

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Corporation Excise Tax

CENTENNIAL BANCORP & SUBSIDIARIES, )  
 )  
 Plaintiff, )  
 ) TC-MD 021246A  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. )  
 ) **DECISION**

Centennial Bancorp and its subsidiaries have appealed the Department of Revenue's assessment of interest on the underpayment of estimated taxes for the 2001 tax year.

Centennial's case was presented by Wesley Hansen, of Symonds, Evans & Co., certified public accountants. The Department of Revenue was represented by its auditor, Diana Delacerna.

**STATEMENT OF FACTS**

In late February or early March of 2001, Centennial filed amended 1998 and 1999 tax returns requesting refunds. The 1998 amended return, on line 43, requested its refund of \$77,184 be credited to the 1999 estimated tax. The 1999 amended return, on line 43, requested its refund of \$98,902 be credited to the 2000 estimated tax. Accompanying these amended returns was a cover letter in which Centennial "respectfully requests that the refund due of \$130,444 shown on the attached 1999 Amended Oregon Corporation Excise Tax Return be carried over to the tax year ending 2001."

The Department of Revenue did not apply any sums to the estimated taxes for the 2001 tax year. Instead, the agency issued a refund.

The refund check was received by the taxpayer and deposited in the ordinary course of its business. As Centennial receives a substantial number of checks, the source of the money and the reason for the refund was not discovered until the underpayment of the estimated taxes for 2001 became apparent. An interest charge of \$8,435 was assessed on the underpayment of estimated tax. If the refunds from 1998 and 1999 had been retained by the Department of Revenue as an estimated tax payment for the 2001 tax year, the amount of interest charged on the underpayment would have been \$2,935.

### **ANALYSIS**

Neither the parties, nor the court, has found a statute addressing this situation. The general statute as to refunds, ORS 305.270,<sup>1</sup> requires the agency to either issue a refund or send the claimant a notice of proposed adjustment. The statute, and its administrative rule, does not speak about the consequences of the department's failure to follow the taxpayer's instructions as to how to apply the refund.

Is it good tax policy then for a tax agency to issue, contrary to the request of a taxpayer, a refund, and then assess interest because a taxpayer does not return the funds to the state in a timely manner? Although the answer to that question is typically no, under the facts of this particular case the court will not relieve Centennial of its full obligation to pay interest.

The court's reasoning is that interest is, obviously enough, a charge for the use of money, and during this period it was Centennial, rather than the state of Oregon, that had the use of the funds. Centennial argues that it is such a large entity that it could not reasonably be expected to know its request that the agency keep the money had been

---

<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

disregarded, and that the state had instead issued a refund. However, an argument on the basis of business practices cuts both ways.

The Department of Revenue is also a large entity. Its practice, when there are no offsetting liabilities, is to refund taxes paid in excess to the taxpayer. The refunds at issue were for the 1998 and 1999 tax years. The returns for these years had been processed. The 2000 tax year was an intervening tax year between the amended years and the period for which estimated taxes were due. Under these circumstances the court cannot say that the decision to pay the refund, contrary to Centennial's request, was either constitutionally or statutorily flawed.

At trial the agency did not maintain that it could not have retained the refunds and applied the sums to Centennial's estimated payments. Instead, the department stated it overlooked the attached request. Likewise, Centennial did not intend to underpay its estimated taxes. Instead, Centennial overlooked the fact that it received a check from the state in payment of the refund. In the balance, the entity that has to

///

///

///

///

///

///

///

///

///

bear the consequences is the one that had the use of the money.

### **CONCLUSION**

Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied. Interest on the underpayment was correctly calculated.

Dated this \_\_\_\_\_ day of April, 2003.

---

SCOT A. SIDERAS  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. 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 SCOT A. SIDERAS ON APRIL 29, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 29, 2003.**