

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

LAUREL ANN CURTIS, )  
 )  
 Plaintiff, ) TC-MD 982318B  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 State of Oregon, )  
 )  
 Defendant. ) **DECISION**

Plaintiff appeals to the Magistrate Division regarding certain personal income tax matters for the 1996 tax year. She claims that Defendant is without authority to impose a tax due on the sale of real property and for the receipt of certain interest income.

I. PRELIMINARY MATTERS

Plaintiff moved to amend her original Complaint on September 30, 2005. That request was not opposed by Defendant. That motion is hereby allowed.

The case is now before the court on Defendant's Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment, and Including Damages under ORS 305.437 (Defendant's motion) first filed August 23, 2005, and renewed October 11, 2005.

II. PRIOR YEARS' APPEALS

Plaintiff previously filed appeals as to Oregon personal income taxes for prior tax years 1983 through 1993. The findings there impact this subsequent appeal.

The Regular Division of this court held a three day trial in June 2003. Plaintiff claimed she was not required to file Oregon tax returns, that Defendant was without authority to assess

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the taxes, and that rents she received were not income. Thereafter, a comprehensive Opinion was issued. *Curtis v. Dept. of Rev.*, 17 OTR 414 (2004). Therein, the Judge wrote:

“Taxpayer attacks the federal tax system. Regardless of whether the federal income tax system must be valid in order for its definitions to be incorporated by reference pursuant to ORS 316.007 to 316.076 (footnote omitted), taxpayer’s challenges to the validity of those provisions have been rejected both generally and in her federal litigation for the years and items in question here. \* \* \* Taxpayer’s position that rents from real estate are not statutorily or constitutionally within the definition of gross income under IRC section 61 has been rejected and has no authoritative support.” *Curtis*, 17 OTR at 418.

Upon further review, that matter was later upheld by the Oregon Supreme Court. *See Curtis v. Dept. of Rev.*, 338 Or 579, 112 P3d 330 (2005). All taxes imposed by Defendant were affirmed. The Tax Court damages award of \$5,000 was also upheld.

### III. 1996 TAX YEAR

The sole year now under appeal is 1996. There are no material facts in dispute. The record clearly establishes the following facts as to that specific year.

Plaintiff was a general partner in a limited partnership. That limited partnership sold certain real property. Plaintiff received interest income. Plaintiff did not file a 1996 Oregon tax return, despite being given several reminders and opportunities. Defendant then asserted its deficiency, based on the best information available. A Notice of Determination and Assessment was issued April 7, 1998, pursuant to ORS 305.265(10).<sup>1</sup> Plaintiff does not contest the mathematical computation of that tax or seek a lower amount. Instead, her position claims the entire tax is invalid in its entirety. She raises various constitutional objections and makes assorted legal arguments.

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 1997.

Much of Plaintiff's current writings are directed to her perceptions of her earlier court cases. She continues to argue the incorrectness of those determinations instead of placing a different focus on the 1996 tax year.<sup>2</sup>

#### IV. ANALYSIS

Plaintiff claims that "capital gains taxes cannot be based on the sale price of the property." (Ptf's Am Compl at 1.) She also maintains that, as she never "received income," she was not required to file an Oregon tax return. Therefore, she concludes the assessment is improper and void. (*Id.* at 3.)

The sale price of real property is the proper starting point for computing capital gains. IRC Section 1001(a) and (b).<sup>3</sup> See *Abby's Inc., v. Dept. of Rev.*, 16 OTR-MD 259 (2000). Partnership income flows through to the shareholders; Plaintiff in this case is a shareholder. ORS 314.712.

The legality of Oregon's income tax and the requirement to file Oregon tax returns have been completely and thoroughly covered in the prior court proceedings. It is sufficient to note that Plaintiff's various claims are still without merit, as they were earlier held to be. It would serve no efficient nor useful purpose to schedule more proceedings in this matter. The case is ripe for a decision.

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<sup>2</sup> She states "There can be no doubt that tax court demonstrated a complete and total disdain for justice in plaintiff's prior case. Its 'findings of facts' were an abomination of lies and distortions of truth. There was never any shred of evidence to support any of its findings and much evidence to discredit defendant's assertions - a fact ignored by tax court even prior to the hearing. Tax court's ridiculous and absurd findings are disgusting to anyone who values, respects and appreciates an independent judicial system and separation of power as designed and mandated in the federal and state constitutions. That the Oregon Supreme Court failed and/or was unwilling to actually give full consideration and weight to the case law, sworn testimony and documented factual evidence supporting plaintiff's position is beyond rational belief \* \* \*." (Ptf's An to Def's Motions, filed Oct 4, 2005.)

<sup>3</sup> References to the Internal Revenue Code (IRC) are to 1994.

V. CONCLUSION

Plaintiff's arguments are without legal merit. There is no genuine issue as to any material fact. Defendant is entitled to judgment as a matter of law. Further, given the findings and detailed explanations by the courts in the prior appeals, Plaintiff's positions in this subsequent case are clearly frivolous. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment, and Including Damages under ORS 305.437 is granted; and

IT IS FURTHER THE DECISION OF THIS COURT that Defendant is awarded damages of \$1,500 pursuant to ORS 305.437.

Dated this \_\_\_\_\_ day of April 2006.

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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 April 12, 2006. The Court filed and entered this document April 12, 2006.***