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April 20, 2012

Oregon Department of Revenue  
Attn: Fraud Coordinator (Morgan Brown)  
955 Center Street, NE  
Salem, OR 97301  
morgan.brown@dor.state.or.us  
morgan.brown@state.or.us

Dear Fraud Coordinator:

I am reporting possible tax fraud and tax evasion by Charles Hales, who states his current address as 7136 S.E. 27th Avenue, Portland, OR 97202.

Please refer to the attached Complaint to the Secretary of State of Oregon and to the newspaper articles it incorporates.

### **Violations of Oregon Tax Law**

The Complaint is based upon facts reported in Oregon newspapers over the past year. Those newspapers have reported that Charles Hales for the years 2004 through 2009 filed Oregon nonresident income tax returns, each of which stated that his residence address was in Stevenson, Washington (and not in Oregon) for the entire year. He paid Oregon income taxes only on his Oregon-source income, not on his total income. THE OREGONIAN on April 6, 2012, reported:

As such, he reported Oregon taxable income in 2008 and 2009 of about \$8,000 out of an overall income of about \$175,000 both years. That put his net Oregon income tax at about \$300.

WILLAMETTE WEEK of April 11, 2012, reported:

Hales' tax returns show his Washington state residence saved him an estimated \$29,900 in 2008 and 2009, the years covered by the returns Hales released to WW.

A person who files an Oregon nonresident income tax return is required by law to swear that he is not a "resident" of Oregon. Oregon law defines "resident of this state" for income tax purposes as "An individual who is domiciled in this state." Oregon tax regulations define "domicile" as "the place an individual considers to be the individual's true, fixed, permanent home." Thus, Charles Hales swore to the State

of Oregon on his 2004-09 income tax returns that his "true, fixed, permanent home" during all of those years was not in Oregon.

Nevertheless, Charles Hales continued to vote in Oregon elections throughout that 6-year period. When I pointed out to elections officers that such voting was unlawful, because he was supposedly not a resident of Oregon during those years, Charles Hales responded to the Director of Elections of Multnomah County on April 18, 2012, that for that 6-year period (2004-09) he considered himself to be an Oregon resident who was only "temporarily away from Oregon." According to the Director of Elections:

In the same interview of April 18, 2012, I asked Mr. Hales if, during the time he lived in Washington State, he considered his Oregon residence address the place to which his habitation was fixed, and whether or not he intended to return. He said that during that time he considered himself to be temporarily away and that he always intended to return to his Oregon residence.

Charles Hales's assertion that "his habitation was fixed" in Oregon and that he "considered himself to be temporarily away and that he always intended to return to his Oregon residence" flatly contradicts his sworn statement of each of his 6 Oregon nonresident income tax returns for 2004-09 that he was not a resident of Oregon for any part of those years.

He has made other public statements that contradict his sworn claim to have been a nonresident of Oregon during 2004-09. WILLAMETTE WEEK of June 27, 2011, reported:

Asked whether he considered himself an Oregon or Washington resident during those years, Hales said: "Both."

WILLAMETTE WEEK of April 11, 2012, reported:

When WW asked Hales in June about his residency, he made false statements. He said he never declared Washington as his residence for tax purposes. "I am and have always been an Oregon resident," he said. Today, Hales says he was mistaken in his statements to WW because he had forgotten that he had filed his taxes as a Washington resident.

A person who files an Oregon nonresident income tax return is required by law to swear that he is not a "resident" of Oregon. Oregon Form 40N requires that the taxpayer state his current address and be a nonresident of Oregon. The instructions state: "You're a nonresident if your permanent home was outside Oregon all year." Just above the signature line for the taxpayer is this attestation: "Under penalty for false swearing, I declare that the information in this return is true, correct, and complete."

The Oregon Tax Code, ORS 316.027(1), defines "Resident" of "resident of this state" as:

- (A) An individual who is domiciled in this state unless the individual:
  - (i) Maintains no permanent place of abode in this state;
  - (ii) Does maintain a permanent place of abode elsewhere; and
  - (iii) Spends in the aggregate not more than 30 days in the taxable year in this state; or
  
- (B) An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 200 days of the taxable year in this state unless the individual proves that the individual is in the state only for a temporary or transitory purpose.

Oregon income tax regulation, OAR 150-316.027(1), states:

- (1) For purposes of ORS 316.027(1):
  - (a) "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. It continues as the domicile until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections.

For the years 2004 through 2009, Charles Hales stated to the State of Oregon on his nonresident state income tax returns that he was not a resident of Oregon. His new public statements entirely contradict that statement. This week he stated to the Director of Elections of Multnomah County "that during that time [2004-09] he considered himself to be temporarily away and that he always intended to return to his Oregon residence." That is an admission by Charles Hales that his "domicile" during those years was Oregon. Consequently, his Oregon nonresident income tax returns filed for 2004 through 2009 were fraudulent.

Note that Charles Hales stated that he "always intended to return to his Oregon residence." That means that his 2004-09 Oregon nonresident income tax returns were knowingly fraudulent.

## **Tax Laws Violated by Charles Hales**

Making false statements on an Oregon nonresident income tax return violates several laws, including these:

**ORS 305.810 Verification of return, statement or document filed under tax laws.** Any return, statement or other document required to be filed under any provision of the laws administered by the Department of Revenue, in lieu of any oath otherwise required, shall:

- (1) Contain or be verified by a written declaration that it is made under penalties for false swearing; or
- (2) Be verified, by such other means as the department may prescribe by rule, that it is made under penalties for false swearing.

**ORS 305.815 False return, statement or document prohibited.** No person shall willfully make and subscribe any return, statement or other document that contains or is verified by a declaration under ORS 305.810 that it is made under penalties for false swearing if the person does not believe the return, statement or other document is true and correct as to every material matter.

**ORS 314.075 Evading requirements of law prohibited.** No person, or officer or employee of a corporation or a member or employee of a partnership, shall, with intent to evade any requirement of any law imposing taxes upon or measured by net income or any lawful requirement of the Department of Revenue thereunder:

- (1) Fail to pay any tax or to make, sign or verify any return or to supply any information required;
- (2) Make, render, sign or verify any false or fraudulent return or statement; or
- (3) Supply any false or fraudulent information.

Under ORS 305.990(4), violation of ORS 305.815 is a Class A misdemeanor, punishable by a prison term of up to one year and/or a fine of \$6,250. ORS 161.615(1), ORS 161.635(1)(a).

Under ORS 314.991(1), violation of ORS 314.075 subjects the violator to a penalty of not more than \$1,000 and is a Class C felony, punishable by a fine of up to \$125,000 and/or a prison term of up to 5 years. ORS 161.605(3); ORS 161.625(1)(d).

## **Statutes of Limitation**

Prosecution of Charles Hales for tax fraud is not prevented by the applicable statutes of limitation. ORS 314.410 states:

(1) At 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.

(2) If the department finds that gross income equal to 25 percent or more of the gross income reported has been omitted from the taxpayer's return, notice of the deficiency may be given at any time within five years after the return was filed.

(3) If the department finds that a return reports or reflects the use of a listed transaction, as defined in ORS 314.307, and that use of that listed transaction results in a deficiency in tax paid, notice of that deficiency may be given at any time within nine years after the return was filed.

(4)(a) The limitations to the giving of notice of a deficiency provided in this section do not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.

First, if an Oregon resident knowingly files an Oregon nonresident income tax return and not an Oregon resident income tax return, the filed return would appear to be false or fraudulent. Thus, no statute of limitations would bar prosecution of Charles Hales for all of the false and/or fraudulent returns filed for 2004-09.

Second, the Department can very likely find that each of his 2004-09 returns omitted 25% or more of his correct gross income. As noted by THE OREGONIAN on April 6, 2012, "he reported Oregon taxable income in 2008 and 2009 of about \$8,000 out of an overall income of about \$175,000 both years." For each of those years, then, he reported less than 4.6% of his true income and did not report 95.4% of his true income. Thus, the 5-year limitation in subsection (2) would allow prosecution of his returns for 2007-09 and possibly earlier years, depending upon when he actually filed those returns.

I thank you in advance for considering this information.

Sincerely,

Seth Woolley