

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MICHAEL E. LEWIS, ANNETTE M.)	
LEWIS, and MIKE LEWIS)	
CONSTRUCTION, INC.,)	
)	
Plaintiffs,)	TC-MD 111131N
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs filed their Complaint on October 11, 2011, challenging Defendant’s Notices of Deficiency Assessment for the 2007 and 2008 tax years. A case management conference was held January 4, 2012, during which the parties discussed Plaintiffs’ appeal and agreed to a timeline by which to exchange additional information, memorialized in a Journal Entry issued January 13, 2012, and extended by a court Order issued March 7, 2012. On April 17, 2012, Defendant filed its written Recommendation stating that, based on additional records provided by Plaintiffs, recommending that Plaintiffs’ tax-to-pay be reduced to \$10,116 for the 2007 tax year and to \$3,835 for the 2008 tax year. (Def’s Recommendations at 1.)

On June 14, 2012, Plaintiffs’ authorized representative Richard W. Brewster filed a written response stating that he “reviewed the audit reports [he] received June 13, 2012, dated June 12, 2012, and agree with the adjustments to the income and deductions for 2007 & 2008.” He further stated that Plaintiffs “request that penalties be waived due to circumstances beyond [Plaintiffs’] control [that] were due to the preparer’s over statements. [Plaintiffs] provided complete and accurate information to the preparer who manipulated the information without their knowledge or approval.” (Ptf’s Ltr, Jun 14, 2012.)

On June 18, 2012, Defendant filed an Answer and Motion for Stipulation, stating the “Final Tax Amounts” as \$10,071 for the 2007 tax year and \$3,750 for the 2008 tax year. (Def’s Ans and Mot at 1.) “All penalties and statutory interest will be revised due to the decrease in tax.” (*Id.*) With respect to Plaintiffs’ request for “waiver of all penalties,” Defendant responds:

“[T]he Court does not have authority to consider any waivers of the 20% substantial understatement and the 25% amnesty penalties. After the Magistrate case has been closed, the Department of Revenue will consider the taxpayers’ request for waiver of all penalties. If the decision is made not to grant the waiver, the taxpayers will have the right to appeal that decision to the Conference Section of the Department of Revenue.”

(*Id.*) As of the date of this Decision, Plaintiffs have not filed a response to Defendant’s Answer and Motion for Stipulation.

The parties are in agreement with respect to Plaintiffs’ tax liability for the 2007 and 2008 tax years and the sole issue before the court is Plaintiffs’ request for waiver of penalties imposed for substantial understatement and amnesty. Defendant has discretionary authority to waive the penalties imposed on Plaintiffs. *See* ORS 314.402(6); OAR 150-314.402(4)(b); OAR 150-305.100-(C).¹ Thus, Plaintiffs’ request that the court waive all penalties imposed must be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that, for the 2007 tax year, based upon the agreement of the parties, Defendant shall revise its Notice of Deficiency Assessment, dated July 19, 2011, to reflect a tax-to-pay of \$10,017. Penalty and interest shall be adjusted accordingly.

IT IS FURTHER DECIDED that, for the 2008 tax year, based upon the agreement of the parties, Defendant shall revise its Notice of Deficiency Assessment, dated July 19, 2011, to reflect a tax-to-pay of \$3,750. Penalty and interest shall be adjusted accordingly.

¹ All references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2007. The 2005 version of the law is applicable for the 2007 tax at issue here; however, there are no differences in the statute between the 2005 and 2007 versions of the law.

IT IS FURTHER DECIDED that Plaintiffs' request for waiver of penalties for substantial understatement penalties and post amnesty for the 2007 and 2008 tax years is denied.

Dated this ____ day of July 2012.

ALLISON R. BOOMER
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Allison R. Boomer on July 18, 2012. The Court filed and entered this document on July 18, 2012.