

THIS DECISION WAS SIGNED BY SENIOR JUDGE CARL N. BYERS ON MAY 2, 2001, AND FILED STAMPED ON MAY 2, 2001. THIS IS NOT A PUBLISHED DECISION.

IN THE OREGON TAX COURT  
REGULAR DIVISION  
Income Tax

|                        |   |                                   |
|------------------------|---|-----------------------------------|
| DAVID E. HILANDS and   | ) |                                   |
| EVADNE A. HILANDS,     | ) |                                   |
|                        | ) | <b>Case No. 4512</b>              |
| Plaintiffs,            | ) |                                   |
|                        | ) | <b>ORDER GRANTING DEFENDANT'S</b> |
| v.                     | ) | <b>CROSS MOTION FOR SUMMARY</b>   |
|                        | ) | <b>JUDGMENT and DENYING</b>       |
| DEPARTMENT OF REVENUE, | ) | <b>PLAINTIFFS' MOTION FOR</b>     |
| State of Oregon,       | ) | <b>SUMMARY JUDGMENT</b>           |
|                        | ) |                                   |
| Defendant.             | ) |                                   |

Plaintiffs (taxpayers) seek individual income tax refunds for 1997 and 1998 on the ground that their Oregon retirement benefits (PERS) were exempt from state taxation. There is no dispute of fact, and only legal issues are presented by taxpayers' appeal. Accordingly, the matter has been submitted to the court on motions for summary judgment.

**FACTS**

Taxpayer Evadne Hilands was a state employee between 1952 and 1989. As such, she accrued benefits and received payments from PERS in both 1997 and 1998. The state required taxpayers to include those retirement payments as taxable income.

Taxpayers claim that the Oregon statute imposing tax on those state retirement benefits impaired Evadne's contract with the state in

violation of Article I, section 10, of the United States Constitution.

#### **COURT'S ANALYSIS**

Taxpayers are correct that imposing taxes on Evadne's state retirement income violates her contract with the state of Oregon. The Oregon Supreme Court so held in Hughes v. State of Oregon, 314 Or 1, 838 P2d 1018 (1992). However, taxpayers err in concluding that the only remedy is tax exemption. In response to the legal decisions, the Oregon legislature increased the benefits to PERS retirees in order to compensate for the damages due to taxing their benefits. The Oregon Supreme Court has upheld that remedy. See Ragsdale v. Dept. of Rev., 321 Or 216, 895 P2d 1348 (1995), cert den sub nom Bank of California, N.A. v. Oregon Dept. of Rev., 516 US 1011, 116 S Ct 569, 133 L Ed 2d 493 (1995); see also Stovall v. State of Oregon, 324 Or 92, 922 P2d 646 (1996).

All of this was clearly explained in more detail in the magistrate's decision. However, taxpayers are not satisfied because of the disparate treatment of federal retirees.

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Taxpayers may have cause for complaint, but any solution must be devised by the legislature not by the courts. Now, therefore,

IT IS ORDERED that Defendant's cross motion for summary judgment is granted, and

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment is denied. Costs to neither party.

Dated this \_\_\_\_ day of May 2001.

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Carl N. Byers  
Senior Judge