

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

ROBERT S. RUFFE)	
and DEBRA J. RUFFE,)	
)	
Plaintiffs,)	TC-MD 050735C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiffs appeal the interest imposed by Defendant’s July 7, 2005, Notice of Liability Balance for 2004. The case was presented to the court for determination at the October 17, 2005, case management conference. For ease of reference the parties will be referred to collectively as taxpayers and the department; where necessary, taxpayers will be referred to by their first names.

I. STATEMENT OF FACTS

Taxpayers were living in Oregon in 2004. Robert moved to Cincinnati, Ohio, on or about July 2004, to begin a new job with Chiquita Brands (Chiquita), effective July 6, 2004. Robert claims that his family was to join him in Ohio, and, in fact, Chiquita’s employment confirmation letter states that, by accepting the company’s offer, Robert committed to a family relocation within 12 months from the hire date. However, Robert’s job came to an unexpected and abrupt end on December 1, 2004, due to the company’s financial status. Robert then moved back to Oregon to join his wife in Medford.

Prior to the move, Robert’s employer withheld Oregon state income taxes; Chiquita withheld taxes for the state of Ohio from July through November 2004. Taxpayers completed an affidavit of domicile for the state of Ohio, indicating they were Oregon domiciliaries in 2004.

Taxpayers filed a full-year Oregon resident return. Taxpayers' Oregon tax liability came to \$13,073 and Oregon withholding was only \$2,384, a difference of \$10,689. The department determined that interest was due for underpayment of estimated tax pursuant to ORS 316.587, and imposed such interest in the amount of \$222.64. Taxpayers filed written objections and the department determined taxpayers were not entitled to cancellation of the interest. Taxpayers timely appealed that decision to this court.

II. ANALYSIS

Ordinarily, an Oregon employer deducts state income taxes from an employee's wages and remits the amounts withheld to the department. *See* ORS 316.167 through ORS 316.172.¹ The amount so withheld is considered the payment of the employee's tax. ORS 316.187. Chiquita, Robert's Ohio employer for five months, did not withhold Oregon income taxes, presumably because Robert was considered an Ohio resident. Instead, Ohio income taxes were withheld and remitted to that state's tax authority. There is nothing unusual about that. However, after Robert was terminated, effective November 30, 2004, he returned to Oregon and filed an Oregon full-year resident return. Robert did not make estimated taxes while he was working and living in Ohio. As a result, only a fraction of the amount due was withheld and remitted to Oregon during calendar year 2004.

ORS 316.587(1) imposes interest on a taxpayer who makes an underpayment of estimated tax. Taxpayers acknowledge that they underpaid their taxes in 2004, and they agree with the amount assessed by the department. However, taxpayers believe that the interest should be waived due to the "unique" circumstances involved in their situation. Subsection (5) of ORS 316.587 does provide for limitations on the department's authority to impose the interest.

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

Of the four situations outlined in the statute, only ORS 316.587(5)(b) would possibly apply to taxpayers' circumstances.² That statute provides:

“Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax to the extent that the Department of Revenue determines that by reason of casualty, disaster or other unusual circumstances the imposition of interest would be against equity and good conscience.” ORS 316.587(5)(b).

The department reviewed taxpayers' waiver request under that statutory provision and determined cancellation was not appropriate because the reason for the underpayment was not due to casualty or disaster and taxpayers' circumstances were not “unusual,” as that factor is defined in the department's administrative rule. OAR 150-316.587(5)(b)³ provides:

“* * * * *

“(2) The following are examples of situations that will be accepted by the department as unusual circumstances for not imposing interest.

“(a) Where the failure to make the necessary estimated tax payment was caused by death or serious illness of the taxpayer, or death or serious illness of the taxpayer's immediate family.

“(b) Where the taxpayer's books and records are destroyed by fire, flood or other natural disaster and therefore, the taxpayer is unable to determine the correct estimated tax payment.

“(c) Where the disaster is so overwhelming that the taxpayer neglects to make the necessary estimated tax payment.

“(d) Where the failure to make the necessary estimated tax payment was caused by the unavoidable and unforeseen absence of the taxpayer from the state immediately prior to the due date of the estimated tax payment.”

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² There is no indication that taxpayers had no tax liability for the 2003 taxable year, that Robert retired after attaining the age of 62 or became disabled, or that Robert's earnings were attributable to a pro rata share of income from an S corporation. Accordingly, paragraphs (a), (c), and (d), of subsection (5) of ORS 316.587 are inapplicable.

³ All references to the Oregon Administrative Rules (OAR) are to 2003.

Taxpayers' failure to make estimated tax payment was not due to death or serious illness, the destruction of taxpayers' records, an overwhelming disaster, or an unavoidable and unforeseen absence from the state at the time the payments were due. Rather, taxpayers did not have Robert's Ohio employer withhold taxes for Oregon because taxpayers intended to permanently relocate to Ohio; the employer was withholding taxes for the state of Ohio. After Robert's termination on November 30, 2004, he contacted the revenue departments of both Ohio and Oregon and determined that Oregon should receive all of the tax revenues for the year.

Taxpayers argue "[i]t would not have been financially practical or made any type of sense for [Robert] to have taxes taken out for the State of Oregon and then the State of Ohio." (Ptf's Compl at 4.) That may be true, but taxes need only have been withheld by one of the two states. If Robert truly was an Oregon domiciliary for the year, as taxpayers' affidavit declares, then Robert should have instructed his employer to withhold taxes for Oregon rather than Ohio, or, perhaps, claimed exemption from Ohio taxes and made estimated tax payments to Oregon. Conversely, if taxpayers intended to make Ohio their home, they should have filed a part-year Oregon return, calculating Oregon taxes based on Oregon-source income. The latter option would have avoided the interest imposed by the department (assuming sufficient withholding from taxpayers' Oregon source income). In fact, in its Answer, the department asked taxpayers to file a part-year resident return. However, given that Ohio refunded all of the taxes withheld from Robert's Ohio wages and that taxpayers have taken the position they were Oregon domiciliaries for all of 2004, their failure to make the required estimated tax payments subjects them to the interest the department imposed. Moreover, the limitations on imposing said interest provided in ORS 316.587(5), and the department's corresponding administrative rule, are inapplicable.

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III. CONCLUSION

For the reasons set forth above, the court concludes that taxpayers are not entitled to cancellation of interest under ORS 316.587(5)(b). Now, therefore,

IT IS ADJUDGED that taxpayers' appeal is denied.

Dated this _____ day of November 2005.

DAN ROBINSON
MAGISTRATE

This document is final and may not be appealed. ORS 305.514.

This document was signed by Magistrate Dan Robinson November 9, 2005. The Court filed this document November 9, 2005.