The terms “spousal support” and “alimony” both refer to payments made from one spouse to an ex-spouse for the purpose of providing support and are used interchangeably in this Decision.

The Decree further stated that Plaintiff was in arrears on his child support payments as of August 2, 2000, in the amount of \$5,554.00. (Def's Ex A-6.) The Decree acknowledged that, since that date, Plaintiff had made three payments of \$254.40 for a total of \$763.20. The Decree then allocated \$424.00 of that total to the August child support payment, \$212.00 to the September child support payment, and \$127.20 to the child support in arrears. (*Id.*) Finally, the Decree declared the child support arrears to be \$5,426.80 as of September 20, 2000. (*Id.* at A-7.) From September 20 to December 31, 2000, Plaintiff made six more payments of \$254.40 which, when added to the court's allocation of \$212, brought his total payments for September through December 2000 to \$1,738.40. (Def's Ex B-4.) As of December 31, 2000, Plaintiff was \$1,500 in arrears on spousal support and \$5,384.40² in arrears on child support.³

The following table reflects Plaintiff's total payments made and total amounts due according to the Decree for the tax years at issue, without allocating the arrears between child support and spousal support. (Def's Ex B-3-4.)

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² Parra calculated the child support arrears to be \$5,596.40 as of January 1, 2001, by adding the payments due for the months of September through December 2000 (\$1,696) to the arrears specified in the Decree (\$5,426.80) and then subtracting the \$1,526.40 in payments made by Plaintiff for the remainder of the year. Mathematically, that is correct; however, Parra did not take the \$212 applied by the Decree to the September payment into account in her calculation. The payments Plaintiff made from September through December equal \$1,738.40 when that \$212 payment is taken into account, leaving a child support arrears of \$5,384.40 as of January 1, 2001.

³ Tax year 2000 is not at issue here; therefore, the court will not analyze the Defendant's allocation of Plaintiff's payments in 2000.

	2001	2002	2003 ⁴
Spousal Support (per Decree)	\$ 6,000.00	\$ 6,000.00	\$ 5,000.00
Child Support (per Decree)	\$ 5,088.00	\$ 5,088.00	\$ 4,840.00
Spousal and Child Support Arrears (per Decree)	\$ 6,884.40	\$ 6,121.20	\$ 3,903.60
Total Due per Decree (Current and Arrears)	\$17,972.40	\$17,209.20	\$13,743.60
Total Payments	\$11,851.20	\$13,305.60	\$12,931.20
Difference to be Allocated Between Spousal and Child Support	(\$6,121.20)	(\$3,903.60)	(\$ 812.40)

At issue in this case is the proper allocation of Plaintiff's support payments between spousal support and child support for the years 2001, 2002, and 2003. Plaintiff asserts that his payments should be applied first to his current child support and current spousal support and that any remainder should then be applied to the arrears. Defendant has proposed that Plaintiff's payments should be applied first to his current child support and his child support arrears and that any remainder should then be applied to his current spousal support and spousal support arrears.

II. ANALYSIS

Oregon imposes an income tax on the taxable income of residents. ORS 316.037(1)(a).⁵ Oregon taxable income is defined as "the taxable income as defined in * * * section 63 of the Internal Revenue Code." ORS 316.022(6). Section 63 of the Internal Revenue Code (IRC)⁶

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⁴ Plaintiff has stated that spousal support was stopped and child support reduced to \$300 in 2003. A payment history report from Support Services indicates that those changes were made beginning in November 2003. (Def Ex B-3). Under that new arrangement, spousal support due in 2003 equaled \$5,000 and child support payments due in 2003 equaled \$4,840. (*Id.*)

⁵ All references to the Oregon Revised Statutes (ORS) are to 2001. The sections referred to in this Decision do not differ among the tax years at issue.

⁶ All references to the Internal Revenue Code (IRC) are to 2000. The sections referred to in this Decision do not differ among the tax years at issue.

provides that “the term ‘taxable income’ means gross income minus the deductions allowed by this chapter.”

Those deductions include the deduction for spousal support found in IRC section 215(a), which states that “there shall be allowed as a deduction an amount equal to the alimony * * * paid during such individual’s taxable year.” Alimony is defined as “any alimony * * * which is includible in the gross income of the recipient under section 71.” IRC § 215(b). Under section 71, alimony “includible in the gross income of the recipient” is “any payment in cash if such payment is received by * * * a spouse under a divorce * * * instrument.” *Id.*; IRC § 71(a), (b). A “divorce * * * instrument” is “a decree of divorce * * * or a written instrument incident to such a decree.” IRC § 71(b)(2).

Any portion of payments made by a payor spouse that are, by the terms of the decree of divorce, made for the support of the payor spouse’s minor children are expressly excluded from the gross income of the payee spouse and, therefore, are not deductible by the payor spouse. *See* IRC § 71(c); IRC § 215. In addition, IRC section 71(c)(3) clearly states that when child support payments are “less than the amount specified in the [decree], then so much of such payment as does not exceed the sum payable for [child] support shall be considered a payment for such [child] support.” The regulations provide a relevant example of how payments are to be allocated between child support and spousal support when the total payment is less than that specified in the decree:

“[I]f the husband is by terms of the decree * * * required to pay \$200 a month to his divorced wife, \$100 of which is designated by the decree * * * to be for the support of their minor children, and the husband pays only \$150 to his wife, \$100 is nevertheless considered to be a payment by the husband for the support of the children.”

Treas. Reg. § 1.71-1 (1960).

Neither the statute nor the regulations makes a distinction between amounts in arrears and amounts currently due, but only state that payments are to be first allocated to any child support obligation that is due under a decree.

Oregon is to follow federal income tax law, including judicial determinations, to the extent practicable. *See* ORS 316.032. The United States Tax Court has concluded that when “payments of both alimony and child support are provided for and the amount paid is less than the amount specified in the [decree], section 71(c) provides that the payment will be allocated to satisfy the child support component of the payment *to the fullest extent possible.*” *Daley v. Commissioner*, 62 TCM (CCH) 1197 (1991) (memorandum decision) (emphasis added). In *Daley*, the taxpayer was unable to show that he made any payments for spousal support or child support during the two years at issue. The court stated that even if he could prove that payments were made, the payments would “be applied first to fulfill [taxpayer’s] child support obligation before it may be deducted by [taxpayer] as alimony.” *Id.* Such payments must be first allocated to any child support due under the decree, including those amounts in arrears, before any is allocated to spousal support. *See Hazam v. Commissioner*, 79 TCM (CCH) 1597 (2000) (memorandum decision) (citing *Blyth v. Commissioner*, 21 TC 275 (1953)).

The United States Tax Court has consistently upheld the “allocation of so much of the alimony portion as needed in order to satisfy the total yearly child support obligation.” *Hau v. Commissioner*, 46 TCM (CCH) 1038 (1983) (memorandum decision). In *Hau*, the petitioner, like Plaintiff here, fell behind in his support payments. The IRS applied a portion of his deduction for spousal support to his child support arrears and, consequently, disallowed the deduction. *Id.* The U.S. Tax Court applied IRC section 71(c) and upheld the disallowance. *Id.*

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Accordingly, Plaintiff's payments must first be allocated to child support, both current and arrears, and any remainder may then be allocated to spousal support, both current and arrears.

III. CONCLUSION

Defendant's proposed allocation of Plaintiff's support payments first to current child support and child support arrears with any remainder then allocated to current spousal support and spousal support arrears for the tax years 2001, 2002, and 2003 follows the law. Now, therefore,

IT IS THE DECISION OF THIS COURT that the \$212 payment in September 2000 as set out by the Decree, and not taken into account by Defendant, shall be subtracted from the 2001 arrears, and the arrears for 2002 and 2003 will be adjusted accordingly; and

IT IS FURTHER DECIDED that Defendant's proposed allocation of payments between child support and spousal support is otherwise approved.

Dated this _____ day of December 2005.

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 December 19, 2005 . The Court filed and entered this document December 19, 2005.