

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Western Oregon Privilege Tax
Forest Products Harvest Tax

SILAS A. HOUGH,)
)
 Plaintiff,) TC-MD 030073E
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to dismiss the above-entitled appeal for lack of jurisdiction. The court discussed its motion with the parties during the case management conference held April 8, 2003. Silas A. Hough appeared on his own behalf. Susan J. Hicks appeared on behalf of Defendant.

Plaintiff appeals 1995 assessments for the Western Oregon Privilege Tax and Forest Products Harvest Tax. Plaintiff claims the liabilities were discharged by the Bankruptcy Court as part of his personal bankruptcy. Defendant claims the debts were not discharged because Plaintiff did not file returns for either of the assessed taxes. Defendant maintains the filing of a return is a condition precedent to a discharge.

As noted during the conference, the court has held on previous occasions that bankruptcy discharge issues are matters for the bankruptcy court. ORS 305.410(1)¹ sets forth the jurisdictional authority of the Oregon Tax Court. It states:

“[T]he tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact **arising under the tax laws of this state.**”

ORS 305.410(1) (emphasis added).

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

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Pursuant to the statute, unless there is an express statutory grant of jurisdiction, the Tax Court only has jurisdiction over questions arising under the state tax laws. Whether a particular debt is discharged in bankruptcy is a question falling under the Bankruptcy Code, not the state tax laws. Furthermore, in *Sayles v. Dept. of Rev.*, 13 OTR 324 (1995), the Tax Court held that it was without authority to determine whether the taxpayer's penalties and interest were discharged in bankruptcy, as claimed by the taxpayer. The Tax Court stated:

“[W]hether penalties and interest are discharged in bankruptcy is an issue for the Bankruptcy Court, not the Tax Court.”

Id. at 328.

Therefore, the court concludes it lacks jurisdiction to determine whether taxpayer's 1995 tax liabilities for the Western Oregon Privilege Tax and Forest Products Harvest Tax were discharged in his personal bankruptcy. Now, therefore,

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this _____ day of April, 2003.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON APRIL 17, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 17, 2003.