

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

MELVIN P. MCGLOTHEN)	
and GAIL L. MCGLOTHEN,)	
)	
Plaintiffs,)	TC-MD 120681C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss, filed August 2, 2012, requesting that the Complaint be dismissed.

This matter is before the court on its own motion to dismiss Plaintiffs’ appeal for lack of jurisdiction. Plaintiffs’ filed their Complaint on July 10, 2012, requesting relief from penalties, interest, and tax deficiency amounts for tax years 2002 through 2005, 2008, and 2009. Defendant filed its Answer on August 2, 2012. The parties appeared for a telephone hearing on August 22, 2012, to discuss Plaintiff’s appeal.

Plaintiffs’ tax liability was self-assessed. (Def’s Ans at 1.) Plaintiffs do not challenge the tax assessed, but state that they “cannot pay anything” on the amount due. (Ptf’s Compl at 1.) Penalties were assessed because Plaintiffs failed to file for three consecutive years, among other reasons. (Def’s Ans at 1.) Defendant requests that the penalties and interest be upheld, as “[the court] lacks authority to waive penalties and interest * * *.” (*Id.* at 2.)

ORS 305.145 (2011)¹ grants the Department of Revenue the authority to adjust penalty and interest amounts. The court is without “legal authority to consider requests for discretionary

¹ The applicable provisions have not been significantly amended during the time period before the court.

waiver of interest.” *Schiavone v. Dept. or Rev.*, TC-MD No 101296C at 2 (March 1, 2011); ORS 305.560 (1)(a) (2011); *see also Pelett v. Dept. of Rev.* 11 OTR 364 (1990). Because the court lacks jurisdiction with respect to penalties and interest, and because Plaintiffs’ do not challenge the tax assessed, the court finds that Defendant’s motion should be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this ____ day of August 2012.

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 August 29, 2012. The Court filed and entered this document on August 29, 2012.