

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MARIO NEGRETE,)	
)	
Plaintiff,)	TC-MD 050912A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

On February 15, 2006, the court entered a Journal Entry in this appeal. The Journal Entry gave Plaintiff an opportunity to abandon his arguments and file a return that contained an accurate statement of his income, exemptions, deductions, and credits that would meet the tests of Defendant and the court. Plaintiff did not take advantage of that opportunity. On the basis of that choice, the aforementioned Journal Entry, and the court’s decision in the companion case also filed by Plaintiff, TC-MD 050674A (closed April 19, 2006), the court finds for Defendant, denies this appeal, and awards damages under ORS 305.437.¹

I. STATEMENT OF FACTS

Plaintiff’s Complaint asserts Defendant’s assessment is flawed in that his tax return for the year at issue did not show an amount of tax, and no other valid returns exist for that tax year. Plaintiff reasons that because his return did not show an amount of tax, Defendant is precluded from modifying his return through making an assessment. Plaintiff’s Oregon return, attached to the Complaint, has been completed using “0” as entries. Plaintiff’s Complaint goes on to assert that “income” as used in its “constitutional sense” is not the same thing as “income” as used in its “ordinary” sense, and that Plaintiff had no “constitutional” income.

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

II. ANALYSIS

The statutes are clear. “A tax is imposed for each taxable year on the entire taxable income of every resident of this state.” ORS 316.037(1)(a). “ ‘Taxable income’ means the taxable income as defined in subsection (a) or (b), section 63 of the Internal Revenue Code, with such additions, subtractions and adjustments as are prescribed by this chapter.” ORS 316.022(6).

There is no distinction in the income tax code between income in its “ordinary sense” and income in its “constitutional sense.” Similarly, there is nothing in the deficiency and assessment statute which precludes Defendant from making an assessment because a taxpayer has filed a return completed with “0” as an entry. *See* ORS 305.265.

The appeal submitted to this court is clearly without merit. It is a frivolous appeal. The Regular Division of this court has taken a similar approach where a party “raises spurious constitutional arguments patched together with citations taken completely out of context.” *Buras v. Dept. of Rev.*, 17 OTR 282, 288 (2004). A penalty pursuant to ORS 305.437 is justified and proper. Due to the prompt disposition of this case, the court finds damages appropriate at \$200.

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III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant is awarded damages of \$200 under ORS 305.437; and

IT IS FURTHER DECIDED that this appeal is dismissed with prejudice.

Dated this _____ day of May 2006.

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 May 10, 2006. The Court filed and entered this document on May 10, 2006.