

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

CHRIS LOAR and RENAE LOAR,)	
)	
Plaintiffs,)	TC-MD 030071C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the penalty imposed by Defendant for tendering two dishonored checks within two years. Plaintiffs' objection concerns the amount of the penalty, which was \$500. The May 12, 2003, case management conference was converted to a hearing on Defendant's motion. Renae Loar appeared for Plaintiffs. Mike Halter, an auditor with the Oregon Department of Revenue, appeared for Defendant.

STATEMENT OF FACTS

Plaintiffs live in Oregon City. Chris Loar is self-employed in the Portland area. Plaintiffs made a payment of \$102 to Defendant on December 22, 2000, for the Tri-Met self-employment tax. That check, No. 1999, was returned by the bank for nonsufficient funds. On October 1, 2001, Defendant received a \$500 check from Plaintiffs as an estimated tax payment. That check was also returned by the bank for nonsufficient funds. On January 15, 2003, Defendant imposed a \$500 penalty. Defendant's notice, which Plaintiffs submitted with their Complaint, provided the following explanation:

"Your check has been returned by your bank unpaid to the Oregon Department of Revenue. Because you have had a previous check returned to us during the past two years, we are assessing a penalty in accordance with ORS 305.228. The penalty on dishonored checks is the greater of \$25.00 or three times the amount of the check, not to exceed \$500.00."

ANALYSIS

The disputed penalty is imposed on persons and corporations, etc., that tender two dishonored checks to Defendant within two years for payment of taxes or other amounts assigned to Defendant for collection. ORS 305.228(1)¹ requires Defendant to:

“assess a penalty against any person who has previously tendered a dishonored check * * * for the payment of any amount collected by the department and who subsequently makes and tenders to the department any check * * * for the payment of any tax or any other amount collected by the department, including amounts [collected for other state agencies and organizations] * * * that is dishonored by the drawee [for lack of funds]”.

As indicated in Defendant’s notice, the penalty is “the greater of \$25 or three times the amount of the dishonored check * * * [but] shall not be greater than \$500.” ORS 305.228(2). The administrative rule in effect for the years at issue provides for the two-year timing limitation. It requires the tending of the prior dishonored check “within the immediately preceding two years.”²

The payments that triggered the penalty fall within the statute. The first was for payment of the Tri-Met self-employment tax. Tri-Met is a municipal corporation

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¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

² The rule provides:

“(2) This penalty shall be imposed on a dishonored check if a prior dishonored check has been tendered by any individual, firm, corporation, company, association, copartnership, estate, trust, trustee, receiver syndicate or any group or combination acting as a unit to the Department of Revenue within the immediately preceding two years. Checks tendered in the same envelope shall be considered a single occurrence for the purpose of determining if a prior dishonored check has been received.

“(3) This penalty shall be assessed on all payments to the department including, but not limited to:

“(a) Advance deposits on withholding accounts.

“(b) Estimated tax payments for personal income and corporate excise tax.

“(c) Payments to the department for transfer to other agencies or governmental units.”

operating a mass transit district. See ORS 267.200 and ORS 267.334(2)(c). The Tri-Met tax is imposed on employers and earnings from self-employment, in accordance with ORS 267.385. Defendant has collection responsibilities. The second dishonored check was for estimated state income taxes, which are paid to Defendant. The two checks were tendered within two years. They were returned because Plaintiffs did not have sufficient funds in their account to cover the checks and the drawee (the bank) could not honor the payment order. The amount of the second check was \$500, which is equal to the statutory limit as the multiplier (allowing for a penalty up to three times the check) was not applied.

Defendant has administrative authority under the statute and corresponding rule to “waive all or any part of the penalty * * * on a showing that there was a reasonable basis for tendering the check.” ORS 305.228(4). The rule defines “reasonable basis” to mean “circumstances beyond the taxpayer’s reasonable ability to control”, and lists as examples bank error and a valid stop payment. OAR 150-305.228(4). The court has no similar authority to adjust the penalty and Renae Loar acknowledged that Plaintiffs simply did not have the funds to cover the check. It is not for the court to determine whether Plaintiffs are entitled to administrative relief from Defendant, but the court cannot grant the relief.

CONCLUSION

Plaintiffs’ request for a reduction in the penalty imposed by Defendant for tendering two checks that were dishonored by the bank is denied because the penalty was properly imposed and the court lacks the discretionary authority to waive or reduce the amount imposed. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs’ appeal is denied.

Dated this _____ day of May, 2003.

DAN ROBINSON
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 DAN ROBINSON ON MAY 22, 2003. THE COURT FILED THIS DOCUMENT ON MAY 22, 2003.