

IN THE OREGON TAX COURT
REGULAR DIVISION
Income Tax

DONNA F. SCHAEFER,)
)
Plaintiff,) **TC 4821**
v.)
)
DEPARTMENT OF REVENUE,)
State of Oregon,)
)
Defendant.) **ORDER**

I. INTRODUCTION

This is one of several cases, specially designated by the court to the Regular Division, that involve challenges to the actions of the Department of Revenue (the department) in connection with contested donations of certain “kicker” refunds to the State School Fund. The matter is before the court on cross-motions for summary judgment and related declarations.

II. FACTS

From time to time, individual income taxpayers in Oregon are entitled to so-called “kicker” refunds when state revenues exceed state budgeted expenses. *See generally* ORS 291.349.¹ A taxpayer may, by irrevocable election, donate the amount otherwise to be refunded to the State School Fund. ORS 305.792(2). Plaintiff Donna Schaefer (taxpayer) used a computer program to prepare her 2006 Oregon income tax return. After taxpayer entered information into the computer program, taxpayer submitted it to the department electronically.

¹ All references to the Oregon Revised Statutes (ORS) are to the 2005 edition.

On the return received by the department, a box had been checked that indicated that taxpayer wanted to donate any “kicker” refund due to taxpayer to the State School Fund. In 2007, taxpayer learned that a substantial “kicker” refund was due for the 2006 year and that taxpayer’s refund had been contributed to the State School Fund. Because taxpayer maintains she did not intend to make that contribution, taxpayer challenged the actions of the department in paying the refund to the State School Fund. The department based its actions on a policy it developed and applied generally. Under that policy, the department would make refund payments to anyone who used computer software in preparing and electronically filing a return, but only if the taxpayer in question provided the department with a copy of the front page of the return showing the school donation box as not having been checked. Taxpayer submitted a copy of the return created by her computer, but the return showed the refund donation box checked.

III. ISSUE

The issue is whether the action of the department in refusing to make a “kicker” refund payment to taxpayer was valid.

IV. ANALYSIS

As an initial matter, the law provides, and taxpayer concedes, that she bears the burden of proof in this proceeding. ORS 305.427. On the question of whether taxpayer, in fact, checked the donation box on the return form, taxpayer concedes that the box was checked on the return received by the department. Under ORS 305.792(2)(b), an election to contribute refunds to the State School Fund makes any election irrevocable. Accordingly, under ORS 305.792, taxpayer is considered to have made the election and it may not be revoked. The presence of the checked box on the filed return must be viewed as conclusive objective evidence that the intent to make the donation existed. Given that the legislature decided to make the election irrevocable, the

court cannot conclude that the legislature nonetheless intended that a taxpayer could come in after the filing of the return to establish a contrary subjective intent.

The position in which taxpayer finds herself is analogous to that of a person who retains an individual tax return preparer. The only difference is that in this case the “preparer” is technological and not personal. In either case, if the preparer improperly indicates an intention to contribute a refund when a taxpayer does not intend to make the contribution, the preparer may bear legal responsibility for the loss. That does not, however, alter the irrevocable nature of the election actually or objectively made. This court has jurisdiction only over challenges to the tax laws and the actions of the department. It does not have jurisdiction over questions of whether persons or programs employed by return filers may have or produce liability if the person’s or program’s actions or products result in returns that do not reflect the actual intent of the person filing the return. On the question over which this court has jurisdiction, the court concludes that the actions of the department were valid.

V. CONCLUSION

Now, therefore, IT IS ORDERED that the motion of the department is granted and the motion of taxpayer is denied. Costs are awarded to neither party.

Dated this ____ day of September, 2008.

Henry C. Breithaupt
Judge

***This document was signed by Judge Henry C. Breithaupt on September 23, 2008.
The court filed and entered this document on September 23, 2008.
This is a published document.***