

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Cigarette/Tobacco Tax

BELMONT AUTO SERVICE INC.,)	
)	
Plaintiff,)	TC-MD 180249N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	FINAL DECISION¹

Plaintiff filed its Complaint on May 31, 2018, contesting Defendant’s Notice of Determination and Assessment (notice), dated June 7, 2017, for the 2017 tax year. The notice stated that Plaintiff was “not able to prove tax was paid on some of all of [Plaintiff’s] inventory of tobacco products. These products are presumed to be untaxed * * *.” At the time of filing its Complaint, Plaintiff provided invoices and requested to be reimbursed for tax already paid. (Compl at 5.)

In its Answer, Defendant disagreed that the “tobacco items in question had ever been substantiated as tax-paid, as required under ORS 323.538. The products were not substantiated as tax-paid at the time of inspection. After the inspection, the [P]laintiff had never provided records documenting the products were tax paid * * *.” Defendant stated that it was willing to review any “invoices or records” provided in this appeal and “to decrease the tax for any items substantiated as tax paid.”

During the case management conference held July 10, 2018, Plaintiff agreed to provide Defendant with additional invoices for review, and Defendant agreed to file its recommendations no later than August 15, 2018. Plaintiff agreed to file its response by August 29, 2018. (Journal

¹ This Final Decision incorporates without change the court’s Decision, entered October 3, 2018. The court did not receive a statement of costs and disbursements within 14 days after its Decision was entered. *See* Tax Court Rule–Magistrate Division (TCR–MD) 16 C(1).

Entry, July 11, 2018.)

Defendant filed its Update with the court on August 15, 2018, reporting that it had provided Plaintiff with a list of 10 unsubstantiated items, and, based on Plaintiff's response, was able to substantiate one additional item as tax paid. Defendant further reported that it requested "verifying invoices for the remaining unsubstantiated items" but received no further response from Plaintiff. Defendant stated that after substantiating the one additional item, Plaintiff's original total tax and penalty of \$649.04 was reduced to \$243.46 — "tax of \$121.73; penalty of \$121.73."

After Plaintiff failed to respond by August 29, 2018, the court entered an Order on September 5, 2018, giving Plaintiff 14 days to state whether it accepted Defendant's recommendations in full or part; the appeal is withdrawn; or trial is requested. The Order further stated that if Plaintiff failed to respond, the court would enter a decision based on Defendant's recommendations. As of this date, the court has not received any communication from Plaintiff. This case is now ready for decision. Now, therefore,

IT IS THE DECISION OF THIS COURT that, based upon Defendant's recommendations, Plaintiff's total tobacco products tax and penalty for tax year 2017 is \$243.46.

Dated this ___ day of October 2018.

ALLISON R. BOOMER
MAGISTRATE

This decision is the court's determination on the merits. A prevailing party may file a statement of costs and disbursements no later than 14 days after the entry date of this decision, as provided in Tax Court Rule – Magistrate Division (TCR-MD) 16. Thereafter, the court will issue a final decision. Any claim of error regarding this decision may be raised in an appeal of the court's final decision.

This document was signed by Magistrate Allison R. Boomer and entered on October 19, 2018.