

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Small Claims

Income Tax

TERRANCE NIKOLAS TAYLOR,	)	
	)	
Plaintiff,	)	
	)	No. 000572E
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	<b>DECISION AND JUDGMENT OF</b>
Defendant.	)	<b>DISMISSAL</b>

This matter is before the court on its own motion to dismiss the above-entitled matter. The court discussed its motion with the parties during the case management conference held June 20, 2000. Terrance Nikolas Taylor appeared on his own behalf. Laurie Fery, Auditor, appeared on behalf of the department.

Plaintiff appeals the department's assessment of penalty and interest for tax year 1998. He does not claim the department erred in its assessment of the penalty and interest. Instead, plaintiff asks the court to waive the charges claiming he was unable to timely file his 1998 return because, among other things, he had difficulty determining how to report a capital gain on the sale of his property.

As explained at the case management conference, the court does not have authority to waive penalties and interest. The legislature has vested the department with this discretionary power. See ORS 305.145(3); *Pelett v. Dept. of Rev.*, 11 OTR 364 (1990). As a result, the court finds this case should be dismissed because it lacks

jurisdiction to provide plaintiff with the relief requested. To seek a waiver of the assessed charges, plaintiff must submit his waiver request to the department. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that the above-entitled matter be dismissed.

Dated this \_\_\_\_ day of June, 2000.

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COYREEN R. WEIDNER  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JUNE 27, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 27, 2000.**