

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Tri-Met Tax

US FOODSERVICE, INC.,)	
)	
Plaintiff,)	No. 000986E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on its own motion to dismiss the above-entitled appeal finding it lacks authority to provide plaintiff with the relief it has requested. The court discussed its motion with plaintiff during the case management conference held October 3, 2000. John Clark, Payroll Supervisor, appeared on behalf of plaintiff. Defendant (the department) failed to appear for the conference.

Plaintiff appeals the department's Notice of Determination and Assessment, dated May 31, 2000. The department assessed a Tri-Met payroll tax, penalty and interest for the fourth quarter of 1999. The penalty relates to plaintiff's failure to timely pay the tax. Plaintiff appeals requesting that the penalty and interest be canceled. Plaintiff explains that, due to certain structural changes, a new unit became responsible for payroll taxes in Oregon and this new unit was unaware of the Tri-Met tax.

As explained at the conference, the court does not have authority to waive penalties and interest. The Oregon 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 it has requested. To seek a waiver of the assessed charges, plaintiff must submit its waiver request to the department. Now, therefore;

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

Dated this _____ day of October, 2000.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON OCTOBER 29, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 20, 2000.