

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Timber Tax

MERLE W. AND MARIAN E. MANNING,	)	
	)	
Plaintiffs,	)	
	)	No. 000727D
v	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on its own motion to dismiss the above-entitled matter. The court has held two case management conferences. Mr. Donald Brudvig and Mr. Malcolm E. Baker, Certified Public Accountants, appeared on behalf of plaintiffs. Mr. Bill Carter, Timber Tax Coordinator, Oregon Department of Revenue, appeared on behalf of defendant.

During the conferences, plaintiffs' representatives requested defendant waive the penalty it imposed for plaintiffs' failure to file a timely Western Oregon Privilege Tax Return. After the first conference, plaintiffs' representatives provided additional information about the sequence of events surrounding the failure to file the return. At the conclusion of the second conference, plaintiffs' representative requested Mr. Carter to explain its application of the good and sufficient cause criteria to the examples set forth in the Oregon Administrative Rule 150-305.145(3)-(A)(e) and (f).

On October 16, 2000, Mr. Carter wrote a detailed explanation of why defendant did not waive the penalty for good and sufficient cause. Mr. Brudvig wrote to the court on October 19, 2000, and challenged defendant's determination. In addition, Mr. Brudvig

questioned the court as to “[w]hat happened to the taxpayers’ right of appeal?” Mr. Brudvig wrote that “[t]he Department of Revenue notice dated April 5, 2000 directed us to appeal to the Magistrate Division of the Oregon Tax Court.”

While the court can determine if plaintiffs are subject to penalties under ORS 314.400, the court does not have the authority to waive penalties. The issue before the court is plaintiffs’ request that the court waive the penalty. At each of the two conferences, the court explained to plaintiffs’ representatives that the court does not have authority to waive penalties imposed under ORS 314.400. ORS 305.560 expressly provides in part:

“(1)(a) Except for an order, or portion thereof, **denying the discretionary waiver of penalty** or interest by the Department of Revenue, an appeal under ORS 305.275 may be taken by filing an original and one certified copy of a complaint with the clerk of the Oregon Tax Court \* \* \*. (Emphasis added.)

“The clear import of this language is that the legislature did not intend this court to review defendant’s discretion in waiving penalties.” *Pelett v. Dept. of Rev.*, 11 OTR 364, 366 (1990). As a result, the court finds this case should be dismissed because it lacks jurisdiction to provide the relief requested. To seek a waiver of the penalty, plaintiffs must submit their waiver request to the department. Now, therefore;

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

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

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JILL A. TANNER  
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 97310. 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 JILL A. TANNER ON  
DECISION**

**NOVEMBER 14, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 14, 2000.**