

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DONALD L. RINGGOLD,)	
)	
Plaintiff,)	TC-MD 060023B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals certain personal income tax matters for the 2002 tax year.

A trial was convened on April 5, 2007. E. Ronald Isakson, Certified Public Accountant, represented Plaintiff; Donald L. Ringgold testified as a witness. Tony King, Auditor, appeared for Defendant. Subsequently, written materials were filed; the record closed May 10, 2007.

The key issue is whether Plaintiff is entitled to deduct \$12,500 as a casualty loss for sums he paid to a third party in 2002.

I. STATEMENT OF FACTS

On June 10, 2002, a fire occurred at Plaintiff's personal residence. There was substantial damage to the structure and personal property contained inside. A small portion of the personal property was owned by Pamela Ringgold (Pamela),¹ Plaintiff's ex-wife. She did not reside in the house at the time, but was storing some possessions there.

Plaintiff's insurance company paid reimbursements for the actual cash value (ACV) losses, including the property of Pamela. According to company records, Plaintiff and Pamela were both reimbursed for the fair market value (FMV) of all their property. (Def's Ex D.) The

¹ When referring to a party in a written decision, it is customary for the court to use the last name. However, in this case, the court's Decision recites facts and references two individuals with the same last name, Ringgold. To avoid confusion, the court will use Ms. Ringgold's first name and refer to Mr. Ringgold as Plaintiff.

report showed Pamela's computation as \$22,720.32 replacement cost loss less \$15,796.95 in depreciation, to yield a \$6,923.37 ACV payment to cover her losses in full. Payments were made directly to Pamela by the insurance firm. No objection was made to the insurance company's accounting.

After the fire, Plaintiff became concerned about the items owned by Pamela. Apparently, Pamela believed the insurance proceeds did not cover all costs necessary to replace the items. She wanted full replacement value with no allowance for depreciation, wear or tear.

Plaintiff stated he then spoke with an attorney acquaintance. At trial, a letter from that attorney was introduced. In part, it stated "[i]f you were a gratuitous bailee, you would be *liable for your own negligence* as it would relate to allowing or causing the fire to destroy the property of a third party." (Brandsness ltr, filed by Plaintiff Jul 27, 2006) (emphasis added). At trial, Plaintiff testified he was not negligent as it related to the fire's causation.

Plaintiff wanted to avoid any legal claims Pamela might decide to file. He then paid her \$12,500 to satisfy any further claims related to her items stored in his house. Plaintiff deducted that payment as a personal casualty loss on his 2002 Oregon tax return, which he filed as a single taxpayer. The casualty loss was disallowed by Defendant.

II. ANALYSIS

Section 165 of the Internal Revenue Code applies to losses of property owned by an individual taxpayer. Plaintiff did not own the property subject to those payments. Furthermore, there is no objective evidence to show there was any loss at all. To the contrary, the insurance records indicate that payment was made for all assets in full. There was no difference in FMV demonstrated.

Treasury Regulation section 1.165-1(b) requires that a bona fide loss be demonstrated. Section 1.165-7(b)(i) sets as a measurement "[t]he amount which is equal to the fair market

value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty.” Internal Revenue Services Publication 552 further defines a casualty loss, including the requirement “that you were the owner of the property.” (2005 WL91422 * 6.) There was no legal obligation for Plaintiff to pay \$12,500, or any amount, to his ex-wife.

Plaintiff has the burden of proof and must establish his case by a “preponderance” of the evidence. ORS 305.427.² A “[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). “[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof.” *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990). Plaintiff has not met that statutory requirement in this record.

III. CONCLUSION

The \$12,500 gratuitous payment was for property not owned by Plaintiff. It does not qualify as a casualty loss. Now, therefore,

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

Dated this _____ day of June 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on June 4, 2007.
The Court filed and entered this document on June 4, 2007.***

² All references to the Oregon Revised Statutes (ORS) are to 2001.