

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Income Tax

DONALD M. PEARSON,)	
)	
Plaintiff,)	
)	No. 000696E
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	DECISION AND JUDGMENT OF
Defendant.)	DISMISSAL

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 29, 2000. Donald M. Pearson appeared on his own behalf. Kim Carey, Auditor, appeared on behalf of the department.

Plaintiff appeals the department's interest charge for tax year 1996 claiming the liability should be waived due to the length of time it took the department to impose the tax deficiency.¹ As explained to Mr. Pearson at the conference, the court does not have authority to waive interest charges. The legislature 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

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¹ Plaintiff appeals the interest charge off the department's Notice of Deficiency, dated April 28, 2000. The interest charge has not, to the court's knowledge, been assessed. Although the appeal to the court is premature because the charge has not been assessed, the court is dismissing the case for jurisdictional reasons.

it lacks jurisdiction to provide the relief requested. To seek a waiver of the interest liability, 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 July, 2000.

COYREEN R. WEIDNER
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON
JULY 6, 2000. THE COURT FILED THIS DOCUMENT ON JULY 6, 2000.**