

Filed: December 6, 2012

IN THE SUPREME COURT OF THE STATE OF OREGON

WILLIAM H. DOWNER,

Plaintiff-Appellant,

v.

DEPARTMENT OF REVENUE,
State of Oregon,

Defendant-Respondent.

(TC-RD 4952; SC S059593)

On appeal from the Oregon Tax Court.*

Henry C. Breithaupt, Judge.

Argued and submitted November 8, 2012.

William L. Ghiorso, Salem, argued the cause and filed the brief for plaintiff-appellant.

Joseph Laronge, Assistant Attorney General, Salem, argued the cause and filed the brief for defendant-respondent. With him on the brief was Ellen F. Rosenblum, Attorney General.

Before Balmer, Chief Justice, and Kistler, Walters, Linder, and Landau, Justices.**

BALMER, C. J.

The judgment of the Tax Court is affirmed.

*TC-RD 4952, 2011WL 2037643 (May 24, 2011).

**De Muniz and Durham, JJ., did not participate in the consideration or decision of this case.

1 BALMER, C. J.

2 Taxpayer appeals from a judgment of the Tax Court, Regular Division,
3 which rejected various arguments asserted by taxpayer and found taxpayer liable for the
4 taxes assessed by the Department of Revenue (department). We affirm.

5 Taxpayer owned and operated The Tobacco Leaf, a retail store in Mill City.
6 Taxpayer purchased tobacco products for resale from, among other sellers, Lil Brown
7 Smoke Shack (LBSS), a business located on the reservation of the Confederated Tribes of
8 the Yakama Nation in the state of Washington. LBSS is not licensed as a distributor of
9 tobacco products in Oregon. Taxpayer attempted to sell The Tobacco Leaf by means of
10 an installment contract to one buyer in 2000 and to another buyer in 2001, but both sales
11 fell through, and taxpayer resumed operating the business in 2002.

12 The department issued notices of tax assessment to taxpayer for unpaid
13 tobacco products taxes arising from his purchases from LBSS between 1997 and 2004.
14 *See* ORS 323.500 to ORS 323.645 (imposing taxes on distributors of tobacco products
15 within Oregon). Taxpayer appealed the assessments (and related penalties and interest
16 that the department imposed) to the Tax Court, Magistrate Division. He argued that he
17 was not liable for tobacco taxes related to those purchases because he was not a
18 "distributor" of tobacco products within the meaning of ORS 323.500 during the time that
19 he was attempting to sell his business in 2000 and 2001. He also argued that the
20 department was estopped from assessing tobacco taxes on his purchases from LBSS
21 because it had misled him into believing that he was in compliance with applicable tax
22 laws and that the court should bar tax assessments on his purchases from LBSS because

1 the department allegedly had lost or destroyed business records that it had seized from
2 him. The Magistrate Division rejected taxpayer's arguments and upheld the assessments.
3 Taxpayer appealed to the Regular Division, which conducted a trial. The Tax Court
4 reviewed the evidence and taxpayer's legal arguments, including his defenses to the
5 assessments, and rejected them in a written opinion. *Downer v. Department of Revenue*,
6 TC-RD 4952, 2011WL 2037643 (May 24, 2011). This appeal followed.

7 On appeal, taxpayer reprises the arguments that he made to the Tax Court,
8 asserting that he is not liable for tobacco products taxes related to his purchases from
9 LBSS. We have considered taxpayer's arguments and conclude that they are not well
10 taken. Additional discussion of the factual context and legal arguments raised in this case
11 would not benefit the public, the bench, or the bar.

12 The judgment of the Tax Court is affirmed.