

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

NICHOLAS MARTIN,)
)
 Plaintiff,) TC-MD 060621C
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 State of Oregon,)
)
 Defendant.) **DECISION**

Plaintiff seeks a stay of the collection of taxes, penalties, and interest in the amount of \$17,460.65, determined by Defendant to be owing for tax years 2002, 2003, and 2004.

There is no dispute as to the relevant material facts bearing on the outcome of Plaintiff's appeal. The case is essentially before the court on cross-motions for summary judgment. Hearing on the parties' oral arguments was held January 9, 2007. Plaintiff appeared on his own behalf. Defendant was represented by an auditor going only by the name "David #3128."

I. STATEMENT OF FACTS

Plaintiff works for Hewlett-Packard as an engineer. According to Plaintiff's W-2 Wage and Tax Statements, his annual wages were \$63,313.55 in 2002, \$62,449.50 in 2003, and \$61,276.26 in 2004. (Ptf's Filing at 5, 8, 11, Oct 5, 2007.) Plaintiff also had nominal interest income of \$19, \$49, and \$72, respectively, for the three tax years. (Def's Answer, Aug 24, 2006.) Plaintiff did not file a state income tax return for 2002, 2003, or 2004. Defendant sent Plaintiff written requests to file returns. Plaintiff did not respond, and on May 19, 2006, Defendant issued a Notice of Determination and Assessment (NODA) for the three years under appeal. The assessments included penalties equal to 100 percent of the tax

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due, plus interest. The total liability amount as of May 19, 2006, was \$17,234.76. (Ptf's Compl at 2, 5, 8.)¹

After the commencement of this proceeding, Plaintiff submitted income tax returns for all three years under appeal (2002, 2003, and 2004). (Ptf's Filing, Oct 5, 2007.) On each of those returns, Plaintiff reports a federal adjusted gross income of \$-0-. (*Id.*)

II. PARTIES' POSITIONS

Plaintiff's Complaint asserts that:

(1) he has complied with all applicable constitutional and statutory provisions, and that his numerous statements and questions both to the Internal Revenue Service (IRS) and Oregon Department of Revenue (Department) have gone unanswered (Ptf's Compl at 11, 12);

(2) Article I section 32 of the Oregon Constitution protects against a compulsory head tax (*Id.* at 13, 14);

(3) the Department's authority to collect individual income tax is statutorily tied to the provisions of the Internal Revenue Code (IRC), and the US Congress has "repealed ALL section[s] applicable to the collection of state individual income taxes," (*Id.* at 14-16);

(4) while 5 USC section 5517 provides for the collection of state income taxes against federal employees, Plaintiff is not a federal employee (*Id.* at 16-18);

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¹ Plaintiff's Complaint and attached documents run 66 pages. The Complaint and NODAs comprise the first 10 pages, followed by a 14 page document titled "VERIFIED NOTICE OF INTENT AND AFFIDAVIT OF COMPLIANCE WITH PUBLIC LAW APPLICABLE TO FILING STATE INDIVIDUAL INCOME TAX DOCUMENTS." That document, which resembles a legal memorandum, has five attachments (A through F) that are collectively 42 pages in length. Those documents are referred to collectively by the court as Plaintiff's Complaint, which will be abbreviated as "Ptf's Compl."

(5) Defendant has imposed a Bill of Attainder against Plaintiff allowing for the collection of the tax, penalty, and interest, without the benefit of a trial and the determination of liability (*Id.* at 18, 19);

(6) if Plaintiff is found to be liable for state income taxes, under IRC section 83, there must be a determination of whether the fair market value of the property transferred in connection with the performance of Plaintiff's services exceeds the amount paid for the performance of his services (*Id.* at 19-22); and,

(7) Defendant is involved in collusion and conspiracy and Plaintiff wants answers to the issues and questions raised in his Complaint (*Id.* at 22, 23).

Plaintiff raises additional related arguments in a supplemental "memo" filed September 14, 2006, which is titled "Plaintiff's Response to Defendant's Answer and to the Admin. Court,"² including defense against the allegation that this appeal is frivolous. At the hearing, Plaintiff explained that the overarching principle applicable to his appeal is that he is looking for an explanation from Defendant; that is, for Defendant's authority to impose a tax against Plaintiff under his particular circumstances, in light of the questions raised. Plaintiff was asked by the court if there was any priority to his arguments and, in response, said there was not, he simply wanted answers to his questions.

In its Answer, Defendant sets forth the legal framework pursuant to which it assessed the tax against Plaintiff. Defendant indicates that ORS 316.362(1) requires residents to file tax returns; ORS 316.037(1)(a) imposes a tax "on the entire taxable income of every resident of this state"; ORS 316.022(6) defines "taxable income" to mean "the taxable income as defined in

² The court will refer to Plaintiff's supplemental filing as "Plaintiff's Response," which will be abbreviated "Ptf's Resp."

subsection (a) or (b), section 63 of the Internal Revenue Code * * *,” which in turn defines taxable income as “gross income” minus allowable deductions; and, IRC section 61 provides that “gross income means all income from whatever source derived, including (but not limited to) * * * [c]ompensation for services.” (Def’s Answer at 1, 2.) Additionally, Defendant notes that ORS 316.162(3) states that “ ‘wages’ means remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash * * *.” (*Id.* at 2.) Defendant seeks damages for frivolous appeal pursuant to ORS 305.437. (*Id.* at 3.)

III. ANALYSIS

Oregon taxes “the entire taxable income of every resident of this state.” ORS 316.037(1)(a).³ There is no dispute that Plaintiff is a resident of Oregon. Oregon generally follows federal law to determine taxable income. ORS 316.007; ORS 316.048.

ORS 316.022(6) provides:

“ ‘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.”

Section 63(a) of the IRC provides that taxable income is gross income minus allowable deductions.⁴ IRC section 61(a) defines gross income as “all income from whatever source derived, including (but not limited to) * * * [c]ompensation for services.” Oregon’s tax rate is set out in the statutes. *See* ORS 316.037; *see Clark v. Dept. of Rev.*, 15 OTR 209, 210 (2000), *aff’d*, 332 Or 326, 26 P3d 821 (2001) (setting forth similar legal framework for taxation of income).

³ Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2001.

⁴ Unless noted otherwise, all references to the Internal Revenue Code (IRC) are to 2000.

During the tax years under appeal, Plaintiff worked for Hewlett-Packard and was paid for his services. That pay constitutes “compensation for services.” Plaintiff therefore does have gross income and is liable for taxes thereon. Plaintiff’s returns, which reported zero income, are not valid “because there must be ‘an honest and reasonable attempt to satisfy the requirements of the tax law.’ ” *Riddle v. Dept. of Rev.*, TC-MD No 030022C, WL 22327322 at *2 (Sept 30, 2003) (*Riddle*) (citing *Beard v. Commissioner*, 82 TC 766, 777 (1984)).

The overarching theme in Plaintiff’s appeal concerns the state’s authority to impose an income tax. The plenary power of the state to impose taxes is well established. Domicile itself establishes a basis for taxation. *Keller v. Dept. of Rev.*, 9 OTR 67, 74 (1981) (*Keller*), *aff’d*, 292 Or 639, 642 P2d 284 (1982). In *Keller*, this court quoted the US Supreme Court’s opinion in *Lawrence v. State Tax Comm’r*, 286 US 276, 52 S Ct 556, 76 L Ed 1102 (1932), in which the Court stated:

“[t]he obligation of one domiciled within a state to pay taxes there, arises from the unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equably among those who enjoy its benefits.”

Keller, 9 OTR at 74. The statutes set forth above trace the statutory basis for a tax.

A. *Unanswered questions, and constitutional and statutory compliance*

Plaintiff seeks an explanation from Defendant that would “verify and validate the Oregon Department of Revenue’s claim that Belligerent Claimant is subject to the requirement of filing a return.” (Ptf’s Compl at 11.) Plaintiff asserts that he has complied with all applicable constitutional and statutory requirements relative to taxation. The court disagrees. As explained above, Oregon taxes the taxable income of Oregon residents. ORS 316.037(1)(a). Plaintiff is an Oregon resident with taxable income. He is therefore subject to the tax. This court has

previously held that wages are clearly taxable. *Combs v. Dept. of Rev.*, 15 OTR 60, 61 (1999), *aff'd*, 331 Or 245, 14 P3d 584 (2000). The tax rate is set out in the statutes. ORS 316.037(1)(a) (setting forth the tax rate table).

As for the requirement of filing return, ORS 316.362(1)(a) requires Oregon residents to file a tax return. After the initiation of his appeal, Plaintiff filed returns reporting zero income. “By reporting zero income, Plaintiff incorrectly computed and reported his tax.” *Riddle*, TC-MD No 030022C, WL 22327322 at *2. Oregon law requires Defendant to review returns and, where a deficiency is determined, to “compute the tax and give notice to the person filing the return * * *.” ORS 305.265(2). Defendant has done so, and Plaintiff has done nothing to honestly refute that assessment. Plaintiff has the burden of proof. ORS 305.427.

B. *Article I, section 32, Oregon Constitution*

Article I, section 32, of the Oregon Constitution provides:

“No tax or duty shall be imposed without the consent of the people *or their representatives* in the Legislative Assembly; and all taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax.” (Emphasis added.)

Plaintiff asserts that this provision requires the consent of the individual to be taxed by the state, and that he has never consented to such a tax. Plaintiff may not have consented, but his representatives in the state legislative assembly have provided for an income tax, as explained above. The Oregon Supreme Court has previously rejected a claim that the requirement to report income is voluntary. *Clark v. Dept. of Rev.*, 332 Or 236, 237, 26 P3d 821 (2001) (stating that “[t]axpayer’s views concerning the voluntary nature of the income tax system * * * however honestly held, are so incorrect as to render legal arguments based on them frivolous.”).

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Plaintiff asserts that the Oregon Supreme Court in *Redfield v. Fisher*, 135 Or 180, 292 P 813 (1930) (*Redfield*), *reh'g den*, 135 Or 205, 295 P 461 (1931), ruled that “[t]he individual, unlike the corporation cannot be taxed for the mere privilege of existing.” (Ptf’s Compl at 14). The court did so state. *Redfield*, 155 Or at 197. However, extending that statement to encompass the act of earning a living is erroneous. *See Dept. of Rev. v. Clark*, 17 OTR 218, 220 n3 (2003) (stating as such). “The court in *Redfield* knew of, and in no way questioned, the then existing Oregon tax on the income of individuals.” *Id.*

In summary, Plaintiff’s argument that the Oregon Constitution requires his personal consent to taxation is rejected because it lacks a legal or factual basis.

C. *Collection of individual income tax is pursuant to repealed federal code sections*

Plaintiff argues that collection of state income taxes is being conducted pursuant to repealed sections of the IRC, specifically Subchapter E sections 6361, 6362, 6363, 6364, and 6365. (Ptf’s Compl at 14-16.) Subchapter E of IRC Chapter 64 was repealed in 1990, by Public Law 101-508, Section 11801(a)(45). However, Plaintiff’s conclusion that this divested the State of Oregon from its authority to collect individual income taxes is misguided and without merit. The repealed sections provided terms governing agreements between states and the United States for collection and administration of “qualified State individual income taxes” by the Secretary in the event that such an agreement was in effect. IRC §§ 6361-6365 (1988). Those sections did not authorize collection of state taxes *by the states themselves*. The state’s power to impose an income tax derives from its sovereign powers, not from any grant by the federal government.

Authority to collect the taxes at issue in the present case is provided by state law. ORS 305.120 states in relevant part that “[t]he Department of Revenue shall see that * * * all taxes are collected * * *.” For income taxes, Oregon has adopted the federal code provisions

“relating to the measurement of taxable income of individuals, * * * modified as necessary by the state’s jurisdiction to tax and the revenue needs of the state[.]” ORS 316.007. Oregon law further provides the authority for the taxation of “the entire taxable income of every resident” and gives the Department of Revenue authority to review Plaintiff’s returns and assert a deficiency if Plaintiff failed to correctly determine the tax. ORS 316.037(1)(a); ORS 305.265(2); *Riddle*, TC-MD No 030022C, WL 22327322 at *2. As this court observed in *Riddle*, “[t]he applicable administrative rule defines a deficiency as ‘the amount by which the tax as correctly computed exceeds the tax, if any, reported by the taxpayer.’ OAR 150-305.265(2)-(A). By reporting zero income, Plaintiff incorrectly computed and reported his tax.” *Riddle*, TC-MD No 030022C, WL 22327322 at *2.

D. *Withholding of state income taxes against non-federal employees*

Plaintiff states that he is not a federal employee nor has he authorized withholding of his non-federal employee compensation. (Ptf’s Compl at 17.) His argument essentially appears to be that the federal government can tax only employees of the federal government; therefore, employees in the private sector such as himself are immune from federal and state income tax liability. In support of his argument Plaintiff cites 5 USC section 5517. (*Id.*)

Section 5517 is related to repealed IRC sections 6361 through 6365, and addresses the terms of agreements between the Secretary of the Treasury and the State when a state statute 1) provides for the collection of tax against federal civil service employees by either imposing on the employers the duty to withhold sums from employees’ pay and make the returns, or to withhold the sum as voluntarily elected by the employee, and 2) the statute applies to withholding generally from the pay of federal employees who are state residents. USC § 5517.⁵

⁵ Unless otherwise noted, all references to the United States Code (USC) are to 2000.

Title 5 of the United States Code is entitled “Government Organization and Employees.”

Section 2105(a) of Title 5 states that:

“[f]or the purpose of this title, ‘employee’, except as otherwise provided by this section or when specifically modified, means an officer and an individual who is--

(1) appointed in the civil service by one of the following acting in an official capacity--

(A) the President;

(B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

* * * * *

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.”

It is readily apparent from this section that Title 5 of the USC, and therefore section 5517, applies only to federal employees, as Plaintiff states in his materials. However, Plaintiff’s conclusion that because he is not a federal employee the state lacks authority to tax is misguided. The court has already provided the authority pursuant to which the state has the power to impose taxes, none of which requires proof that Plaintiff is a federal employee.

Plaintiff’s general argument, that the federal government can tax only employees of the federal government, has been previously considered and rejected by this and other courts.

See Orton v. Dept. of Rev., TC-MD No 030905C, WL 22847246 at 1 (Nov 10, 2003)

(rejecting as unpersuasive the plaintiff’s assertion that he had no Oregon tax liability because he was not a federal employee); *see Peth v. Breitzmann*, 611 F Supp 50, 53 (ED Wis 1985);

see Pabon v. Comm’r, TC Memo 1994-476, 68 TCM (CCH) 813, 816 (1994) (*Pabon*)

(characterizing this position as nothing but “tax protester rhetoric and legalistic gibberish.”).

Not only is Plaintiff’s claim wrong, because the federal government can and does tax non-federal

employees, but the contention as a whole, has nothing to do with state income taxes. The state could tax individuals even if the federal government decided to repeal the federal income tax entirely.

E. *Bill of attainder not permitted without trial and determination of liability*

Plaintiff claims that Defendant has improperly imposed a bill of attainder against his property rights. (Ptf's Compl at 18.) "A 'bill of attainder' is a 'law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.'" *Mannelin v. DMV*, 176 Or App 9, 24, 31 P3d 438 (2001) (*Mannelin*), *aff'd sub nom, McNutt v. DMV*, 336 Or 147, 82 P3d 162 (2003) (citing *Nixon v. Administrator of General Services*, 433 US 425, 468, 97 S Ct 2777, 53 L Ed 2d 867 (1977) (*Nixon*)).

Here, Defendant's assessment of Plaintiff's liability for income tax, interest, and penalties does not amount to a bill of attainder. First, the applicable statutes and code sections do not single out Plaintiff. The *Mannelin* court noted that:

"[a]s the Supreme Court explained in the *Nixon* decision, the prohibition against bills of attainder 'surely was not intended to serve as a variant of the equal protection doctrine, invalidating every Act of Congress or the States that legislatively burdens some persons or groups but not all other plausible individuals.'" "

Mannelin, 176 Or App at 24 (citing *Nixon*, 433 US at 471 (footnotes omitted)). Second, guilt or innocence is not being determined, either legislatively or in any other manner.

The issue here is whether Defendant properly assessed Plaintiff's liability for personal income taxes, penalties, and interest. Third, there is no punishment being inflicted, only a tax.

Assuming, arguendo, that the assessment of penalties for failure to pay income tax constitutes a punishment for purposes of the prohibition against bills of attainder, the statutes provide for the protection of a judicial trial. ORS 305.270(10) provides for "appeal [of] any notice of proposed

adjustment, refund denial or notice of assessment in the manner provided in ORS 305.404 to 305.560[,]" which pertain to proceedings in the Oregon Tax Court. Plaintiff has availed himself of that right. In short, Plaintiff has made no objectively reasonable argument that Defendant's actions in this case constitute a bill of attainder.

F. *IRC section 83*

Under the general rule of IRC section 83, property received in exchange for the performance of services is includable in the gross income of the person performing the services to the extent the fair market value of the property exceeds the amount (if any) paid for such property. Plaintiff makes numerous arguments related to IRC section 83 and the computation of his gross income, but offers no evidence that shows why the wages listed on his W-2 Wage and Tax Statements are not includable in his gross income. (*See* Ptf's Compl at 19-21; Ptf's Filing at 5, 8, 11, Oct 5, 2007.)

Defendant cites *Conner v. Commissioner*, 770 F2d 17 (2d Cir 1985) (*Connor*), where the court rejected the argument Plaintiff makes in the instant appeal, to wit, that wages are not income but an exchange of property. As noted in Defendant's Answer, the *Conner* court stated:

"[t]he taxpayer next argues that wages are not income but an exchange of property. As money is property and labor is property, so his argument goes, his work for wages is a non-taxable exchange of property. Wrong again. Wages are income. *See, e.g., Schiff v. Commissioner*, 751 F.2d 116, 117 (2d Cir.1984). The argument that they are not has been rejected so frequently that the very raising of it justifies the imposition of sanctions."

Conner, 770 F2d at 20; (Def's Answer at 2). Defendant also cites *United States v. Lawson*, 670 F2d 923 (10th Cir 1982) and *Olson v. United States*, 760 F2d 1003 (9th Cir 1985), and explains that in each of those cases the courts rejected the argument that wages are not gains subject to tax but merely something received in exchange for services or merely the cost of labor

which cannot be taxed. (*Id.*) This court agrees, and rejects Plaintiff's argument that computations under IRC section 83 exclude his wages from gross income. The court notes that similar arguments, including "that a taxpayer has a 'claim of right' to exclude the cost or value of the taxpayer's labor from income or that taxpayers have a basis in their labor equal to the fair market value of wages they receive, or similar arguments described as frivolous in Rev. Rul. 2004-29, 2004-1, C.B. 627, or Rev. Rul. 2007-19, 2007-14 I.R.B.____[,]" have been labeled frivolous by the Internal Revenue Service (IRS). IRS Notice 2007-30(4).

G. *Compensation is not income*

As stated above, Oregon imposes an income tax on the taxable income of every state resident. ORS 316.037(1)(a). "Taxable income" is gross income minus allowable deductions, and gross income is defined as "all income from whatever source derived, including (but not limited to) * * * compensation for services." IRC §§ 63(a), 61(a).

Plaintiff contends that there is a difference between "income," which has an element of "profit or gain," and "compensation," which involves "an equal exchange of labor for a loss sustained, having intrinsic value that must be restored to Plaintiff, deducting and restoring the sweat equity of Plaintiff's Labor Property as protected under the 'just compensation' clause of the Fifth Amendment to the United States Constitution." (Ptf's Resp at 5) (emphasis omitted.) This argument relates closely to Plaintiff's bill of attainder and IRC section 83 claims discussed above and is similarly without merit.

The Takings Clause of the Fifth Amendment to the United States Constitution provides that "private property [shall not] be taken for public use, without just compensation." The Oregon Court of Appeals recently stated that the "guarantee was 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should

be borne by the public as a whole.’ ” *Hammer v. City of Eugene*, 202 Or App 189, 192, 121 P3d 693 (2005), *rev den*, 340 Or 308, 132 P3d 28 (2006) (citing *Armstrong v. United States*, 364 US 40, 49, 80 S Ct 1563, 4 L Ed 2d 1554 (1960)). By way of example, the court stated that “if the government constructs a highway for use by the general public, it would be unfair to construct it on privately owned property without paying the owner just compensation for the affected property, because the benefit would inure to the general public, whereas the burden would rest solely on the landowner.” *Id.* Here, there is no property being taken by the government. Rather, Plaintiff is being asked to share in the expenses of government services by paying a tax on his wages.

The argument that “[i]ncome taxation, tax withholding, or the assessment or collection of tax is a ‘taking’ of property without due process of law or just compensation in violation of the Fifth Amendment[.]” is an argument deemed frivolous by the IRS. IRS Notice 2007-30(9)(e). That argument has also been rejected by this court. *See Raby v. Dept. of Rev.*, TC-MD No 021028D, WL 21241349 (Apr 30, 2003).

Closely related is the general argument Plaintiff appears to make – that compensation for services is not taxable income. This and similar arguments have been attempted by other taxpayers without success. *See Negrete v. Dept. of Rev.*, 19 OTR 134, 137 (2006) (*Negrete*) (rejecting the argument that wages are not income) (citing “*Combs v. Dept. of Rev.*, 15 OTR 60, 61 (1999), *aff’d*, 331 Or 245, 14 P3d 584 (2000) (holding that such a claim was ‘unrealistic and uninformed’ and that ‘wages are clearly taxable’); *Christenson v. Dept. of Rev.*, 18 OTR 269, 273 (2005) (holding that such a position ‘is without merit’); *Clark v. Dept. of Rev.*, 15 OTR 197, 200 (2000), *aff’d*, 332 Or 236, 26 P3d 821 (2001) (stating that such a view is ‘patently distorted and removed from reality.’ ”). Such arguments have not only repeatedly been rejected by the

courts, they have been ruled frivolous by this court, the Oregon Supreme Court, and the United States Supreme Court. *See Negrete*, 19 OTR at 137-38 (holding that wages are clearly taxable income and awarding frivolous appeal damages under ORS 305.437).

Taxpayer's additional claims appear to sound in tort and this court has no jurisdiction over such claims. *Sanok v. Grimes*, 294 Or 684, 697-98, 662 P2d 693 (1983).

H. *Frivolous Appeal Damages*

Defendant seeks damages for frivolous appeal pursuant to ORS 305.437, which provides that damages not to exceed \$5,000 shall be awarded to the Department “[w]henver it appears * * * that the taxpayer’s position in such proceeding is frivolous or groundless * * *.”

ORS 305.437(1). Although Plaintiff in his Response offers argument in defense of Defendant’s claim, he fails to convince the court. (Ptf’s Resp at 2, 3.)

Was Plaintiff’s appeal “frivolous?” “A taxpayer’s position is ‘frivolous’ if there was no objectively reasonable basis for asserting the position.” ORS 305.437(2). “For the purposes of ORS 305.437, this court analyzes objective reasonableness under the same standard as that used under ORS 20.105[,]” which pertains to the awarding of attorney fees. *Gall v. Dept. of Rev.*, 19 OTR __, __ (Nov 22, 2006) (slip op at 11), TC No 4767, WL 3487425 at *6 (citing *Yanez v. Washington County Assessor*, 18 OTR 276, 281 (2005)). In determining whether a claim was objectively reasonable under ORS 20.105, “the court assesses whether taxpayer’s claims, defenses, or grounds for appeal were ‘entirely devoid of legal or factual support at the time [they] were made.’ ” *Christenson v. Dept. of Rev.*, 18 OTR 269, 274 (2005) (citation omitted). Here, Plaintiff’s claims lack any legal or factual support and are, therefore, objectively unreasonable. Accordingly, the court awards damages in the amount of \$1,500.

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IV. CONCLUSION

Based on the foregoing, the court concludes that Plaintiff's wages are taxable by Oregon and that, on the available information, Defendant properly calculated Plaintiff's personal income tax liability, penalty, and interest for tax years 2002, 2003, and 2004. Further, Plaintiff's arguments are not objectively reasonable because they are without legal or factual support, and, therefore, Plaintiff's arguments are frivolous under ORS 305.437. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff shall be assessed taxes, penalties, and interest as set out in the Notices of Determination and Assessment for the 2002, 2003, and 2004 personal income tax years;

IT IS FURTHER DECIDED that interest shall continue to accrue at the statutory rate until such time as all amounts related to Plaintiff's tax liability, as set forth herein, are paid in full; and

IT IS FURTHER DECIDED that Defendant shall be awarded \$1,500 in damages.

Dated this _____ day of August 2007.

DAN ROBINSON
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 Dan Robinson on August 17, 2007. The Court filed and entered this document on August 17, 2007.