

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Timber Tax

THOMAS CREEK LUMBER & LOG CO.,)	
)	
Plaintiff,)	TC-MD 050697D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s interest assessments made when Plaintiff failed to pay self-assessed Western Oregon Privilege Tax (WOPT) for tax years 1996 through 2000, and Forest Products Harvest Tax (FPHT) for tax years 1997 through 2000. The parties filed Cross Motions for Summary Judgment. Oral argument was held on January 25, 2006. There is no material dispute of fact.

I. STATEMENT OF FACTS

The parties verbally agreed at oral argument that Plaintiff owed FPHT for tax years 1996, 1997, 1998, 1999, and 2000. “Thomas Creek filed returns for each of the foregoing tax years, but was unable to pay the taxes in full, as and when they came due. The deficiencies were not paid within 60 days of the respective due dates.” (Ptf’s Mot for Summ J at 1.) Plaintiff “owed WOPT Taxes for tax years 1996, 1997, 1998, 1999 and 2000. Thomas Creek filed returns for each of the foregoing tax years but was unable to pay the taxes in full, as and when they came due. The deficiencies were not paid within 60 days of the respective due dues.” (*Id.* at 1, 2.)

Plaintiff alleges that the interest Defendant assessed was at a rate in excess of that authorized by statute, specifically ORS 305.220. Defendant alleges that ORS 305.222(2)(b)

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permits “[a]pplication of a two-tiered interest” and ORS 305.222 “incorporate[s] ORS 305.220.” (Def’s Answer at 1; Def’s Resp and Cross-Mot for Summ J at 3.)

II. ANALYSIS

The parties agree that when a taxpayer owes WOPT and FPHT taxes, but fails to pay those taxes by the due date, interest can be assessed. The statutory authority for the imposition of interest is ORS 321.560(6)¹ which provides that:

“A delinquent tax or a deficiency shall bear interest at the rate established under ORS 305.220 for each month, or any fraction thereof, from the time the return was due.”

ORS 321.560(6) clearly states that the interest rate to be imposed on a “delinquent tax or a deficiency” is set by ORS 305.220. For all tax years at issue, ORS 305.220(1) provides that:

“[u]nless specifically provided otherwise by statute or by rule of the Director of the Department of Revenue adopted pursuant to subsection (3) of this section, every deficiency or delinquency arising under any law administered by the Department of Revenue shall bear simple interest at the rate of five-sixths of one percent per month or fraction thereof.”

Plaintiff concludes that “ORS 321.560(6) mandates that any deficiency should bear interest at the rate (singular) established by ORS 305.220.” (Ptf’s Mot for Summ J at 3.)

Defendant concludes that “[t]imber taxes imposed under ORS chapter 321 are subject to the two-tier interest rate established under ORS 305.222.” (Def’s Resp and Cross-Mot for Summ J at 3.)

In construing the statutes to impose interest, the court follows the leading case on statutory interpretation, *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993) (*PGE*). *PGE* directs the court to accept the plain meaning of a

¹ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) will be to year 2003.

Because there have been no changes to ORS 321.560(6) for any of the tax years at issue, the statute quoted is the same in the 1997, 1999, and 2001 editions of the ORS. Any changes from year-to-year in the language of a statute quoted in this Decision will be noted, if applicable.

statute and “that words of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611. The legislative intent is to be determined first from the text and context of the statute. *Id.* If, after looking at the text and context of the statute, the meaning is still unclear, the court may consider the legislative history. *Id.* When ascertaining the meaning of a statute, the court must consider rules of statutory construction. *Id.* Specifically applicable to this case is the following statutory instruction to the judge: “* * * not to insert what has been omitted, or to omit what has been inserted * * *.” ORS 174.010.

Plaintiff is correct that ORS 305.220 sets forth one rate. However, ORS 305.220(1) further states that the rate set forth in the statute can be determined “otherwise”: “[u]nless specifically provided otherwise by statute * * *.” To ignore that phrase would be contrary to the statutory requirement of ORS 174.010. It is that phrase that allows Defendant to impose, in the words of Plaintiff, “two tiered interest.” (Ptf’s Mot for Summ J at 3.)

Plaintiff would like this court to conclude that “[h]ad the legislature intended a two tiered interest assessment, ORS 321.560(6), could have easily referenced ORS 305.220 and 305.222. It did not and does not.” (Ptf’s Mot for Summ J at 3.) The court agrees with Plaintiff that the legislature could have referenced both statutes. As Plaintiff states, it did not. However, the fact that ORS 321.560(6) fails to reference ORS 305.222 does not mean it does not apply when ORS 305.220(1) begins by stating that another statute may provide otherwise. ORS 305.222 is a statute that provides otherwise, and ORS 305.222(2)(b) “specifically” provides that “[i]n the case of an assessment under ORS 305.265(12),² if the delinquency is not paid within 60 days after the date of the assessment, the interest rate provided under ORS 305.220 shall be one-third of one

² ORS 305.265(12) states: “If a return is filed with the department accompanied by payment of less than the amount of tax shown on or from the information on the return as due, the difference between the tax and the amount submitted is considered as assessed on the due date of the report or return (determined with regard to any extension of time granted for the filing of the return) or the date the report or return is filed, whichever is later.”

percent greater than that so provided under ORS 305.220. The increased rate shall apply only for interest periods that begin 61 days after the date of notice of the delinquency.” ORS 305.222 specifically relates the two statutes: “For purposes of determining the interest rate established under ORS 305.220 * * *.” ORS 305.220 sets the interest rate for a deficiency or delinquent payment of an assessed tax up to, and including, the sixtieth day. ORS 306.222(2)(b) sets the interest rate for all time periods after the sixtieth day.

III. CONCLUSION

Based on the court’s interpretation of the statutes, specifically the introductory phrase of ORS 305.220(1), “[u]nless specifically provided otherwise,” and the specific reference to ORS 305.220 set forth in ORS 305.222 , the court concludes that Defendant’s method of assessment is correct. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s Motion for Summary Judgment is denied; and

IT IS FURTHER DECIDED that Defendant’s Cross Motion for Summary Judgment is granted.

Dated this _____ day of March 2006.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on March 7, 2006 . The Court filed this document on March 7, 2006.