IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

BRYAN GALBREATH,	)	
	)	
Plaintiff,	)	TC-MD 060735E
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE, State of Oregon,	)	
	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appeals Defendant's deficiency notices for the 2002 and 2003 tax years. A trial in the matter was held in the courtroom of the Oregon Tax Court March 14, 2007. Plaintiff appeared on his own behalf. David #3128 appeared on behalf of Defendant.

I. BACKGROUND

On January 10, 2007, Plaintiff filed a "Motion to Ammend [*sic*] Complaint to Make More Definative [*sic*]" (Motion to Amend). The court granted Plaintiff's Motion to Amend and treated Plaintiff's Motion to Amend as his Amended Complaint. Within that Amended Complaint, Plaintiff raises seven issues.[1] At trial, Plaintiff presented testimony and evidence on two of the issues. Notwithstanding, the court will address each of Plaintiff's claims.

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[1] Plaintiff submitted several other motions, which the court denied in written Orders. Those motions were: (1) Motion to Claim and Exercise Constitutional Rights and Require the Presiding Judge to Rule Upon this Motion and All Public Officers of this Court to Uphold Said Rights, filed December 6, 2006; (2) Motion to Strike Answer for Fraud and Render Default Judgement [*sic*], filed December 20, 2006; (3) Motion for Citizen's Demand for Trial by Jury, filed December 21, 2006; (4) Motion to Order Discovery, filed January 10, 2007; and (5) Reply to Defendant Answer and Motion for Summary Judgement [*sic*], filed February 12, 2007. The court's rulings on those motions are incorporated as part of this Decision.

II. ANALYSIS

A. *Is David #3128 authorized to represent Defendant in this appeal?*

Plaintiff argued that David #3128 is not authorized to represent Defendant in his Motion to Strike Answer for Fraud and Render Default Judgement [*sic*]. The court denied Plaintiff's motion, finding David #3128 could represent Defendant. (*See* Order Denying Plaintiff's Motion to Strike Answer for Fraud and Render Default Judgement [*sic*].) Plaintiff raised his objection to David #3128's representation again at the beginning of trial. The court has already ruled on Plaintiff's objection and has incorporated its Order in this Decision. No further analysis is required.

B. *Is David #3128 qualified to assess a deficiency?*

Plaintiff claims that David #3128 is not lawfully qualified to assess a tax. In *Okorn v. Department of Revenue*, the Oregon Tax Court held that "no written delegation of agency powers is necessary for defendant's officers and agents to assess the taxes contested herein." 11 OTR 385, 388 (1990). In *Harding v. Department of Revenue*, this court also denied similar arguments, stating:

> "Another issue raised by plaintiff regards the lack of a delegation of authority. Plaintiff complains that the auditor did not give him a copy of a document filed with the Secretary of State conferring on him (the auditor) or the department the power to assess taxes. This issue is also without merit. While the director must by law (ORS 305.057) file a designation with the Secretary of State when she authorizes an officer or employee to exercise a power conferred upon her, the power to assess taxes is not given to the director, per se, but rather to the Department of Revenue."

TC-MD No 991467C (Mar 15, 2000) (footnote omitted). The court finds Plaintiff's arguments on this issue are similarly without merit.

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C. *Did Defendant timely issue its Notice of Deficiency for 2002*?

For tax year 2002, Defendant issued Plaintiff a refund check dated November 28, 2003. Subsequently, Defendant determined that, in fact, the return resulted in a deficiency and issued a Notice of Deficiency (NOD) April 14, 2005. Plaintiff claims the NOD was late because ORS 305.270(8)[2] requires that, if Defendant determines a deficiency exists, it must issue a NOD within one year of issuing a refund. Plaintiff's reference to ORS 305.270(8), however, only relates to a portion of the statute. A full, and complete, reading of the statute reveals that, in fact, Defendant's NOD was timely issued. The statute states:

> "8) If the department refunds the amount requested as provided in subsection (3) of this section, without examination or audit of the refund claim, the department shall give notice of this to the claimant at the time of making the refund. Thereafter, the department shall have one year in which to examine or audit the refund claim, and send the notice of proposed adjustment provided for in subsection (3) of this section, *in addition to any time permitted in ORS 314.410 or 314.415*."

ORS 305.270(8) (emphasis added). The statute allows Defendant one year, in addition to the time allowed in ORS 314.410 and 314.415. ORS 314.410 allows Defendant anytime within three years after a return is filed to issue a NOD.[3] Although it is not clear from the evidence when Plaintiff filed his 2002 return, it is known that Defendant issued the NOD April 14, 2005. That was a little over two years past the close of the 2002 tax year. Based on the above, the court concludes Defendant timely issued the 2002 NOD.

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[2] All references to the Oregon Revised Statutes (ORS) are to 2005.

[3] ORS 314.410(1) states that "[a]t any time within three years after the return was filed, the Department of Revenue may give notice of deficiency as prescribed in ORS 305.265."

D. *Was Defendant required to wait 30 days after issuing the 2003 Notice of Proposed Adjustment before issuing the 2003 NOD?*

Plaintiff claims that Defendant issued a Notice of Proposed Adjustment (NOPA) and NOD on April 13, 2005. Plaintiff argues that, instead, Defendant should have granted him 30 days to object to the NOPA before issuing the NOD. The court finds Plaintiff's claim is without merit.

In *Simson v. Department of Revenue*, the Tax Court observed that, when Defendant receives a return requesting a refund, and Defendant determines instead that a deficiency exists, Defendant may issue a NOD under ORS 305.265(2). 15 OTR 89, 90-91 (2000). The court observed that both ORS 305.265(2) and ORS 305.270(3) have application but Defendant may choose to only issue a NOD and, by doing so, satisfy the requirements of ORS 305.270(3). Based on the discussion in *Simson*, it is clear that a NOD may immediately be issued with, or in lieu of, a NOPA. No 30-day waiting period is required.

Plaintiff also claims he was misled by the NOPA, claiming it showed zero dollars in tax to pay. First, Plaintiff failed to provide the court with a copy of the NOPA, so the court is unable to review the adequacy of the notice. Second, the NOD is clear that a deficiency exists and explains the reasons for Defendant's conclusion. The NOD put Plaintiff on notice that Defendant was not in agreement with Plaintiff's 2003 return.

E. *Must Plaintiff pay tax and file a return?*

Plaintiff claims no law exists that requires him to pay a tax or file an income tax return. Plaintiff's reasons for making that allegation are not entirely clear, but it appears Plaintiff is making the argument that payment of taxes and the filing of returns are simply actions made on a voluntary basis. Such arguments, however, have been rejected by the courts. In *Christenson v. Department of Revenue*, the Tax Court observed:

> "Taxpayer claims that he chose not to comply with the Oregon state personal income taxation statutes because he believes that wages are not income and that reporting income is voluntary. Taxpayer's position is without merit. *Clark v. Dept. of Rev.*, 332 Or 236, 237, 26 P3d 821 (2001) ('Taxpayer's views concerning the voluntary nature of the income tax system and the nontaxability of wages paid by private employers for an individual's labor, however honestly held, are so incorrect as to render legal arguments based on them frivolous.')"

18 OTR 269, 273 (2005).

The Magistrate Division has also held that claiming the income tax system is voluntary, rather than mandatory, is an argument that has been routinely rejected:

> "Taxpayer's argument is not original and has been raised repeatedly by other individuals. The courts have consistently rejected this 'voluntary' argument as excusing a person from paying an income tax. *See, e.g., McLaughlin v. Commissioner*, 832 F2d 986, 987 (7th Cir 1987) ('The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation but * * * has been repeatedly rejected by the courts.')"

Ruland v. Dept. of Rev., TC-MD No 020171E (Nov 29, 2002).

The court concludes, therefore, that Plaintiff's claims that he is not required to file a return or pay an income tax are without merit.

F. *Is Plaintiff legally responsible for an income tax?*

Plaintiff claims in his Amended Complaint that no constitutional law exists to impose an income tax liability on him. At trial, Plaintiff presented two arguments under that claim: (1) that the cost of his labor is deductible from his wages and (2) that the Internal Revenue Service (IRS) has determined he owes no tax and, therefore, Defendant should make a similar finding.

1. *Labor as cost*

In *Sparks v. Department of Revenue*, this court analyzed the income tax system and concluded that wages are taxable and that labor is not a deductible cost. TC-MD No 060821B (Apr 23, 2007). The court held:

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> " '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 prescribed by this chapter.' ORS 316.022(6).
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> "Income from wages, services, and commissions are taxable. IRC §§ 61(a)(1) and 63(a). *A taxpayer may not deduct the cost of his labor from gross income*. *Thomas v. Dept. of Rev.*, 14 OTR 136, 138 (1997) (finding that 'even the most uninformed wage earners understand that if labor were deductible, they would owe no income tax. If that were the case, then most * * * * state income tax revenues would disappear. Obviously, Congress would amend section 83 to avoid such a drastic result.')."

Id. (emphasis added).

Plaintiff's arguments regarding the nontaxability of his income has been raised and rejected before. The court finds, therefore, that Plaintiff's arguments must be denied.

2. *IRS determination*

At trial, Plaintiff spent the majority of his time going through computer records of the IRS in an effort to demonstrate the IRS has reviewed his claims for 2002 and 2003 and concluded he was entitled to a refund for those years. The information involved various computer codes, which Plaintiff explained to the court demonstrate the returns had been pulled for audit. He further argued the codes proved the audits resulted in zero adjustments.

The court begins by observing that, even if the IRS concluded Plaintiff's 2002 and 2003 returns were accurate, Defendant is entitled to reach a contrary conclusion. The Tax Court has previously observed that Oregon's income tax is based on the federal income tax "as defined in the laws of the United States, not as determined by the Internal Revenue Service." *Okorn*, 11 OTR 385, 387 (1990). In *Okorn*, the court observed that "[i]f the state and a taxpayer disagree over the amount of a taxpayer's taxable income, *neither party can rely simply upon a*

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federal determination. The taxpayer and the state are put to their respective proofs of the actual income." *Id*. (emphasis added).

In any case, the court finds Plaintiff failed to demonstrate the IRS audited and accepted Plaintiff's arguments that his income is not taxable. Plaintiff submitted no audit letter or other correspondence from the IRS stating it agreed with the returns. On the contrary, Plaintiff's November 26, 2006, letter to an IRS auditor suggests the IRS has *not* accepted the 2002 and 2003 returns. (*See* Ptf's Ex 21.) Plaintiff's letter was in response to a letter sent by the IRS auditor where, according to Plaintiff's testimony, the auditor was "trying to change something with respect to 2002 and 2003." The IRS's letter was not submitted to the court so the nature of the change is unclear. However, based on the text of Plaintiff's letter, it appears the IRS, like Defendant, is claiming Plaintiff's position with regard to 2002 and 2003 is, in fact, frivolous. In his letter to the IRS, Plaintiff responds:

> "I have evidence that these claims were previously examined by what appears to be the Criminal Investigation Division (CID) at Ogden UT. The above listed attachments clearly evidence that both these refund claims were thoroughly examined and accepted as valid, not frivolous, by other IRS professionals.
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> "When you state that my 'position' is frivolous. I am not exactly sure what that means. * * * ."

(Ptf's Ex 21 at 2.)

Based on Plaintiff's letter, it appears the IRS has not accepted his returns, as claimed by Plaintiff, but is, in fact, considering them to be frivolous. Plaintiff has failed to demonstrate, therefore, that the IRS accepted his returns as filed and, in any case, the court is under no obligation to follow the IRS's determinations.

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G. *Were the payments received by Plaintiff in a form taxable by the State of Oregon?*

Plaintiff claims that he received payment for his services in the form of federal reserve notes. Plaintiff claims those notes are debt instruments of the United States and are not taxable by the State of Oregon. Once again, Plaintiff makes a claim that is neither novel nor unique and has been consistently rejected by the courts.

In *Maddox v. Department of Revenue*, this court thoroughly reviewed the taxpayer's claim that the federal reserve notes he received as wages were not taxable. The court rejected the taxpayer's arguments as follows:

> "[The p]laintiff's argument that he may not be taxed on his wages because he is paid in federal reserve notes is no more credible [than] any of his other arguments. As authority for his argument he points to 18 USC § 8 (1994) which defines federal reserve notes as obligations of the United States and 31 USC § 3124 (1994) which exempts obligations of the United States from taxation. The definition of obligations of the United States set forth in 18 USC § 8 (1994) is for purposes of crimes and criminal procedures, such as counterfeiting and embezzlement. It was not intended to address the issue before the court.
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> "The Maryland Court of Special Appeals had this issue before it in *Provenza v. Comptroller*, 497 A2d 831, 64 Md App 563 (1985). That court held that the phrase 'obligations of the United States' as used in 31 USC § 3124 (1994) 'refers to interest bearing instruments such as United States bonds.' * * * Thus, the *Provenza* court held that payment in Federal Reserve notes did not exempt that payment from Maryland income tax pointing out that to rule otherwise 'would have the absurd effect of preventing state taxation of any income which may be received in Federal Reserve Notes.'"

Maddox, TC-MD No 021143F (Apr 10 2003). *See also State ex rel Mendonca v. Dept. of Rev.*, TC No 2838 (June 21, 1989) (finding the taxpayer's argument that federal reserve notes are not legal to be frivolous). The court finds, therefore, that Plaintiff's argument with respect to the receipt of federal reserve notes must be denied.

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H. *Frivolous Damages*

Defendant claims the court should award it damages under ORS 305.437 based on the frivolous nature of Plaintiff's claims. The court agrees and awards Defendant $1,000 in damages.

III. CONCLUSION

Based on the above analysis, the court concludes Plaintiff's claims are frivolous in nature and must be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied; and

IT IS FURTHER DECIDED that Defendant's request for frivolous damages is awarded in the amount of $1,000.

Dated this _____ day of July 2007.

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COYREEN R. WEIDNER
MAGISTRATE

If you want to appeal this Decision, file a complaint in the Regular Division of the Oregon Tax Court, by <u>mailing</u> to: 1163 State Street, Salem, OR 97301-2563; or by <u>hand delivery</u> to: Fourth Floor, 1241 State Street, Salem, OR.

Your complaint must be submitted within <u>60</u> days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Coyreen R. Weidner on July 24, 2007. The Court filed and entered this document on July 24, 2007.